

Civil remedies trump POCA recovery in landmark decision

The decision in *Crown Prosecution Service v Aquila Advisory Limited* provides welcome clarification on the interplay between POCA and common law recovery. It seems companies may still be subject to the POCA regime and stripped of a potential windfall which the CPS did not avail themselves of in this case.

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Where clients rely on the criminal justice system to prosecute fraud and repatriate funds lost due to dishonest breach of fiduciary duties of a senior officer, the decision in *Crown Prosecution Service v Aquila Advisory Limited* [2021] UKSC 49, provides welcome clarification on the interplay between POCA and common law recovery.

The decision underlines a company's capacity to enforce its proprietary rights in priority to unsecured creditors, though a constructive trust and represents a significant weapon where directors are in receipt of unauthorised profits in breach of their fiduciary duties. The ability to do so would not be undermined by the illegality of directors' acts, which would not be attributed to the company and where companies may, as in this case, decide to pursue their own recovery

However, as a caveat, it seems companies may still be subject to the POCA regime and stripped of a potential windfall under Parts 2 and 5 of POCA, which the CPS did not avail themselves of in this case.

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