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Litigation Update

R v Osmond: UK Court of Appeal Clarifies the Reach of Tipping Off Under POCA

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On 28 July 2026, the UK Court of Appeal handed down its judgment in *R v Osmond* [2026] EWCA Crim 979. This is the first time that the Court of Appeal has addressed the tipping off offence under section 333A(3) of the Proceeds of Crime Act 2002 (POCA). Against the background of a disclosure by a solicitor to a client in the context of an investigation into money laundering allegations, the judgment provides regulated firms with important guidance on the broad scope of the section 333A(3) offence.

First, where a specific investigation into a particular transaction forms part of a broader investigation, that specific investigation can amount to a separate "investigation" for the purposes of section 333A(3), irrespective of whether the wider investigation is already publicly known. Second, the capacity in which information is received by the defendant is relevant, rather than the source of the information. Information received by a solicitor from a Serious Fraud Office (SFO) investigator is received in the course of regulated business. Third, it is sufficient that the disclosure is likely to cause prejudice. Actual prejudice need not be suffered.

In addition, the Court confirmed that an SFO investigator receiving a forged document acted "*in connection with his performance of any duty*" under section 10 of the Forgery and Counterfeiting Act 1981 (FCA).

The 'Tipping Off' Offence Under Section 333A(3) POCA

A person commits a tipping off offence under section 333(A)(3) POCA if:

1. They disclose that an investigation into allegations that an offence under POCA has been committed, is being contemplated or is being carried out;
2. The disclosure is likely to prejudice that investigation; and
3. The information on which the disclosure is based came to the person in the course of a business in the regulated sector.

Schedule 9 to POCA contains a list of businesses in the regulated sector.

Background Facts

At the relevant time, Mr William Osmond was the senior partner of a law firm, Osmond and Osmond Solicitors. Mr James Ramsay was a longstanding client of Mr Osmond. In 2013, Mr Ramsay provided £4 million through an off-the-shelf British Virgin Islands company, Barrow Management Ltd. (Barrow), as a loan towards the purchase of an £8 million property in Mayfair. Mr Osmond represented Mr Ramsay and his company in connection with the transaction. The money provided by Barrow was paid to the borrower and purchaser through Osmond and Osmond's client account.

The SFO learned of the property transaction during its investigation into a mining company, Eurasian Natural Resources Corporation Limited (ENRC). That investigation concerned allegations of corruption, fraud and money laundering. Although Mr Ramsay was not a suspect in the ENRC investigation, the recipient of the loan and purchaser of the Mayfair property was the wife of an individual who held a senior position at ENRC, and the daughter of one of ENRC's founders.

In 2018, the SFO informed Mr Osmond, first by telephone and subsequently in writing (by way of a Section 2 notice under the Criminal Justice Act 1987), of the investigation into ENRC, of its suspicion of money laundering in connection with the £4 million loan, and told him that he would be required to answer questions and provide documents about the property purchase.

The day after being contacted by the SFO, Mr Osmond telephoned Mr Ramsay to discuss the SFO's enquiries and how they should be answered. Shortly thereafter, Mr Osmond travelled to Malta to meet with Mr Ramsay to discuss the matter, and continued to engage in correspondence with Mr Ramsay upon his return to the UK. As a result, the information Mr Osmond provided to the SFO was not his independent recollection but shaped by discussions with and instructions from Mr Ramsay.

In response to the SFO's request for a copy of Mr Osmond's engagement letter with Mr Ramsay with respect to the property transaction, instead of admitting that no such letter existed, Mr Osmond created a backdated letter.

<u>The Decision at First Instance</u>

The trial judge made three pre-trial rulings:

1. The relevant "disclosure" for the purpose of section 333A was the disclosure by Mr Osmond to Mr Ramsay of the SFO's specific investigation into the property purchase, even though the broader ENRC investigation was publicly known.
2. The information on which the disclosure was based came to Mr Osmond from the SFO in the course of business in the regulator sector, as Mr Osmond acted in his capacity as a solicitor for Mr Ramsay and Barrow in relation to the property transaction.
3. Even though the SFO had the power, not a duty, to investigate, the SFO investigator was acting "in performance of a duty" to his employer when he received the backdated engagement letter.

At trial, Mr Osmond was convicted of (1) tipping off, contrary to section 333A(3) POCA, and (2) forgery, contrary to section 1 of the FCA 1981. He was sentenced to nine months' imprisonment suspended for 18 months.

<u>The Decision of the Court of Appeal</u>

Mr Osmond made the following submissions on appeal:

1. The trial judge's rulings withdrew important factual issues and narrowed the scope of the defence case which should have been considered by the jury.

2. The specific enquiry into the financing of the property purchase was merely a part of the broader, well-publicised investigation into ENRC.

3. The disclosure did not come to Mr Osmond in the course of business in the regulated sector, but from the SFO; it was insufficient that Mr Osmond had acted as a solicitor in the property purchase.

4. The SFO was merely exercising powers rather than performing any duty when the false engagement letter was received. The term "duty" in section 10 of the FCA requires something more than the duty owed by an employee to their employer.

5. The disclosure did not cause the SFO's investigation to suffer any prejudice. It had not been proved that the information and documents provided to the SFO were any different, as a result of the disclosure to Mr Ramsay, than if Mr Osmond had provided them without Mr Ramsay's input.

6. A second judgment in the ENRC civil litigation (ENRC2), which was handed down after the conclusion of Mr Osmond's trial, concerns a finding of misconduct by SFO officials in the broader criminal investigation into ENRC and should have been disclosed in Mr Osmond's trial.

The Court of Appeal ultimately refused leave to appeal. The Court reached the following conclusions on each of the issues.

1. **Pre-trial rulings**: Given the "*real danger*" that "*the trial would become bogged down in a morass of irrelevant material*", the judge's rulings were "*necessary to ensure that the case was dealt with efficiently and expeditiously*" in accordance with the overriding objective under paragraph 1.1 of the Criminal Procedure Rules and "*the jury was enabled to focus on the real issues*".

2. **The disclosure**: It is for the prosecution to decide what it is that they allege has been disclosed for the purpose of section 333A(3). An investigation can be the subject of a disclosure under section 333A(3) even if that investigation is also an aspect or strand of a wider investigation. Accordingly, the prosecution could contend that the disclosure by Mr Osmond to Mr Ramsay was the fact that the SFO was investigating allegations of money laundering in connection with the property purchase, not the wider investigation into ENRC. The fact that the investigation into the property purchase formed part of a wider investigation into ENRC, the existence of which was public knowledge, did not give rise to any issue of fact for the jury.

3. **In the course of business in the regulated sector**: Mr Osmond learned that the SFO was investigating the property transaction in the course of a business in the regulated sector, namely "*as a solicitor engaged in transactions concerning the purchase of real property, the acquisition of off-the-shelf companies and the handling of client money*", all of which were involved in the property transaction in which Mr Osmond acted as Mr Ramsay's solicitor, and which fall within the definition of regulated businesses under Schedule 9 of POCA. It is irrelevant that Mr Osmond received the information from the SFO; what matters is not the source of the information, but the capacity in which it is received. It is also irrelevant that the transaction about which the SFO was seeking information was a historical transaction.

4. **In connection with his performance of any duty**: Deception, or attempted deception, of a public official carrying out a criminal investigation in the course of his employment is necessarily "*in connection with his performance of any duty*". The duty was owed to both the employer with responsibility for investigating offences (the SFO) and to the public. It does not matter that the SFO had a power, not a duty, to investigate. The power is exercised when the investigation commences. Those carrying out the investigation are exercising a public function. They have a duty to do so in accordance with the employer's instructions and the law.

5. **Prejudice**: The prosecution is not required to show that the disclosure has caused prejudice to the investigation, and it is not a defence that, with hindsight, no prejudice has in fact been suffered. The issue was whether the disclosure was "likely" to prejudice the investigation. That was an issue of fact for the jury. In any event, "*disclosure of the investigation to the target is inherently likely to prejudice the investigation because of the risk that evidence will be destroyed or compromised or that an offender may seek to evade justice*".

6. **ENRC 2 civil judgment**: The misconduct identified in the ENRC civil litigation was not relevant to the issues to be determined by the jury in Mr Osmond's case, where the disclosure was narrower and more specific and in which the SFO officials who had committed the

misconduct were not involved. The misconduct findings were irrelevant to the question of whether Mr Osmond was guilty of the offences with which he was charged.

Practical Considerations

The principles articulated in the Court of Appeal's judgment give rise to a number of practical considerations for regulated firms who may be contacted by regulatory bodies, supervisory authorities or law enforcement agencies. These considerations are of particular importance as the Court of Appeal granted leave for its judgment to be cited in future cases.

1. **Caution**: Exercise caution and, as a default position, treat outreach from investigating authorities regarding a client or transaction as a potential risk of tipping off. Do not automatically assume that information can be shared with clients and consider carefully the content of any communications. Assume the information is sensitive, confidential and undisclosable until the Money Laundering Reporting Officer (MLRO) or other appropriate function has determined what, if anything, can be disclosed without triggering section 333A(3) of POCA.

2. **Awareness**: Understand that disclosure of non-public details of a specific aspect of a wider investigation can constitute a tipping off offence, even where the wider investigation is already in the public domain. Recognise that a tipping off offence can also occur where the information is received directly from the investigating authority in the course of regulated business.

3. **Assumption of prejudice**: Whether a disclosure will cause actual harm at the time when it is made will not always be readily ascertainable. Assume that a disclosure will give rise to prejudice, despite it being unnecessary to establish that actual harm has been suffered.

4. **Escalation**: Implement appropriate escalation procedures to ensure that any individual who receives investigative contact notifies the firm's MLRO or other appropriate compliance or legal personnel immediately. Ensure escalation procedures apply to both current and historical work or client relationships.

5. **Documentation**: Maintain contemporaneous records about the specific information received from the investigating authority and document any decision-making processes regarding communications with clients in circumstances where there is a risk of tipping off.

Corporate Criminal Liability

In our recent article, we discussed the extension of corporate criminal liability in the UK under section 250 of the Crime and Policing Act 2006. Corporates are now criminally liable for all offences committed by their senior managers acting within the actual or apparent scope of their authority.

The new law means that, if a senior manager – an individual who plays a significant role in either (1) the making of decisions about how the whole or a substantial part of the activities of the organisation are to be managed or organised or (2) the actual managing or organising of the whole or a substantial part of those activities – acting within the actual or apparent scope of their authority commits a tipping off offence under section 333A(3) of POCA, the company may also be guilty of the offence.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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