

# Enforcement Update — Wrongdoing in Supply Chains; Six Months on from *R(WUC) v NCA*

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In June 2024, the Court of Appeal handed down its Judgment in *R (on the application of World Uyghur Congress) v National Crime Agency* [2024] EWCA Civ 715. It represents a significant turning point for the way in which businesses ought to approach issues arising from possible wrongdoing in supply chains. Six months after the event, and having reflected after our participation in many events and conferences which have alighted upon the topic, we provide here an *aide memoire* on the key issues to consider for businesses and highlight some recent legal developments in matters affecting supply chains.

## ***A reminder of R(WUC)***

Businesses can no longer rely on the fact that adequate consideration was paid at some earlier point in the supply chain to cleanse goods from known or suspected criminal origins. Emanating from an appellate panel, which was chaired by none other than the Lady Chief Justice, the Judgment of the Court said this: "If [...] the judge accepted the NCA's submission [...] that, at any point in a market supply chain stretching many thousands of miles, the chain could be broken merely by the use of adequate consideration in any of the transactions involved, he was wrong to do so."

Crucially, a business is therefore left in the position of ensuring that it pays adequate consideration at the stage it actually acquires the property (to provide a defence pursuant to s.329(2)(c) of the Proceeds of Crime Act 2002 ("POCA") to the offence of

acquiring criminal property) and/or filing a Defence Against Money Laundering ("DAML") Report to, hopefully, provide a defence to a money laundering offence.

The Judgment is additionally complex for businesses however, since it clarifies that, even if a business acquires property in circumstances where it can rely on the adequate consideration defence pursuant to s.329, that defence applies only to a possible offence contrary to s. 329 – not any additional separate offence/s contrary to s.328 or s.327. This gives rise to an inherently unsettling position where a company can acquire criminal property (an offence contrary to s.329) without committing an offence if it has paid adequate consideration (the defence pursuant to s.329(2)(c)), but it could still commit an offence of *inter alia* converting or transferring that property (s.327) or of arranging to facilitate *inter alia* its use or control (s.328)). That leaves businesses in a difficult position in respect of how to navigate these choppy waters.

## ***Additional Issues for Businesses***

### ***1. What is meant by "adequate consideration"?***

The limited authorities hold that this is a factual question which is to be determined by what is objectively reasonable in all the circumstances with reference to the evidence. In defining what is meant by adequate consideration, s.329 refers to where something is "inadequate consideration" with reference to the "value of the consideration".



The CPS guidance on adequate consideration focuses on the concept of a "*proper market price*". In these authors' view, consideration may be adequate with reference to all the circumstances of the bargain, in other words the "*value*" given in the transaction as consideration, and not just the amount of money that was paid. Frequently, consideration, as a contractual issue, does not pertain to the pure financial amount and may factor in additional non-pecuniary benefits to the contractual counterparty.

## 2. Criminal Attribution by Senior Managers

In December 2023, legislation was implemented (s.196 Economic Crime and Corporate Transparency Act 2023) which states, in summary, that certain criminal acts by senior managers can attribute criminal liability to a corresponding corporate body. It is therefore possible that where such a 'senior manager' deals with criminal property, with inadequate consideration having been given, this could attribute criminal liability to the business.

This consequently brings into sharp focus a dichotomy in respect of who should be responsible for internal investigations into supply chain malpractice. The conundrum being that, if someone who is a 'senior manager' conducts the investigation and is consequently infected with the requisite knowledge or suspicion that the property in question is the proceeds of crime, for the purposes of a money laundering offence, this may create an issue with attribution for the company, if the consideration paid was inadequate. The issue of timing of the knowledge

and whether the interaction between the factors gives rise to any ongoing issues will be at the heart of the matter.

However, while there might accordingly be a temptation for investigations to be conducted by those more junior than 'senior managers', and without external assistance, this would be incredibly high risk. Not having someone senior involved in investigations, and/or with insufficient expertise, is likely to lead to infringement of other civil and criminal provisions (by way of limited examples for immediate consideration: Financial Services and Markets Act 2000 provisions for those in the regulated sector, or a s.7 defence of adequate procedures under UK Bribery Act 2010). This is an area which requires navigation with great care.





### 3. What might businesses do in order to deal with the issues that arise?

Having a good compliance regime in place to reduce the risk of entering into transactions that require use of the adequate consideration defence in the first place is a useful first step. If in spite of identifying such a risk, a business is nevertheless desirous of the goods, seeking advice on what should be done to ensure adequate consideration is well documented is a recommended second step. If in doubt or additionally inclined, a DAML report can also be made to provide protection from a money laundering offence (if approved or deemed as such); though a DAML is not without its own enforcement risks.

Seek legal advice on the implementation of a good compliance regime. Importantly, if you are engaged in higher AML risk purchase of goods, do more to ensure you can evidence compliance. The external investigation risk now emanates not just from domestic enforcement bodies but also from NGOs, possible competitors (e.g. private prosecutions are possible), international trade bodies, and wider cross-border regulators/regulations (e.g. those dealing with CSDDD in the European Union).

Customers are also increasingly concerned about industrial exploitation including slavery. Companies who proactively guard against these risks should therefore benefit on the bottom line. Additionally, the reputational risk and exposure to loss of share value from enforcement action can be devastating and far reaching.

Our criminal and civil teams are well-equipped with specialist advisors who can help to navigate these complex issues.

## Enforcement Tracker

Since the *R(WUC)* Judgment was handed down in June 2024, we have been tracking some of the more recent developments into supply chain practices and investigations. A selection of those are set out below.

### United Kingdom

#### *What is going on in R(WUC)?*

The NCA was directed to reconsider its decision and reopen the investigation into the cotton goods. There is no update on the NCA website, and the agency is not susceptible to Freedom of Information requests.

We are not aware of any increase in activity emanating from the NCA as a result of the *R(WUC)* ruling.

#### *Migrant workers get permission to appeal decision in their case against Dyson*

Legal action by a class of Malaysian victims is being taken against two Dyson UK companies, and a Dyson Malaysian company, for claims relating to allegations of forced labour, false imprisonment, assault, battery and degrading treatment. The appeal hearing took place in the Court of Appeal on the 26 and 27 November 2024, challenging the decision that the case should not be heard in the UK. The 24 claimant migrant workers are bringing common law tort and unjust enrichment claims against the Dyson companies.

During the course of publishing this article, the Court of Appeal ruled that it was permissible for the Appellants to bring their claim in England & Wales (*Limbu and others v Dyson [2024] EWCA Civ 1564*).





### ***UK Government launches consultation to target NHS supply chain***

An investigation into the risk of modern slavery and human trafficking in the NHS supply chain was presented to Parliament in December 2023 – it found that more than a fifth (21%) of suppliers were considered high risk. The five products with the highest risk were identified as: surgical instruments, gloves, gowns, uniforms and face masks.

On 21 November 2024, the UK government launched a consultation on new procurement measures that would clamp down on modern slavery within the NHS supply chain. The proposals would require public procurement bodies, which purchase goods and services for the NHS, to identify and mitigate risks of modern slavery within their supply chains. The potential new regulations would apply to all relevant public bodies – i.e. NHS trusts, integrated care boards, local authorities etc. The government is inviting public bodies, suppliers, trade associations, interest groups, patients and the wider community to respond to its proposals by February 2025.

### ***Suppliers of luxury perfumes brands, Lancôme and Aerin Beauty, linked to child labour***

In May 2024, a BBC investigation exposed child labour in the jasmine supply chain used by luxury perfume brands like Lancôme and Aerin Beauty. The jasmine, sourced from Egypt, is harvested by families who, due to low wages, rely on their children to help pick the delicate flowers. Despite claims by L'Oréal (owner of Lancôme) and Estée Lauder (owner of Aerin Beauty) of zero tolerance for child labour, the investigation found children as young as 10 working in the fields. Although commitments have been made to transparency and safe working conditions, the ongoing use of child labour in the jasmine supply chain raises serious questions about the perfume industry's ability to uphold its promises.

### ***Boohoo's controversial supplier re-engagement sparks governance scrutiny***

Boohoo is facing fresh governance criticism after reviving ties with a manufacturer it had axed due to modern slavery concerns. In 2021, Boohoo terminated contracts with over 400 suppliers after reports surfaced that workers in its supply chain were subjected to exploitative conditions. In response, Boohoo overhauled its supplier network, aiming to improve labour standards. However, in November, a Telegraph investigation established that GN Euro, a large Leicester-based clothing manufacturer, is selling womenswear to Boohoo, despite being disengaged in 2021. This move has raised questions about Boohoo's governance practices and commitment to ethical sourcing.





## United States

### ***US extends import ban to dozens of Chinese companies given forced labour claims***

Effective 25 November 2024, the Department of Homeland Security (DHS) announced the addition of a further 29 businesses based in the People's Republic of China (PRC) to the Uyghur Forced Labor Prevention Act (UFLPA) Entity List – bringing the total number of entities on the UFLPA Entity List to 107. These firms are now banned from importing into the US. Customs & Border Protection (CBP) began enforcing the UFLPA in June 2022. Since then, CBP has reviewed more than 10,000 shipments valued at more than \$3.6 billion under the UFLPA.

## Europe

### ***European Council adopts Forced Labour Regulation***

The European Council has adopted a ban on the sale of products made using forced labour. The European Council voted in favour of adopting the Forced Labour Regulation on 19 November 2024. The European Commission will, as a first step, create a database of materials, products and regions at high risk of possible human rights violations. All stages of the upstream value chain will be considered including extraction, harvesting, production and manufacturing. The regulation will apply three years after it is published in the Official Journal of the European Union – something which should happen before Christmas 2024. It has been in development for more than two years.

### ***Luxury Fashion's hidden labour exploitation revealed in high-end brands such as Dior***

Recent investigations in Milan have exposed troubling labour practices within the luxury fashion supply chain, notably involving suppliers for high-end brands such as Dior. Investigators uncovered that a Chinese-owned supplier of Dior was exploiting workers, forcing them to sleep at the factory and work long hours in unsafe conditions. The bags produced were sold to Dior for €53, while they retailed for over €2,000 in Milan's luxury stores. As a result, Dior's Italian subsidiary, Manufactures Dior, was placed under court administration in June 2024 for failing to conduct adequate due diligence and oversight of its suppliers.

This case is part of a broader crackdown on labour abuses in the luxury fashion sector. A similar judgment was handed down by the Court of Milan in April 2024 against a Giorgio Armani subsidiary which was placed under court administration for "culpably failing" to oversee its suppliers. These incidents have shed light on potential systemic issues within the industry, raising concerns about the exploitation of workers in global supply chains, particularly in countries with lower labour costs.

Please contact the Fieldfisher Commercial Crime team via our details below if you would like to discuss any of the issues raised in this article.



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