

# Andrew Bird

YEAR OF CALL: 1987



*"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

5SAH Chambers is delighted to announce that Andrew Bird has been successful in his application to become Queen's Counsel. Arrangements for the new Queen's Counsel to make their declaration before the Lord Chancellor are to be confirmed in January 2021.

Andrew Bird is a specialist in white-collar crime, civil and criminal asset forfeiture, and civil and public law proceedings regarding 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. In between, he continues his practice as a leading junior in cases involving public law challenges to the criminal and investigative processes.

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

Chambers & Partners 2021.

Andrew is ranked 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. He is also recognised in Who's Who Legal at the UK Bar in the field of asset recovery and civil fraud.

"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.

He is appointed to the Attorney General's 'A' list panel for government work and acts in cases of the highest complexity. He has been standing counsel to RCPO and the DWP and was on the SFO A Panel for 5 years.

‘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*

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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, 2008-2019).

"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.

### **Direct Public Access**

Accepts Direct Public Access instructions.

## *Professional Panel Appointments*

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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.

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*

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Criminal Bar Association.

Fraud Lawyers' Association.

Proceeds of Crime Lawyers' Association.

South-Eastern Circuit.

## *Asset Recovery, Civil Fraud & Confiscation*

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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 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 by the Serious Fraud Office. He is regularly instructed by the NCA and Police Forces nationwide in asset recovery matters.

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

Legal 500 2020.

Andrew is listed in Chambers and Partners as a star individual of 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.

## *Business Crime*

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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 instructed in another major SFO investigation. He regularly acts for the FCA on the asset recovery aspects of multiple-victim frauds.

More recently he has been involved as 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 recent work include two ground-breaking prosecutions for land-banking fraud, including confiscation and compensation, 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.

*"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*

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Andrew is 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 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

## *Immigration*

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Andrew is often instructed by the Government in immigration cases, which are often of a high profile nature.

## *Judicial Review & Public Law*

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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 *Chatwani* litigation and *R (Newcastle United) v HMRC* [2017] 4 WLR 187.

## *Professional Discipline & Regulatory*

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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*

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Andrew accepts instructions in relation to Public Inquiries and Inquests.

## *Cases of Note*

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### **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 Ghori [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.

## **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 (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

## *Accreditation*

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