



**Engage**

Legal insights and analysis

## **Litigation activism confirms the risks of money laundering liability in supply chains**

24 July 2024

---

On 27 June 2024, the Court of Appeal handed down judgment in *World Uyghur Congress v National Crime Agency* [2024] EWCA Civ 715. The challenge of a 2023 decision by the High Court was brought by World Uyghur Congress ("WUC") against the National Crime Agency ("NCA"), which investigates serious and organised crime in the UK, in relation to the NCA's decision not to investigate alleged offences under the Proceeds of Crime Act 2002 ("POCA") in connection with cotton products originating from the Xinjiang Uyghur Autonomous Region of China ("Xinjiang"). The judgment confirms the risk of money laundering liability where there is evidence of human rights violations in supply chains.

### **Legislative background**

POCA sets out the UK's principal money laundering offences which are committed when a person deals with "criminal property" - property that constitutes or represents benefit from criminal conduct<sup>1</sup>. Of the three principal money laundering offences under POCA, it is section 329(1) POCA which creates the offence aimed at those who acquire criminal property, criminalising the acquisition, use, and/or possession of criminal property.

Section 329(2)(c) creates an exemption where the criminal property was acquired, used or possessed for "adequate consideration"<sup>2</sup>. POCA does not define "adequate consideration". However, consideration is deemed "inadequate" where the value of the consideration is significantly less than the value of the property<sup>3</sup>.

### **The High Court decision**

The background to the case focussed on a decision made by the NCA in 2020. At the time, WUC had shared with it evidence that it had gathered supporting the contention that serious human rights abuses were taking place in Xinjiang in China and that cotton produced from the region was likely to result from forced labour. The WUC contended that the NCA should investigate such imports under POCA, on the basis that cotton goods originating from Xinjiang likely represented proceeds of crime and trading in them could amount to an offence of money laundering.

In the first instance, the High Court [found](#) that cotton produced through forced labour could constitute “proceeds of crime”, but agreed with the NCA in their contention that:

- In the absence of the identification of a specific consignment of goods being the product of criminality, the requirements of a POCA money laundering offence were not met; and
- the “adequate consideration” exemption applied if the criminal property was paid for at market value thereby effectively “cleansing” the property of its criminal status, allowing it to be bought and sold subsequently without adverse consequences, such as the risk of criminal liability for money laundering or a civil recovery or forfeiture claim in relation to the proceeds of the onward sale.

Accordingly, the High Court held that the NCA's decision was sound when it refused to open an investigation under POCA in relation to the cotton products.

## The appeal

On 27 June 2024, the Court of Appeal reversed that [decision](#), and found in favour of WUC on the basis that:

- A “proper basis” for a POCA investigation (whether criminal or civil) does not require evidence of criminal conduct in relation to a specific consignment of cotton. The Court of Appeal highlighted the *“legitimate concern that the Judge’s judgment is to be understood as endorsing the proposition that there is a need to establish criminal conduct or criminal property before an investigation under POCA can begin”*.<sup>4</sup>
- The proposition that paying market value (“adequate consideration”) for criminal property within a supply chain results in the criminal property being cleansed was *“wrong in law”*<sup>5</sup>.

The NCA will now have to reconsider its decision to open an investigation.

## Implications

The judgment has wide reaching ramifications.

Firstly, whilst preserving the adequate consideration exemption for a bona fide purchaser paying fair value for goods or property, the judgement makes plain that the mere existence of adequate consideration somewhere in the supply chain does not cleanse goods or products from being identified as criminal or recoverable property, for the purposes of POCA. In other words, section 329(2)(c) of POCA has no impact on the status of the property itself and does not act as a circuit breaker. It provides protection from criminal liability, but only for the person who acquires the goods or property for adequate consideration<sup>6</sup>. On the face of it, it provides no further shield from prosecution to a person (or company) who may commit a subsequent money laundering offence where they acquire criminal property for adequate consideration but then go on to convert it into other property, transfer it to another person, or become party to an arrangement which enables the acquisition, retention, use or control of that property by another person (sections 327 and 328 of POCA). We anticipate that this secondary onward risk will lead to a significant increase in the number of Defence Against Money Laundering requests being made to the NCA<sup>7</sup>.

Secondly, it affirms that modern slavery within a supply chain can taint resulting products from a POCA perspective. With ESG litigation on the rise, it has never been more important for corporates, and particularly those with overseas production activities, to ensure their supply chains are free from forced labour and other criminal activities. This further reflects international trends, as we have previously highlighted in our related [Engage article](#) on the EU's approach to this issue, which details how member states will soon be required to implement new regulations to hold companies liable for human rights and environmental violations within the global supply chain.

Finally, from a UK perspective, the judgement also confirms that decision making when on-boarding a third-party supplier creates not only a commercial and/or reputational risk, but also a criminal liability risk. Where due diligence conducted on a third party raises red flags of criminality in a supply chain, a senior manager/decision maker who proceeds to on-board that supplier, notwithstanding their suspicion, risks binding the company for the purposes of POCA.<sup>8</sup> In addition to risk assessing supply chains, corporates should also consider who within their organisation is empowered to take such decisions.

If you would like to discuss any aspect of this article, please get in touch with any of the contacts listed.

Authored by Claire Lipworth, Liam Naidoo and Olga Tocewicz.

#### References

1 In whole or part, directly or indirectly, irrespective of where that criminal conduct occurred (s 340(3), POCA).

2 Note that this exemption does not apply to other substantive offences created by sections 327 and 328 POCA.

3 s 329(3)(c) POCA.

4 At paragraph 54.

5 At paragraph 56.

6 To be liable for a section 329 money laundering offence, any subsequent purchaser would still need to have the requisite knowledge or suspicion that the goods or property represented benefit from criminal conduct, i.e. was criminal property, and they would also have to fail to pay adequate consideration.

7 A DAML can be requested from the NCA where a reporter has a suspicion that property they intend to deal with is in some way criminal, and that by dealing with it they risk committing one of the principal money laundering offences under POCA.

8 As defined within section 196(4) of Economic Crime and Corporate Transparency Act 2023.