

Andrew Bird Q.C.

YEAR OF CALL: 1987 | QUEEN'S COUNSEL: 2021



"Andrew Bird is a genius for criminal law, POCA and cash forfeiture work."

CHAMBERS AND PARTNERS 2018 FOR POCA WORK AND ASSET
FORFEITURE (ALL CIRCUITS).

Overview

Andrew Bird QC took silk in March 2021. He is a specialist in white-collar crime, civil and criminal asset forfeiture, and civil and public law proceedings which overlap with the criminal process. Having prosecuted cases for the state at the highest level he now has a thriving practice in private prosecution cases, particularly those involving allegations of fraud. He has acted for both the private prosecutor and the defence. He was first junior to David Perry QC in *D Limited v A* [2017] EWCA Crim 1172, where the Court of Appeal overturned a Judge's terminating ruling and gave guidance in relation to a number of issues including motive and conduct in private prosecutions. In early 2019, led by Jonathan Laidlaw QC he represented a defendant to a private prosecution for fraud and successfully argued for the dismissal of all charges. He is presently involved in a Judicial Review of the decision of a Magistrates' Court legal advisor refusing to issue a summons to a private prosecutor. In between, he continues his practice in cases involving criminal investigations, and

public law challenges to the criminal and investigative processes, and gives advice in substantial cases to both sides of the criminal divide.

"Andrew is incredibly user-friendly and has an encyclopedic knowledge of his practice areas."

Chambers & Partners 2021.

As a junior, Andrew is ranked in 2020 as a star Individual in Chambers and Partners in the fields of POCA work and Asset Forfeiture and also ranked in Financial Crime and Private Prosecutions - Financial Crime. He is ranked in The Legal 500 as a Tier 1 leading individual in the field of POCA and asset forfeiture and is also ranked in the field of Fraud - Crime. He is also recognised in Who's Who Legal at the UK Bar in the field of asset recovery and civil fraud.

'Andrew combines an excellent legal brain with a very practical approach to litigation.'

The Legal 500 2022.

"Has a very good eye for detail and particularly enjoys researching tricky legal issues. He always instils confidence in us and the courts that he knows his subject inside out."

"Andrew Bird is a veritable genius in POCA. Academic judges respect his detailed and persuasive skeleton arguments."

Chambers and Partners 2020.

In 2012, he was appointed to the Attorney General's 'A' list panel for government work and acts in cases of the highest complexity, and particularly those where the civil and criminal jurisdictions overlap. He was a Grade 4 CPS prosecutor, and has been standing counsel to RCPO and the DWP and was on the SFO A Panel for 5 years, involved in two of its biggest investigations.

'He combines hands-on expertise with detailed legal knowledge to provide insightful advice.'

The Legal 500 2021.

'Excellent at proceeds of crime because of his knowledge of the area.'

The Legal 500 2019.

"Very knowledgeable, commercial and practical." "When we go to him, we know we have a fount of knowledge we can draw upon."

Chambers and Partners 2019.

Additional Information

In 2000 Andrew was appointed as an examiner of the High Court.

Andrew is a contributing Editor to leading encyclopaedia Smith, Owen and Bodnar on Asset Recovery (OUP, 2008-2020).

"He's good strategically, good on his feet and good on paper."

Chambers and Partners 2017.

'A complete expert in this area [POCA & Asset Forfeiture], who combines practical knowledge with great judgement.'

The Legal 500 2017.

Seminars

Andrew is a regular presenter of seminars for Central Law Training, POCLA, Police Forces, Association of Police Lawyers, National Policing Improvement Agency (NPIA), the NCA and others.

He has also been an Expert presenter to the European Commission CITES and Wildlife Crime Enforcement Group: 2012.

In 2021 he presented a series of seminars to a leading City firm of solicitors in the field of POCA investigations and reporting obligations.

Direct Public Access

Accepts Direct Public Access instructions.

Professional Panel Appointments

Standing Counsel to the RCPO: 2005.

Standing Counsel to the DWP: 2008.

SFO A Panel 2012-2017.

Attorney-General's "A" List civil panel for treasury and other government work, 2012 - 2021.

Level 4 CPS Prosecutor: 2012.

Level 4 Specialist CPS Prosecutor for Fraud, POCA and Serious Crime.

Education

MA, Trinity Hall, University of Cambridge.

Inns of Court School of Law.

Professional Memberships

Criminal Bar Association.

Fraud Lawyers' Association.

Proceeds of Crime Lawyers' Association.

South-Eastern Circuit.

Asset Recovery, Civil Fraud & Confiscation

For many years Andrew has been a specialist in criminal confiscation, including restraint, receivership and other enforcement. Most recently he has conducted the confiscation and enforcement proceedings (and resisting a third party claimant appeal) for two FCA

investigations involving multiple-victim fraud. He acted for the City of London Police in the ground-breaking cash seizure case of *R (Merida Oil) v Central Criminal Court* [2017] 1 WLR 3680. He is presently instructed in relation to restraint and confiscation aspects of a major investigation and prosecution by the Serious Fraud Office. He is regularly instructed by the NCA and Police Forces nationwide in asset recovery matters. He has conducted two multimillion Account Freezing Order and Forfeiture cases for the NCA.

‘Extremely intelligent, with extensive expertise in POCA matters.’

Legal 500 2020.

Andrew as a junior is listed in Chambers and Partners as a star individual in Proceeds of Crime and Asset Forfeiture work.

"He is a leading expert on challenges to search warrants and the variation of bail conditions."

CHAMBERS AND PARTNERS 2018

"A true expert" in the proceeds of crime field, who has extensive experience of heavyweight asset forfeiture, recovery and confiscation cases.

CHAMBERS AND PARTNERS 2016

"He understands and has experience of asset recovery from both the proceeds of crime angle and the commercial fraud angle. He is very bright and has a really good tactical sense of how to get where we need to go."

CHAMBERS AND PARTNERS 2015

Andrew also has specialist expertise in cases involving:

Civil Recovery.

Cash Forfeiture, Account Freezing Orders and Listed Asset Recovery Proceedings.

Condemnation and other forfeitures and deprivation cases, and applications for the return of detained property.

The obtaining of and challenge to investigative orders under Part 8 of the Proceeds of Crime Act 2002, including Disclosure Orders, Search and Seizure Warrants and Unexplained Wealth Orders.

Cases that broach the traditional divide between civil and criminal, including committal proceedings, freezing orders and observance of POCA obligations.

Business Crime

Andrew is often instructed in financial and business crime cases. He was instructed by the Serious Fraud Office in the Rolls-Royce investigation which led to a Deferred Prosecution Agreement. He was also, until 2019, instructed in another major SFO investigation involving allegations of international corruption. He regularly acts for the FCA on the asset recovery aspects of multiple-victim frauds. He also acts for victims and other third parties who want to intervene in confiscation proceedings.

He was first junior for the private prosecution in the terminating ruling appeal and subsequent trial in [*D Limited v A* \[2017\] EWCA Crim 1172](#), and as first junior for a Defendant who successfully applied for the dismissal of a £22 million private prosecution for conspiracy to defraud. He is presently instructed in two further private prosecutions, one for the prosecution and one for the defendant.

Other work includes two ground-breaking prosecutions for land-banking fraud, including confiscation and compensation for victims, the prosecution of an online bank for fraudulent trading, prosecutions for laundering the proceeds of MTIC and other frauds, and prosecutions for VAT and excise fraud.

His experience in business crime has led to his instruction in cases in the Commercial Court: representing the SFO as intervener in *Libyan Investment Authority v Societe Generale*, and acting for a respondent to committal proceedings in *Evison v Finvision Holdings LLC* [2020] EWHC 239 (Comm). He is presently acting for HMRC in a case involving a dispute over the imposition of a compound penalty for offences involving the export of military hardware.

During the lockdown he acted for a defendant charged with a £2 million banking fraud in a trial at a Nightingale Court. He is presently instructed for the defence in a case alleging Class A drug supply and money-laundering, with a trial listed for 2022.

Having led for the prosecution in business crime cases for some 20 years he is well placed to advise suspects how to manage their responses to an investigation, and (if that fails and they are charged) how to deal with the complexities of a modern trial.

"He gets really stuck into the details of a case and he is very collaborative to work with. He takes a lot of stress off the solicitors." "An incredibly knowledgeable, very clever and experienced criminal barrister. He is an incredibly effective junior - proactive and hard-working."

Chambers & Partners 2021.

"An extremely fine lawyer, who's very practical and well regarded by the judges as someone they trust. He is straightforward and to the point in his advocacy." "A fount of all knowledge on criminal matters and very effective on his feet."

Chambers and Partners 2020.

Criminal Prosecutions - Private & Public

Andrew was one of only seven juniors ranked in the new practice area listed in Chambers & Partners in **Financial Crime – Private Prosecutions**. Andrew tends to practise in a fairly specialist field, built up from his experience as Standing Counsel to RCPO, and his continuing instruction by City of London Police, HMRC and the NCA at the investigative stage. These cases tend to be in areas such as excise and VAT fraud, investment fraud, money-laundering, drug trafficking, medicines, and wildlife crime.

"He's a forceful and tenacious advocate on behalf of prosecuting authorities."

Chambers & Partners 2021

"He straddles the divide between civil and criminal law with comfort, and he's fantastic at judging a tribunal. He really knows his onions. You can put a point to him and he'll come up with creative solutions quickly, which is what you want in a barrister."

Chambers and Partners 2017

Judicial Review & Public Law

Andrew accepts judicial review and public law instructions. He has been involved in many of the high profile challenges to investigative orders and warrants, including the *Faisaltext* litigation, *Chatwani* litigation and *R (Newcastle United) v HMRC [2017] 4 WLR 187* and the Judicial Review challenge to the use of a European Investigation Order to obtain data from Encrochat communications: *R (C) v DPP [2020] 4 WLR 158*.

Professional Discipline & Regulatory

Andrew is well versed in regulatory law and often advises and appears in cases involving trading standards, food safety, environmental health and illegal money-lending.

Andrew has a wealth of experience in health and safety cases, and some of his experience in this area is listed below:

Health & Safety

Fatal accidents, including three cases involving deaths in public swimming pools.

Defence of London Borough for injury to specialist sub-contractor.

Prosecution for fatal accident in course of mass participation triathlon.

Prosecution of manager of shopping and leisure centre for incident involving fall of child visitor while playing on escalator.

Prosecution of major supermarket for fatal accident involving workplace transport issues.

Inquests & Inquiries

Andrew accepts instructions in relation to Public Inquiries and Inquests.

Cases of Note

ASSET FORFEITURE – CRIMINAL

Re A; CCE v A [2003] 2 All ER 736

Approach of court when confiscation enforcement proceedings are in conflict with matrimonial proceedings involving an innocent wife.

R v UMBS Online limited; R v P [2007] EWCA Crim 3128

POCA Restraint Orders for online bank; release of funds for legal expenses; compatibility with Convention Rights.

R v B [2008] EWCA Crim 1374

Need for evidence of dissipation risk in application for Restraint Order.

R v Allpress, Symeou and Morris [2009] EWCA Crim 8; [2009] 2 cr App R (S) 58

How benefit is to be calculated for the purposes of confiscation in money-laundering cases.

R v Najafpour [2009] EWCA Crim 2723; [2010] 2 Cr. App. R. (S.) 38

How an irrecoverable debt is to be valued for the purposes of “available amount” in confiscation.

R v White, Dennard, Perry & Rowbotham [2010] EWCA Crim 978

Proper approach to benefit in confiscation cases involving tobacco smuggling; liability to pay excise duty; impact of EU Legislation. Leading case in the so-called “Chambers Review” of historic confiscation cases involving excise duty, in which Andrew was lead counsel for RCPO.

R v Walker [2011] EWCA Crim 103, [2011] 2 CR App R (S) 54

Whether interest of potential beneficiary under discretionary trust is “property” for the purposes of confiscation.

R v Ghorri [2012] EWCA Crim 1115

Propriety of Judge disregarding High Court charging order when assessing value of recoverable amount.

R v Taylor & Wood [2013] EWCA Crim 1151

EU Law aspects of liability to pay excise duty and consequences for confiscation proceedings; post-Waya proportionality

R v Powell & Westwood [2016] EWCA Crim 1043, [2017] Env LR 11

Leading case on confiscation benefit following environmental pollution conviction; circumstances in which Court will disregard corporate veil in confiscation proceedings. Benefit (pecuniary advantage) to a company was held not to have been obtained by the director.

R v Bhandari, Moore & others – Op Alfreton (Southwark Crown Court 2019)

Multi-handed cut-throat confiscation proceedings following convictions for investment fraud; compensation achieved for victims; appeal pending by third party (s.10A POCA) Claimant.

ASSET FORFEITURE – CIVIL

Ali v Best (1995) 161 JP 393

Evidence in cash forfeiture cases; admissibility of “habits and doings”.

Hashwani v Letherby (1998) 162 JP 153

Forfeiture of endangered species - ivory.

R v West London MC, ex p Lamai (DC) 6.7.00 and [2001] EWCA Civ 1501

Time limit for appeal against cash forfeiture decision

Butt v HMRC [2001] EWHC Admin 1066

Standard of proof in cash forfeiture

R (Hoverspeed) v CCE [2003] QB 1041

Judicial Review of HMRC search and seizure policies in relation to alcohol and tobacco importations; impact of EU Legislation.

R (CC of Lancashire) v Burnley MC [2003] EWHC 3308 (Admin)

Whether it was an abuse of process to apply for forfeiture of cash following a failed detention application.

R (Newbury) v CCE [2003] 1 WLR 2131

ECHR implications of condemnation and forfeiture; proportionality.

R (Mudie) v Kent Magistrates Court [2003] 2 All ER 631

Condemnation is civil not criminal; availability of legal aid.

R (Sissen) v Newcastle Crown Court [2004] EWHC 1905 (Admin)

Judicial Review of condemnation of endangered species – CITES.

ARA v He & Chen [2004] EWHC 3021 (Admin)

ECHR compatibility of civil recovery and interim receiverships.

Muneka v CCE [2005] EWHC 495 (Admin)

Elements and means of proof in cash forfeiture applications.

R (Bartholomew) v HMRC [2005] EWHC 1666 (Admin)

Condemnation of Excise Goods and proportionality

R v Payton [2006] EWCA Crim 1226

Relationship between parallel criminal and civil (cash forfeiture) proceedings – approach to be adopted.

RE B [2008] EWHC 1291 (Admin)

Production Orders (High Court) in Detained Cash Investigations

HMRC v Pisciotto [2009] EWHC 1991 (Admin)

Admissibility of evidence in cash forfeiture cases.

Angus v UKBA [2011] EWHC 461 (Admin)

What has to be proved in cash forfeiture applications (departing from Muneka – above).

UKBA v Tuncel & Basbaydar [2012] EWHC 402 (Admin)

Elements of proof in cash forfeiture.

R (Amos) v Maidstone Crown Court [2013] EWCA Civ 1643

Whether condemnation under CEMA 1979 is civil or criminal for the purposes of Art 6 ECHR

Nuro v Home Office [2014] EWHC 462 (Admin)

Causation in cash forfeiture: cash obtained by illegal immigrant through (otherwise lawful) working

R (Merida Oil) v Central Criminal Court [2017] 1 WLR 3680

Propriety of conversion of banked funds to cheques for the purposes of seizure

NCA v K (Disclosure Orders) [2018] EWHC 3531 (Admin)

Merits and Procedure in relation to applications for Disclosure Orders

Lauri Love v NCA [2019] 2 WLUK 464

Public interest defence to return of computers under Police (Property) Act 1897

FRAUD AND OTHER CRIMINAL

R v Montila [2004] 1 WLR 3141

Leading House of Lords case on the elements of money-laundering offences under the Criminal Justice Act 1988 and Drug Trafficking Act 1988.

M v Isleworth Crown Court [2005] EWHC 363 (Admin)

Role of the Admin Court in Bail decisions post-CJA 2003.

R v Rehman [2006] EWCA Crim 1600

Customs questioning, cautions and PACE.

R v Creed & Finn [2006] EWCA Crim 3299

Sentencing in baggage handler drug importation case following trial based on supergrass evidence.

R v F & B [2008] EWCA Crim 1868

Means of proof in money-laundering prosecutions.

R v Barclay & Metcalf (Norwich Crown Court, 2006)

CITES and wildlife prosecution.

R v K [2007] EWCA Crim 54

POCA money-laundering offences; prosecutor's appeal.

R v Shabbir Hussain [2010] EWCA Crim 970

Whether possession in the UK of Class C controlled drugs with intent to supply them abroad amounts to an offence under the Misuse of Drugs Act 1971.

R v David John Wain (Reading Crown Court, November 2010)

Innovative prosecution following SOCA investigation of supplier of Benzocaine and other cutting agents and "legal high" drug GBL.

R v UMBS Online Ltd (Southwark Crown Court, February 2011)

Prosecution of online bank for fraudulent trading and money-laundering.

R v Williams (Bournemouth Crown Court, March 2012)

Prosecution of yacht broker for false accounting and evasion of VAT on supply of boats from Channel Islands.

R v Eshpari & others (Isleworth Crown Court, September 2012)

Land banking fraud.

R v Maynard & others (Southwark Crown Court, January 2013-2019)

Land banking fraud.

R v Sandeep Singh Gill (Isleworth Crown Court)

Money-laundering and facilitation of MTIC fraud.

D Limited v A Southwark Crown Court [2017] EWCA Crim 1172

Whether motive and conduct of private prosecutor amounted to abuse of process.

AW v SP and Others Southwark Crown Court, December 2018

Private Prosecution for conspiracy to defraud

JUDICIAL REVIEW – SEARCH WARRANT AND OTHER CRIMINAL PROCESS

R (Mercury & Masters) v Leeds Crown Court and HMRC [2008] EWHC 2721 (Admin); [2009] Stc 743

Judicial Review of search warrants; whether reasonable grounds for believing that tax mitigation scheme amounted to an offence; full and frank disclosure.

R (Faisaltext & others) v Preston Crown Court, Chief Constable of Lancashire Constabulary and HMRC [2009] 1 WLR 1867

Judicial review of PACE search warrants and special procedure warrants; treatment of computers which contain both relevant and irrelevant material.

R (Morville Trading) v Manchester Crown Court [2009] EWHC 3680 (Admin)

Special Procedure Production Order; approach to be taken to LPP.

R (Wood) v North Avon MC [2009] EWHC 3614 (Admin)

Multiple challenges to search warrant; need for full and frank disclosure

R (Whiston-Dew & Richards) v HMRC [2009] EWHC 3761 (Admin)

Obligations of disclosure in relation to judicial reviews of search warrants

R (Windsor & Hare) v HMRC [2011] EWHC 1899 (Admin)

Nature of relief and retention by investigators of copies when search warrants are quashed.

R (Glenn & co) v HMRC [2011] EWHC 2998 (Admin)

Judicial Review of Search Warrants. How material should be specified.

R (Anand) v HMRC [2012] EWHC 2989 (Admin)

Need for precision in drafting of search warrant; whether order should be made for return of items seized

R (Hoque & Das) v City of London MC [2013] EWHC 725 Admin

Search warrant for restaurant premises suspected of VAT fraud lacked specificity, but correctly included computers and mobile phones as items to be sought

R (Panesar) v CCC and HMRC [2014] EWCA Civ 1613; [2015] 1 WLR 2577 (DC and CA)

Challenges to orders made under s.59 Criminal Justice and Police Act 2001; (on appeal) whether criminal cause or matter and the nature of s.59 applications

R (Chatwani) v Birmingham MC and NCA [2015] EWHC 1283 (Admin)

Challenge to search warrants - egregious NCA conduct that they should be permitted to gain no advantage from warrants – relief

R (Chatwani) v Birmingham CC and NCA [2015] EWHC 1284 (Admin) POCA CASE

Production Order under POCA

Chatwani v NCA [2015] UKIPTrib 15_84_88-CH

Challenge to authorisations for property interference under Police Act 1997

R (Sharer) v CLMC and HMRC [2016] EWHC 1412 (Admin)

Challenge to warrant authorising seizure of computers from estate agent; whether special procedure

R (Lowden) v Gateshead MC [2016] EWHC 3536 (Admin); [2017] 4 WLR 43

Judicial Review by private prosecutor of decision not to issue a summons in a case where the defendant had been cautioned; examination of cautioning procedure

R (Malik) v Manchester & Salford MC [2016] EWHC 3723 (Admin) and [2018] EWCA Civ 815

Challenge to searches under warrant; terms of relief; (on appeal) whether criminal cause or matter

R (Newcastle United) v HMRC [2017] 4 WLR 187

Judicial review of search warrants and associated proceedings under s.59 CJPA 2001

R (Hart) v HMRC [2017] EWHC 3091 Admin

Full and Frank Disclosure; as to whether Production Order (rather than search warrant) would be appropriate.

R (Fitzgerald) v Preston Crown Court [2018] EWHC 804 (Admin)

Observations by the court on the need for clarity in applications for warrants in complex cases

R (Singh Virdee) v NCA [2018] 1 WLR 5073

Priority between use of statutory post-arrest search powers and search warrants

R (HMRC) v Maidstone Crown Court [2018] EWHC 2219 Admin

Approach to application under s.59 Criminal Justice and Police 2001

R (Ashbolt and Arundell) v HMRC and Leeds Crown Court [2020] EWHC 1588 Admin
Judicial Review of search warrants in tax investigation

JUDICIAL REVIEW OF SEARCH WARRANTS IN TAX INVESTIGATION

R (C) v DPP [2020] 4 WLR 158

Judicial Review of European Investigation Order used to obtain data extracted by foreign authorities from Encrochat communications

Accreditation

