

# Fraud issues: Financial Institutions

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# Key issues

The world in 2021 represents a difficult risk landscape for banks. Corporate borrowers are at increased risk of suffering undetected insider fraud during current market conditions.

## The key risk issues for banks:

1. Regulatory investigation: the FCA and foreign regulators may investigate the bank's systems and controls for preventing fraud.
2. Civil damages claims: one of the duties owed by Banks to their corporate customers (the "Quincecare" duty) is to refrain from executing a payment instruction if the bank has reasonable grounds for believing that the instruction is an attempt to misappropriate funds. There have been several recent cases in the UK that increase the risk of civil liability for banks where money is misdirected away from corporate customers by fraudulent directors.
3. Criminal law enforcement: financial crime agencies (including the SFO) may seek to investigate the bank's involvement in and awareness of the facts relating to the fraud.

## Key actions that banks can take now to mitigate these risks:

1. Review systems and controls for customer authorisation of large payments in light of new fraud typologies;
2. Train the business on how to detect suspicious payments and how to respond;
3. Review customer terms and conditions to check what duties you are accepting;
4. Question profits as well as losses: the masking of fraud may result in what appears to be unexpectedly strong performance;
5. Ensure your arrangements with customers keep you adequately informed about their business
6. Plan your crisis response by putting in place response procedures.

## Our expertise

Simmons & Simmons has experience across the issues that arise in this situation:



Advising on systems and controls in respect of financial crime;



Conducting internal investigations and reviews of control infrastructure;



Defending banking clients against damages claims for breach of duty;



Advising on engagement and response to investigations conducted by regulators and law enforcement; and



Coordinating the response to cross-border issues involving multiple claimants and regulators.

**Case Study 1:** Acting for a global bank on its response to its client (a major commodities firm) suffering an insider fraud. That client claimed over £50m against the bank for breach of Quincecare (and other) duties, alleging that the bank should have detected that derivatives trading was unauthorised and speculative. Our role was to manage this significant piece of litigation, along with internal investigations, and brought it to a successful pre-trial conclusion for the client.

**Case Study 2:** Acting for an international bank that had fallen victim to a commodity financing fraud perpetrated by one of its clients. This triggered an international response, across China, Hong Kong, Singapore, and the UK, with a cross-practice team covering litigation, financial crime, regulatory and insurance. It ultimately resulted in insurance related proceedings to recover for the client.

**Case Study 3:** Acting for a bank in the context of an enforcement investigation, reviewing its systems and controls and testing its policies and procedures. The report was subsequently used by the bank to convince the regulator in question that it had self-identified any outstanding issues and committed to a course of remediation. As a result, the regulator agreed to discontinue the enforcement proceedings with no penalty against the bank.

# Industry recognition

## Directory Rankings

### Chambers & Partners

- Financial Crime: Corporates – Band 1
- Banking Litigation – Band 2
- Financial Services: Non-Contentious Regulatory – Band 2

## Legal 500

- Fraud: Civil – Tier 1
- Regulatory Investigations and Corporate Crime – Tier 1
- Banking Litigation – Tier 2
- Financial Services: Contentious – Tier 2
- Financial Services: Non-Contentious Regulatory – Tier 2
- Fraud: White Collar Crime – Tier 2

## Awards

- Commercial Litigation Team of the Year at the Legal Business Awards 2019
- Litigation Team of the Year at the Lawyer Awards 2019
- Banking Litigation Team of the Year at the Legal Week Commercial Litigation and Arbitration Awards 2019

*'Simmons & Simmons' civil fraud unit has wide experience of domestic and cross border fraud claims, acting for both claimants and defendants. The breadth of experience across the team means that clients can be confident that whatever the issue, someone in the S&S team will have dealt with it before.'*

### Legal 500 2020

*'An excellent team with broad and in-depth knowledge spanning both civil and criminal regimes'.*

### Legal 500 2020

*'They are a major City law firm that delivers a boutique personal service'.*

### Legal 500 2020

*"They do a very good job of handling significant matters and are very good at working collaboratively."*

### Chambers 2020

## Our international team

We offer the specialist expertise needed to prevent and respond to incidents of fraud including financial services regulatory advice, banking litigation and civil fraud, white collar crime and regulatory and criminal investigations.

### Financial Services Regulatory



**Andrew Williams**  
Consultant, London



**Penny Miller**  
Partner, London



**Jochen Kindermann**  
Partner, Frankfurt



**Eva Chan**  
Partner, Hong Kong

### Banking Litigation and Civil Fraud



**Richard Bunce**  
Partner, London



**Patrick Boylan**  
Partner, London



**Douglas Robinson**  
Managing Associate,  
London



**Tom Fyfe**  
Partner, Hong Kong

### White Collar Crime



**Camilla de Silva**  
Partner, London



**Stephen Gentle**  
Partner, London



**Sascha Kuhn**  
Partner,  
Dusseldorf



**David Schreuders**  
Partner,  
Amsterdam



**Fernando Aizpun**  
Partner  
Madrid

### Regulatory Investigations



**Etienne Kowalski**  
Partner  
Paris



**Emma Sutcliffe**  
Partner  
London



**Richard Sims**  
Partner  
London



**Thierry Gontard**  
Partner  
Paris

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