



The Bar Council

15 July 2024

Practice note on *Rex (on the application of World Uyghur Congress) v the National Crime Agency* [2024] EWCA Civ 715

Practitioners should note that in *Rex (on the application of World Uyghur Congress) v the National Crime Agency* [2024] EWCA Civ 715, 26 June 2024, the Court of Appeal (Civil Division) held that the ‘adequate consideration’ exemption in s 329(2)(c) has no application to the offences in section 327 or section 328 of the Proceeds of Crime Act (‘POCA/the Act’).

The Court also held that where a person acquires property that represents someone’s benefit from criminal conduct and they know or suspect that it constitutes or represents such a benefit, that property remains criminal property even if the recipient is able to avail themselves of the s 329(2)(c) ‘adequate consideration’ exemption.

The Bar specific Part 2a LSAG Guidance, and in particular the FAQs and Typologies (for example in FAQ 6 & 7 and Typology 1, 9 & 12) where they refer to the ‘adequate consideration’ exemption must be read with the above qualification in mind. It is not correct to say, as the FAQs currently do, that: “In cases where adequate consideration has been provided the funds in possession of the recipient are no longer the proceeds of crime – regardless of whether you know or suspect that they are the proceeds of crime or not: *R. v. Afolabi* [2009] EWCA Crim 2879 (35).”

Even in cases where adequate consideration has been provided, where the funds in possession of the recipient are criminal property, they will remain criminal property where the recipient either knows or suspects that they are the proceeds of crime. Only persons who receive such funds without notice of their criminal nature receive them as clean funds.

The decision in *World Uyghur Congress* does not impact upon the decision in *Bowman v Fels* [2005] 1 W.L.R. 3083, in which the Court of Appeal held that s 328 of POCA was not intended to cover or affect the “ordinary conduct of litigation” or its consensual resolution. However, it should be noted that the Court in *Bowman v Fels* was considering a lawyer’s obligations under POCA in relation to a lay client’s source of funds as relevant to the litigation. The Court was not considering a lawyer’s obligations under the Act in relation to the payment of their fees. The scope of the latter has not been expressly considered by the Courts.

Accordingly, a barrister who receives payment for fees knowing or suspecting that the funds received are criminal property may be in possession of criminal property even if they give adequate consideration for those monies. Receiving such fees, without the required consent, could expose the barrister to potential criminal liability for the offences of being a party to a

'transfer' within the meaning of s 327 or an 'arrangement' within s 328 of the Act. A subsequent conversion or transfer of those monies could also expose the barrister to criminal liability under s 327 of the Act. A barrister who finds themselves in such a position should therefore give careful consideration as to whether they should make a Defence Against Money Laundering disclosure to the National Crime Agency.

If you are, or suspect that you are, in receipt of criminal property and are not sure what to do, you should take qualified, independent legal advice as to what steps to take.

The Guidance will be updated as soon as possible.