



# FINANCIAL OFFENCES & REGULATORY INVESTIGATIONS

**Birds** | Solicitors

SERIOUS FRAUD, CONFISCATION  
& REGULATORY INVESTIGATIONS

A Guide to Our Services

## Serious Fraud: Our Experience

Birds Solicitors has a wealth of experience in representing individuals charged with serious fraud offences. The firm is regularly instructed in cases often involving millions of pounds.

The firm is recommended in the Legal 500 for its fraud work. We are equipped to deal with fraud cases of any complexity and seriousness. We often receive referrals from other major solicitors firms dealing with fraud cases where a conflict of interest arises as we are known to be able to meet the unique challenges that these cases present with a minimum of fuss and the requisite degree of expertise.

Such cases require a degree of specialism over and above that required for more general criminal matters and the firm is recognised as providing an excellent service to its clients charged with such offences and to prepare cases thoroughly for trial.

We have the ability and experience to cope with the huge volume of material that these investigations produce and to ensure that the client is able to participate effectively in his or her own defence by giving instructions focussed on the main issues in the case.

Some cases have a high profile both in the UK and internationally, in particular those involving very large amounts of money or

allegations of insider dealing. Many fraud cases are not headline makers but are no less important to our client. In each case we ensure that the client benefits from our considerable experience in this complex area of work.



## Insider Dealing

Insider dealing cases are mainly investigated and prosecuted by the Financial Conduct Authority (FCA). On occasions the FCA prefers regulatory enforcement over criminal prosecution. It is common in such investigations that a suspect is arrested and has their house and place of work searched before interview under caution at the police station. There is very often a lengthy period on pre-charge bail with further interviews within that period before any decision is made whether to charge the individual with any offences.

The FCA has huge resources for detection of insider dealing offences and has a range of powers at their disposal including arrest and search of premises, interviewing suspects in detention at police stations and restraining accounts throughout the world.

The criminal offences of insider dealing are punishable by a maximum of seven years' imprisonment or an unlimited fine. These cases almost inevitably attract immediate custodial sentences on conviction.

The firm has been involved in the most recent high profile prosecutions by the FCA for insider dealing, Operation Saturn and Operation Tabernula. In both cases the FCA alleged that inside information was used to place spread bets on the value of company shares. The nature of the cases was very different but both were extremely document heavy and complex matters to defend.

It is important that the defence solicitor is able to understand the issues concerned and to handle and manipulate the documentary evidence produced by both the Crown and the defendant or co-defendants in the case.

Our experience in these types of cases means that we are able to provide a team of individuals to work on the case tailored to the requirements of the case. The team will always be led by a Director who will work on the case on a day to day basis and be responsible for ensuring that the case is properly managed throughout. We are well known for providing hands on representation at the most senior level to these cases whether legally aided or privately funded.



## Money Laundering

The Proceeds of Crime Act 2002 (“POCA”) creates a number of offences generically referred to as money laundering offences. These offences are aimed at the movement, concealment and conversion of criminal property. It is illegal to conceal, disguise, convert or transfer criminal property or to remove it from the jurisdiction (s327 POCA). It is also illegal to enter into or become concerned in any arrangement which the individual knows or suspects facilitates the acquisition, retention, use or control of criminal property for or on behalf of another person (s328 POCA). Equally it is an offence to acquire, use or possess criminal property (s329 POCA).

POCA also creates offences aimed at the regulated sector concerning failure to disclose suspicions about money laundering activity by others in certain circumstances and tipping off individuals who may be the subject of an investigation. These offences put professionals at risk of prosecution for actions within their normal working routine.

It is essential that anyone who is likely to be affected by these provisions of POCA receives adequate anti-money laundering training.

Birds Solicitors has dealt with numerous cases involving allegations of money laundering, many involving very large sums of money. These cases often involve very extensive investigations and the cases can involve many thousands of pages of evidence including complex accounting documentation. We are well equipped to manage these cases, evaluate the strength of the evidence (with or without the assistance of experts) and to guide the defendant through the complex process of preparing such a case for trial.

### **Boiler room and land banking frauds**

These types of fraud are very similar in construction. A “boiler room” fraud normally involves potential investors being cold called by a salesman seeking to sell them shares in companies that turn out not to be worth the amount paid or at worst entirely worthless or non-existent. They do not always involve the sale of bogus shares but can include the sale of other commodities for alleged investment such as coloured diamonds or wine.

Where the commodity in question is a parcel of land, the fraud is commonly referred to as a land banking fraud. In

these cases the parcel of land is often said to be a good development investment by the salesman but in fact has no chance of obtaining planning permission or is otherwise unsuitable for development as being geographically unsuitable or within an area where no development is permitted.

The salesmen often use high pressure techniques and make statements about the investment which are untrue or deliberately misleading. It is common for pseudonyms to be sued and for the callers to be based abroad or in serviced offices in the UK which move on a regular basis.

Investigations into these offences are complex and can take a long time to come to fruition. Defendants can be on bail pending charge for many months and may be interviewed by the authorities on numerous occasions. The investigation will inevitably include detailed financial analysis of company and personal accounts.

It is important that anyone suspected of such an offence obtains expert legal advice from a solicitor with experience of such cases as soon as possible. This firm has a wealth of experience in defending boiler room type frauds involving the sale of shares and other commodities and cases involving the sale of parcels of land. We can assist and advise from the earliest stage in the case.

## Bribery and corruption

Most people understand the concept of bribery and corruption as the act of giving money or goods to another person in exchange for them doing something to benefit of the person providing the money or gift. In business the lines may become blurred particularly where dealings with individuals outside of the UK are concerned and in certain industries where such payments may be or have been reasonably common place.

However, where such allegations are investigated, they can be extremely complex and lengthy enquiries. Often they involve allegations of payments being made to certain individuals within companies to place a contract for goods or services with a specific company, favouring a specific company in a tender process or providing a “kick back” commission for the provision of the contract. The situation may arise where the allegation is that an individual in a financial institution is provided with payment for authorising a loan to a company.

We have experience of acting in such cases including cases involving the placing of multi-million pound international contracts, UK contracts worth millions of pounds and kick back commission for loans worth millions of pounds.

Our experience of these specific types of case and large fraud related cases in general means that we are able to deal with the issues that arise in such investigations and prosecutions. We are able to handle the complex issues that such cases often throw up where details of the workings of various industries have to be understood by the advising lawyer.

We have the ability to deal with such paper heavy cases and to manage the case appropriately and efficiently for the client whether it proceeds to trial or not.



### *Examples of our previous fraud related cases*

Our previous fraud related cases include:

- The “Robinsons” legal aid fraud case in which we represented one of the 29 defendants in a large scale fraud on the legal aid fund by a firm of solicitors called Robinsons who were allegedly making fraudulent claims on the legal aid fund for payment in cases where work had not been undertaken or had been exaggerated. This was an extremely

complex fraud cases involving a warehouse of paperwork and an investigation which took many years to get to trial. Our client was acquitted after a trial lasting 13 months.

- We were involved in the first major prosecution for insider dealing by the FCA (Operation Saturn) which at that time was a flagship prosecution for that organisation.

- Subsequently we were instructed in what has been described as one of, if not, the largest FCA insider dealing investigation (Operation Tabernula) which involves the prosecution of bankers and traders allegedly engaged in an insider dealing conspiracy worth several million pounds.

- We were also involved in the LIBOR and Foreign Exchange enquiries (see regulatory investigations) acting as an Independent Legal Adviser in the internal bank investigation and in relation to an investigation by the FCA. In these cases no charges were brought against our client.

- We successfully represented a company director in a corruption case where the alleged victim was a large rail related company for whom contracts were allegedly awarded as a result of tainted tender processes and the payment of bribes..

- We also represented an MP in an investigation into expense claims conducted by the Metropolitan Police but which concluded with no action being taken.

- We also successfully defended a journalist charged in the well publicised police operation known as Operation Elveden. These case involved allegations that journalists from a national newspaper paid police officers (and other public officials) for information on which they based stories in the newspaper.

- We successfully defended a man charged with a large scale and extremely complex land banking fraud in which parcels of land were sold to potential investors at prices considerably higher than the land was said to be worth.

- In relation to “boiler room” type fraud cases, we have defended in cases involving the sale of shares at inflated prices (similar to land banking) and also in a case where the items made available for alleged investment were coloured diamonds.

- We represent a defendant in a conspiracy to make corrupt payments in an international project involving a well known multi-national company and the alleged payment of bribes to foreign politicians and senior officials.



## Restraint and Confiscation

In a number of investigations, the prosecuting authorities seek a Restraint Order from the Court pre-charge. This will be obtained at a hearing not attended by the suspect and served on the individual concerned often at the time of their arrest for the offences in question.

The Court can only grant a Restraint Order where it is satisfied that certain conditions as set out in s40 of the Proceeds of Crime Act 2002 (“POCA”) apply.

The Restraint Order limits the use of the individual’s assets during the course of the investigation and any subsequent criminal proceedings. Often the order requires disclosure to be made of the individual’s assets in the UK and abroad.

Anyone served with a Restraint Order should seek immediate advice from a solicitor with experience of dealing with such matters. Unless the individual has been charged, legal aid for such advice is limited but there are also restrictions on

the use of private funds. This matter should be discussed with the solicitor.

A Restraint Order has to allow for reasonable living expenses. It also has to make provision to allow the person to carry on any trade, business, profession or occupation. A solicitor may be able to negotiate variations to the order with the prosecuting authorities by consent or possibly obtain legal aid for an application to the court to vary the order.

Birds Solicitors can assist you if you are restrained in providing advice on how to deal with issues of disclosure and any variation application that may be possible subject to appropriate funding being available.

## Confiscation Orders

Once a defendant has been convicted the Court can in many cases make a Confiscation Order against them. The process is difficult for defendants and the provisions of the legislation are often described as draconian.

The process can be drawn out and if the defendant is serving a custodial sentence obtaining the information required can be complicated. Initially the defendant will be required to provide a statement disclosing their assets. Thereafter the prosecution will prepare a detailed statement setting out what they consider to be the benefit from the offence to the defendant and

benefit from the “criminal lifestyle” provisions if they apply to the case.

If the provisions apply they will go back six years from the date of charge and it will be assumed that all income and expenditure during that period is from criminal conduct unless the assumption is proved to be incorrect or would cause an injustice.

The burden of proof is placed onto the defendant to demonstrate that they have not benefitted from criminal conduct over the previous six years where the criminal lifestyle provisions are engaged.

This can be very difficult as it can mean accounting for every item of income and expenditure within that period. Evidence will be required to show that any specific income was not from criminal conduct.

The defendant then has to produce a statement in response to the prosecutor’s statement. The defence solicitors and advocate will discuss matters with the Crown to narrow the issues to those that remain in dispute. If agreement cannot be made there will be a contested hearing at which the order will be made.

The court will have to decide on the level of “benefit” including from past criminal conduct under the criminal lifestyle provisions and make an order in that amount unless it is satisfied that the assets available to the defendant are less than the benefit figure. In such cases the order is made at the level of the assets. It

does not matter when the assets were obtained or whether it can be proved that they were obtained legally.

A period of time to pay the order will be given which cannot be extended beyond 6 months. Interest will run on unpaid sums from the end of the agreed time period. Thereafter the Magistrates’ Court may start enforcement proceedings to recover unpaid sums or imprison the defendant in default of payment.

Birds Solicitors has a wealth of experience in dealing with restraint and confiscation proceedings.

We have dealt with orders involving very large sums of money in the past and are adept at negotiating the best available outcome for our clients.

**Steven Bird** has lectured on confiscation and has written the chapter on restraint and confiscation in a forthcoming book on Drugs Law to be published shortly. He regularly takes on confiscation cases from other solicitors once the client has been convicted. It is reasonably common for defendants to seek a transfer of legal aid at the confiscation stage to a firm with expert knowledge of this area of work.

## **Regulatory Investigations and Compliance Advice**

The firm undertakes certain regulatory work involving investigations by regulators such as the Financial Conduct Authority or investigations and prosecutions by other regulatory bodies such as the Health and Safety Executive or the Trading Standards Authority. We are also able to provide advice on compliance with the requirements of the Bribery Act 2010 and the Modern Slavery Act 2015 by commercial organisations.

We were recently involved in the FCA-led international investigation into the setting of LIBOR by the UK banks which was an extremely high profile example of our regulatory work. Charges were not brought against our client and we acted through the internal bank investigation and during interviews with the FCA.

We were also involved in an internal bank investigation representing the individual employee on an internal investigation into Foreign Exchange dealing.

We have defended clients for breaches of health and safety legislation (including manslaughter by gross negligence) and offences prosecuted by local authorities and Trading Standards from matters as diverse as building regulation breaches, health and safety breaches in construction, breaches of regulations in the manufacture of soft furnishings and fraud within the sale of telephone equipment and telephone service

contracts and fraud in relation to a betting syndicate.



Whether the potential offence investigated is complex such as the wholesale selling of second hand cars which are said to have been "clocked" or more straight forward, we have the ability and expertise to help. As an example, we had the summons withdrawn against a company who sold a sofa in a trading standards test purchase which did not meet to the fire safety regulations for soft furnishings.

Legal aid is occasionally available if individuals are charged or interviewed in certain circumstances but these cases are much more often funded by the employing company or insurance.

### **Corporate Compliance under the Modern Slavery Act 2015:**

We have a separate brochure dealing with the services that we are able to provide to corporate entities in relation to their obligations to ensure Transparency in their Supply Chains.

The introduction of section 54 of the Modern Slavery Act 2015 Act has placed a burden on certain companies to produce and publish an annual slavery and human trafficking statement from the financial year ending on or after 31st March 2016. Any company to which the obligation applies must report on what investigations they have made and steps they have taken in the previous financial year to ensure that slavery and human trafficking is not taking place within its supply chain or any part of its business as soon as reasonably practicable after the end of each financial year.



This is an on-going obligation designed to eradicate modern slavery and human trafficking within the supply chains of large companies. The Government can enforce compliance with the section by the use of injunctive civil proceedings.

The obligation applies to every commercial organisation that supplies goods or services and has a total turnover of not less than £36 million. Commercial organisations include companies or partnerships which carry on business or

part of a business in any part of the United Kingdom wherever that company or partnership is incorporated or formed.

The slavery and human trafficking statement must set out the steps that the organisation has taken during the previous financial year to ensure that slavery and human trafficking is not taking place within any part of its business or any part of its supply chain. If nothing has been done to investigate or identify any such issues, a statement to that effect has to be made. Such statements have to be approved by the Board of Directors and signed by a Director or approved by members of a limited liability partnership and signed by a designated member or general partner.

The statement has to be published on the organisation's website with a link in a prominent place on the Home page. In the unlikely event that the organisation does not have a website, a copy of the statement must be provided to anyone who requests a copy within 30 days of that request.





**Contact Birds Solicitors for further advice**

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**Compliance under the Modern Slavery Act 2015**

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**Steven Bird** has been defending serious fraud cases for more than 25 years.



**Philippa Southwell** is recognised as one of the leading lawyers in the area of modern slavery and human trafficking.



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