

UPDATE

## Financial Orders – Handle with Care!

Update prepared by Robert Shepherd (Partner & Advocate, Guernsey) and Sally French (Senior Associate & Advocate, Guernsey)

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Guernsey law enforcement is making increasing use of financial orders. Financial Services Businesses are typically not the subject of these orders, but may need to implement them. This is not always easy, as *Heykers v HM Comptroller* Guernsey judgment 41/2018 shows.

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### Facts

The Court made a forfeiture order in September (see [here](#) for our earlier update) which Mr Heykers appealed. Mr Heykers then applied to the Court for the release of forfeited money to fund the appeal. But the money has already been released by the Bank to the authorities.

### Judgment

The Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (the **Forfeiture Law**) allows such applications to release money to fund legal costs where:

- Money is detained or frozen. In this case the money had ceased to be detained as the Bank had transferred it; or
- The money belongs to the applicant or he is otherwise entitled to it. Mr Heykers' ownership/entitlement ceased on the forfeiture order being made.

On this basis HM Comptroller argued that the Court's role in considering such an application had been extinguished. The Court was not persuaded by this *unduly legalistic* approach which had no regard to Mr Heykers not being at fault for the Bank's release. Mr Heykers was not to be deprived of legislative benefits due to the mistake of another.

s.13 (3) of the Forfeiture Law requires that forfeited money be detained or frozen, and not released until proceedings, including any appeal, conclude.

There would have been no question as to whether the Court's powers were engaged had the money remained held as required by s.13(3). The Court therefore found it was able to consider an application to release money for payment of legal expenses, ordering the release of £8,000 from the forfeited sums for that purpose.

### Implications

Financial services businesses must be careful with all financial orders. These orders place additional obligations upon businesses which may not be obvious on the face of the order. Care must always be taken when seeking to comply with the requirements of any financial order, and if in doubt seek professional advice.

For further guidance on Forfeiture Orders see our [Guide](#).

The same considerations will also apply in Jersey. See our Update on the Jersey regime [here](#).

## Contacts

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