Neutral Citation Number: [2024] EWHC 501 (Admin)

Case No: AC-2023-LON-001768

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Date: 8 March 2024

Before:

MR JUSTICE POOLE

- -

Between:

NATIONAL CRIME AGENCY

Applicant

- and –

(1) JAVANSHIR FEYZIYEV
(2) PARVANA FEYZIYEVA
(3) THE WITHERS TRUST CORPORATION LIMITED

Respondents

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Andrew Sutcliffe KC and **Tom Rainsbury** (instructed by the NCA) for the **Applicant**
Kenneth MacLean KC, **David Caplan**, and **William Hays** (instructed by Kingsley Napley LLP) for the **First and Second Respondents**

Hearing dates: 21-22 February 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 8 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Poole:

Introduction

1. On 23 June 2023 Mrs Justice Heather Williams granted a without notice application by the National Crime Agency ("NCA") for a Property Freezing Order ("PFO") prohibiting the Respondents from in any way dealing with the their property specified in the PFO ("the PFO Properties"), which the NCA alleges has a total value of approximately £50m, namely 22 leasehold properties in London ("the London Properties"), rental income from the London Properties, and the balance of a bank account at LGT bank, Liechtenstein ("the Liechtenstein account"). The First and Second Respondents applied on 7 August 2023 to discharge the PFO ("the Discharge Application") and for orders that the proceedings be heard in private with restrictions on reporting and publication of any judgments or transcripts ("the Privacy Application").

2. I have had the advantage of detailed written and oral submissions from Leading and Junior Counsel and lengthy bundles of documentary material and witness statements to which I shall refer as necessary in this judgment.

3. The Third Respondent takes no active part in the proceedings and, for the sake of economy, I shall refer to the First and Second Respondents as "the Respondents". The Respondents' case is that the PFO should not have been granted and in any event should now be discharged because (i) there was (and is) no real risk of dissipation; (ii) there were multiple and serious breaches of the NCA's duty of full and frank disclosure/fair presentation at the without notice hearing before Heather Williams J, and (iii) there is no good arguable case against them.

4. Heather Williams J heard the without notice application in private. She has not published her judgment. She gave case management directions on 4 September 2023 that the Discharge and Privacy Applications should be heard together with "the extent to which the combined hearing will take place in private" to be determined at the hearing. She made interim orders prohibiting the publication of the PFO, her judgment, and any transcript of the proceedings before her, such orders to continue until the hearing of the combined hearing. Notice of the combined hearing and of the court's consideration of reporting restrictions was given to the media in the prescribed manner. No representations from the media have been received but the parties differed on the approach that the court should take on the Privacy Application. The Respondents submitted that the Discharge Application should be heard in private and that the judgment of Heather Williams J and any judgment given on the Discharge Application, the orders made, and transcripts of the hearings, should not be published. The Applicant submitted that the Discharge Application should be heard in public and that there should be no derogations from the principle of open justice. I heard detailed submissions on the Privacy Application on 21 February and gave an ex tempore judgment directing that subject to very limited restrictions on identifying the names, home address, and schools of the Respondents' minor children, and account numbers and sort codes of any bank accounts referred to in the evidence, the Discharge Application should be heard in public, may be reported, and that the judgments would be published, and the orders and transcripts may be published with no anonymity for the Respondents. However, I have directed that the judgment, order, and transcripts from the without notice hearing may only be published once this judgment on the Discharge Application is published, so as to avoid the unfairness to the Respondents which Heather Williams J herself identified, which might be caused if her conclusions on the without notice application were published before the court's determination after a contested hearing.

5. This is my judgment on the Discharge Application only.

The Legal Framework

Statutory Provisions

6. Part 5 of the Proceeds of Crime Act 2002 ("POCA 2002") concerns the civil recovery of the proceeds of unlawful conduct and has the purpose of enabling the enforcement authority to recover in civil proceedings property which is or represents property obtained through unlawful conduct, conferring interim powers which are exercisable whether or not any proceedings have been brought for an offence in connection with the property. A PFO is one such interim measure which does not require a final determination that a recovery order must be made (*NCA v Davies* [2016] EWHC 899 (Admin)). POCA 2002 s245A provides:

> "245A Application for property freezing order
>
> (1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).
>
> (2) A property freezing order is an order that—
>
> (a) specifies or describes the property to which it applies, and
>
> (b) subject to any exclusions (see section 245C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
>
> (3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
>
> (4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.
>
> (5) The first condition is that there is a good arguable case—
>
> (a) that the property to which the application for the order relates is or includes recoverable property, and
>
> (b) that, if any of it is not recoverable property, it is associated property.
>
> (6) The second condition is that, if—

> (a) the property to which the application for the order relates includes property alleged to be associated property, and
>
> (b) the enforcement authority has not established the identity of the person who holds it, the authority has taken all reasonable steps to do so."

7. The submissions before me focused on the allegation that the PFO Properties was "recoverable" rather than "associated" property and I shall refer in this judgment only to "recoverable" property. There is no dispute that the NCA is an enforcement authority. The *Practice Direction – Civil Recovery Proceedings* ("PD-CRP") applies. The application must be made in the Administrative Court (paragraph 2.1), to a High Court Judge and in accordance with CPR Part 23 (paragraph 5.1 of PD-CRP). Certain formal requirements of the application are set out in PD-CRP which Heather Williams J found had been complied with. The Respondents take no issue with that finding. PD-CRP Paragraph 7.1, reflecting POCA 2002 s245B, provides that an application to vary or set aside a PFO (also referred to within PD-CRP as the "discharge" of a PFO) may be made at any time by any person affected by the order. In *NCA v Simkus* [2016] 1WLR 3481, [2016] EWHC 255 (Admin) Edis J noted at paragraph [38] that "the jurisdiction to vary or discharge is not a review of the decision to grant the order, still less an appeal… The judge hearing an application on notice to vary or discharge the without notice order is not in any way bound by the approach of the first judge."

8. The key condition for the making of a PFO is that the applicant is able to establish a "good arguable case" that the property concerned is or includes "recoverable property". As to what is meant by "recoverable property", by POCA 2002 s304 provides:

> "(1) Property obtained through unlawful conduct is recoverable property.
>
> (2) But if property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.
>
> (3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by—
>
> (a) the person who through the conduct obtained the property, or
>
> (b) a person into whose hands it may (by virtue of this subsection) be followed."

9. "Unlawful conduct" is defined by POCA 2002 s241:

> "(1) Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.

> (2) Conduct which—
>
> (a) occurs in a country or territory outside the United Kingdom and is unlawful under the criminal law applying in that country or territory, and
>
> (b) if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part, is also unlawful conduct."

By POCA 2002 s242:

> "(1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.
>
> (2) In deciding whether any property was obtained through unlawful conduct—
>
> (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,
>
> (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct."

10. POCA 2002 s316(4) to (7) define "property". POCA 2002 s282A and Schedule 7A concern property outside the UK. POCA 2002 s305 concerns "tracing property" into others' hands and POCA 2002 s306 concerns "mixing property". The application of those provisions has not been the subject of argument before me. An exception ("the good faith exception") is provided by POCA 2002 s308:

> "(1) If—
>
> (a) a person disposes of recoverable property, and
>
> (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property, the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable."

Authorities Relevant to an Application for a PFO

11. Part 5 of POCA 2002 provides a mechanism for the civil recovery of property without proof of commission of a criminal offence by any specified individual, let alone the

Respondents themselves. Even prior to civil recovery proceedings being brought, various powers are exercisable during the investigative stage. Typically, as in the present case, a PFO may be the last measure sought prior to civil recovery proceedings being brought, if they are brought at all. A PFO may only be made if there is a "good arguable case" that the property identified is or includes recoverable property. In *NCA v Azam & Ors* [2014] EWHC 2722 (QB), at [3] Andrews J summarised what needed to be established to show that property was recoverable:

> "[3] The right to recover property does not depend on the commission of unlawful conduct by the current holder. All that is required is that the property itself be tainted because it, or other property which it represents, was obtained by unlawful conduct. Since property might be recoverable from someone who is entirely innocent of wrongdoing, the NCA is required to establish clearly that the property in question was obtained by unlawful conduct. It is unnecessary for the NCA to prove the commission of any specified criminal offence, in the sense of proving that a particular person committed a particular offence on a particular occasion. However it is necessary for it to prove that specific property was obtained by or in return for a criminal offence of an identifiable kind or in return for one or other of a number of offences of an identifiable kind: *Director of the Assets Recovery Agency v Szepietowski* [2007] EWCA (Civ) 766, [2008] Lloyd's Rep FC 10, per Moore-Bick LJ at [106]–[107]."

12. Similarly, King J held in *ARA v Jackson & Smith* [2007] EWHC 2553 (QB) at [116] that the court was entitled to take a:

> "global approach to the issue of proof that the property in issue is recoverable within the meaning of the Act.
>
> …
>
> I do not consider it essential that the court considers each property transaction on an item by item basis in the sense that the Claimant has an obligation to show some particular unlawful actions by the Respondent at some particular time which enabled the particular transaction."

13. The court may rely on inference to establish unlawful conduct. In *SOCA v Namli* [2013] EWHC 1200 (QB) Males J held at [47] to [49] that,

> "[47] The drawing of inferences may be particularly relevant when the unlawful conduct relied on consists of money laundering. The position was summarised by Hamblen J in *Serious Organised Crime Agency v. Pelekanos* [2009] EWHC 2307 (QB) at [34] to [37] in terms with which I respectfully agree as follows:

"34. In order to demonstrate that property derives from crime for the purposes of proving money laundering it is legitimate to rely upon inferences drawn from the way in which the money was handled.

35. In *ARA v Olupitan* [2007] EWHC 162 (QB) Langley J summarized the position as follows [at paragraphs 65- 66]:

> '65 A substantive offence of money laundering can be proved by inference from the way in which cash is dealt with and it is not necessary to prove the underlying offence which generated the cash: *R v El Kurd* [2001] Crim. L.R. 234; and *R v L,G,Q and M* [2004] EWCA Crim 1579 . As Mr Eadie submitted, if money is handled in a manner consistent only with money laundering, "the inference is that it must be criminal property because no one launders clean money". Mr Krolick submitted that it was a condition precedent to any allegation of money laundering that the property should be the proceeds of a criminal offence. He referred to the decision of the House of Lords in *R v Montila* [2005] 1 Cr App R 26. But what is required in law to establish money laundering and how that may be proved raise different issues. El Kurd was cited in *Montila* and referred to in the Opinion of the Committee with apparent approval and certainly without adverse comment on the question material to this case.
>
> 66 In this case, the evidence is, as the Director alleges, that around £195,000 cash (and £24,000 in unidentified credits) were credited to the accounts of Olupitan and Makinde in a period of some five and a half years. They remain unexplained and without any supporting documentation. Such explanations as have been offered have been rejected as untruthful. I accept Mr Eadie's submission that in the circumstances of this case as I find them to be it is a proper inference that money laundering has occurred.'

36. The judgment of King J in *Jackson* is to similar effect [at paragraphs 118-119]:

> '118 I also consider that the court is entitled to take a commonsense approach to the inferences to be drawn from the manner in which the Respondent chose to store his accumulated cash and from the failure of the respondent to keep any business records in the context of the evidence as a whole.
>
> 119 Equally, as the Receiver said in evidence, one would expect any successful law abiding businessman to keep some sort of record no matter how simple, of what he was buying, what he was selling and the amounts of his

> overheads – if only to work out the sort of profit he was making and which were his most profitable items. The criminal dealer in, for example, illicit drugs will of course eschew any record by which his activities might be detectable.
>
> 37. This approach was endorsed by Griffith Williams J in *Gale* [at paragraph 17]:
>
> '17 I respectfully agree with and adopt the above cited observations of Sullivan J, Langley J and King J and if support is needed it is to be found in the decision of the Court of Appeal, Criminal Division in *R–v- Anwoir & Others* [2008] 2 Cr App R 36 at para 21 at page 539 that there are two ways in which the Crown can prove in money laundering offences that property was derived from crime - either by proving it derived from unlawful conduct of a specific kind or kinds or by evidence of the circumstances in which the property was handled, such as to give rise to the irresistible inference that it could only have been derived from crime (although in criminal proceedings the higher standard of proof is required).'"
>
> [48] Whether an adverse inference is appropriate will inevitably depend on the detailed circumstances of each individual case. But, in an appropriate case, it is clear that such an inference can properly be drawn from a failure to provide an explanation of apparently suspicious dealings and that doing so does not involve an inadvertent reversal of the burden of proof, which remains on SOCA throughout: see also *Olupitan v. Director of the Assets Recovery Agency* in the Court of Appeal [2008] EWCA Civ 104 at [30] and [31].
>
> [49] Putting this in crude terms, and not forgetting SOCA's burden of proof, if a transaction looks like money laundering and has not been satisfactorily explained by a defendant who ought to be in a position to explain it if there is an innocent explanation, that is probably what it is."

14. In *The Niedersachsen* [1984] 1 All ER 398, a freezing order case, Mustill J said of the test of "good arguable case":

> "... the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument and yet not necessarily one which the judge believes to have a better than 50% chance of success" [404]

In *DPP v Briedis* [2021] EWHC 3155 (Admin) Fordham J held that the threshold for making a PFO was "relatively low" [8]. I note that in *Lakatamia Shipping Co Ltd v Morimoto* [2019] EWCA Civ 2203, Haddon-Cave LJ observed at [38]:

> The 'good arguable case' test was the subject of a comprehensive review by the Court of Appeal recently in *Kaefer v AMS* [2019] EWCA Civ 10; [2019] 1 CLC 143 in the context of jurisdictional gateways. Green LJ (who gave the leading judgment, *Davis* and Asplin L JJ concurring) conducted a magisterial analysis of the recent authorities, including *Brownlie v Four Seasons Holdings* [2017] UKSC 80; [2018] 2 CLC 121 and *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34; [2018] 2 CLC 174. He observed at [59] that a test intended to be straightforward 'had become befuddled by "glosses", glosses upon glosses, "explications" and "reformulations".' The central concept at the heart of the test was 'a plausible evidential basis' (see paras [73]–[80])"

15. If the conditions for making a PFO are met, then POCA 2002 s245A gives the court a discretion to make such an order. The risk of dissipation of the relevant property is not a requirement or test found within the statutory provisions relevant to the making of a PFO but it is accepted by the Applicant that the risk of dissipation is at least of relevance to the exercise of the court's discretion. However, Counsel for the parties disagree as to the approach the court ought to take to the risk of dissipation. Mr Sutcliffe KC relies primarily on *Nuttall v NCA* [2016] 4 WLR 134, [2016] EWHC 1911 (Admin), in which Collins J held:

> "[18] I must now deal with the application to discharge the PFO. This was argued by Mr Ganesan. He relied essentially on two grounds. First, he submitted that in order to justify the making of a PFO it is necessary for the NCA to establish a risk of dissipation of any asset to be included in the order. Section 245A of POCA does not include the need to show a risk of dissipation. It requires that there be a good arguable case that the order relates to or includes recoverable or associated property (s.245A(5)). Section 245A(3) provides:-
>
> "An application for a [PFO] may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property".
>
> Reliance is placed on observations of Edis J in *NCA v. Simkus* where he said that s.245A(3) would usually mean that there was a risk of dissipation of the assets if notice of the application were given.
>
> [19] In my view, a judge asked to grant a PFO will consider the general background and concerns raised by the NCA. What is

> needed is a good arguable case that knowledge of the investigation and the identification of assets could lead to dissipation so as to frustrate any recovery order. If the judge considers that the general background does not show a good arguable case that there is a risk of dissipation of assets or any particular asset, he will not be likely to grant the order. But it has never been considered nor does s.245(A) require that a risk of dissipation had to be proved."

16. Counsel for the Respondents submitted that Collins J's formulation has not survived the later appellate decisions of *Holyoake & Anor v Candy* [2018] Ch 297, and *Lakatamia* (above). In *Holyoake*, the Court of Appeal considered a notification injunction for which the statutory test under the Senior Courts Act 1981 s37(1) was whether the grant of the injunction was just and convenient. Gloster LJ held at page 347H that in respect of "conventional freezing orders" it was well established that:

> "There here must be a real risk, judged objectively, that a future judgment would not be met because of unjustifiable dissipation of assets. But it is not every risk of a judgment being unsatisfied which can justify freezing order relief. Solid evidence will be required to support a conclusion that relief is justified, although precisely what this entails in any given case will necessarily vary according to the individual circumstances."

17. In *Lakatamia* (above) the Court of Appeal was concerned with a worldwide freezing order made without notice. Haddon-Cave LJ held:

> "[33] The basic legal principles for the grant of a WFO are well-known and uncontroversial and hardly need re-stating. It nevertheless is useful to remind oneself of the succinct summary of the test by Peter Gibson LJ in *Thane Investments Ltd v Tomlinson* [2003] EWCA Civ 1272 at [21] where he stated that, before making a WFO, the court must be satisfied that:
>
> '… the applicant for the order has a good, arguable case, that there is a real risk that judgment would go unsatisfied by reason of the disposal by the defendant of his assets, unless he is restrained by the court from disposing of them, and that it would be just and convenient in all the circumstances to grant the freezing order.'
>
> [34]. I also gratefully adopt (as the judge did) the useful summary of some of the key principles applicable to the question of risk of dissipation by Popplewell J (as he then was) in *Fundo Soberano de Angola v dos Santos* [2018] EWHC 2199 (Comm) (subject to one correction which I note below):

(1) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer.

(2) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.

(3) The risk of dissipation must be established separately against each respondent.

(4) It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets [may be*] dissipated. It is also necessary to take account of whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty.

(5) The respondent's former use of offshore structures is relevant but does not itself equate to a risk of dissipation. Businesses and individuals often use offshore structures as part of the normal and legitimate way in which they deal with their assets. Such legitimate reasons may properly include tax planning, privacy, and the use of limited liability structures.

(6) What must be threatened is unjustified dissipation. The purpose of a WFO is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it judgment proof. A WFO is not intended to stop a corporate defendant from dealing with its assets in the normal course of its business. Similarly, it is not intended to constrain an individual defendant from conducting his personal affairs in the way he has always conducted them, providing of course that such conduct is legitimate. If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment. That would be contrary to the purpose of the WFO jurisdiction because it would require defendants to change their legitimate behaviour in order to provide preferential security for the claim which the claimant would not otherwise enjoy.

(7) Each case is fact specific and relevant factors must be looked at cumulatively.

(* Note: I have replaced the words 'are likely to be' in sub-paragraph (4) with 'may be'.)"

18. I note that at [51] Haddon-Cave LJ further held:

> "… the correct approach in law should be formulated in the following two propositions:
>
> (1) Where the court accepts that there is a good arguable case that a respondent engaged in wrongdoing against the applicant relevant to the issue of dissipation, that holding will point powerfully in favour of a risk of dissipation.
>
> (2) In such circumstances, it may not be necessary to adduce any significant further evidence in support of a real risk of dissipation; but each case will depend upon its own particular facts and evidence."

19. Similarly, in *NCA v McCready* [2018] EWHC 1705 (Admin) Warby J noted at [7] that,

> "It has been observed by the Court on previous occasions that property that has been obtained through unlawful conduct is inherently likely in the nature of things to be at risk of dissipation."

20. Counsel for the Respondents referred me to the judgment of Cavanagh J in *SFO v Jammal & Anor* [2021] EWHC 1422 (Admin) where he quoted paragraph 19 from Collins J's judgment in *Nuttall* (above) and referred to the risk of dissipation of the assets in question as being a "key consideration", and May J's judgment in *Commissioners for HMRC v Astra Trading FZE* [2021] EWHC 3817 (QB) at [11] where she held that "the court will ordinarily be required to be satisfied of such a risk [of dissipation] before making an order under s245," again referring to *Nuttall* (above).

21. Counsel for the Respondents also refer to Butcher J's recent summary of the principles relating to the risk of dissipation of assets in *Magomedov v TPG Group Holdings (SBS) LP* [2023] EWHC 2655 at [57] to [61]. Butcher J was considering applications for notification injunctions and worldwide freezing orders. He reviewed authorities in relation to the question of "whether there is a real risk that judgment will go unsatisfied by reason of the unjustified disposal by the defendant of his assets, unless he is restrained by court order from disposing of them." He referred to the summary set out by Haddon-Cave LJ in *Lakatamia v Morimoto* (above). The Respondents submit that those principles, now adopted on applications which are materially the same as an application for a PFO, require a different approach to the risk of dissipation than that articulated by Collins J in *Nuttall* when he said that POCA 2002 s245A does not require that a risk of dissipation had to be proved.

22. I am concerned with the proper approach to the exercise of a statutory power to make a PFO, not an interlocutory freezing order or a notification injunction. The application before me is not a without notice application, but an application to discharge a PFO which was made without notice. Making allowances for the different contexts, it

nevertheless seems to me that Haddon-Cave LJ's judgment in *Lakatamia* is consistent with Collins J's approach in *Nuttall* and that there need be no confusion about the approach that I should adopt. Haddon-Cave LJ endorsed Peter Gibson LJ's test in *Thane*, namely that the applicant "has a good, arguable case, that there is a real risk that judgment would go unsatisfied by reason of the disposal by the defendant of his assets." Similarly, in the context of an application for a PFO, Collins J held that the application must establish, "a good arguable case that knowledge of the investigation and the identification of assets could lead to dissipation so as to frustrate any recovery order." On a discharge application, the respondents already have knowledge of the investigation and know which assets are identified. Nevertheless, for the PFO to continue, there must be a good arguable case of a risk that dissipation could lead to the frustration of any recovery order. I accept and apply Haddon-Cave LJ's summary of the principles set out by Popplewell J in *Fundo Soberano de Angola* (above): the risk that must be established is of unjustified dissipation; the risk must be real; it must be established by solid evidence; a good arguable case of dishonesty will not be sufficient unless it points to the conclusion that the assets may be dissipated; the use of offshore structures is relevant but not determinative; each case will be fact specific.

Without Notice Applications – Full and Frank Disclosure and Fair Presentation

23. Counsel for the Respondents refer to caselaw on the requirement for the Applicant to give full and frank disclosure and a fair presentation of the case on a without notice application. In *YXB v TNO* [2015] EWHC 826 (QB) Warby J set out the principles relating to the duty as follows:

> "… ii) The duty requires the applicant to make a full and fair disclosure of those facts which it is material for the court to know: *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350, 1356 (1) and (2) (Ralph Gibson LJ). Put another way, disclosure should be made of "any matter, which, if the other party were represented, that party would wish the court to be aware of": *ABCI v Banque Franco-Tunisienne* [1996] 1 Lloyd's Rep 485, 489 (Waller J).
>
> iii) Non-disclosure of material facts on an application made without notice may lead to the setting aside of the order obtained, without examination of the merits. It is important to uphold the requirement of full and frank disclosure.
>
> iv) But the court has a discretion to set aside or to continue the order. Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues that were to be decided. The answer to the question whether the non-disclosure was innocent is an important, though not decisive, consideration. See *Brink's Mat* at pp1357 (6) and (7) and 1358 (Balcombe LJ).

> Further points to be derived from *Brink's Mat* are:-
>
> i) The duty applies to facts known to the applicant and additional facts which he would have known if he had made proper inquiries before the application (1356H, Ralph Gibson LJ).
>
> ii) If material non-disclosure is established the court will be "astute to ensure" that a claimant who has obtained an injunction without notice and without full disclosure "is deprived of any advantage he may have gained" (1357C, Ralph Gibson LJ).
>
> iii) The rule in favour of discharge also operates as a deterrent to ensure that those who make applications without notice realise the existence and potential consequences of non-disclosure (1358D-E, Balcombe LJ).
>
> iv) The discretion to continue the injunction, or to grant a fresh one in its place, is necessary if the rule is not "to become an instrument of injustice"; it is to be exercised "sparingly", but there is no set limit on the circumstances in which it can be exercised (1358E-F, Balcombe LJ).”

24. In *Birmingham City Council v Afsar* [2019] EWHC 1560 Warby J repeated those principles and added at [22]:

> “These are the principles relating to disclosure of facts. As to the law, the authorities are clear: there is a "high duty to make full, fair and accurate disclosure … and to draw the court's attention to significant ... legal and procedural aspects of the case": *Memory Corp v Sidhu (No 2)* [2001] 1 WLR 1443 (CA), 1459-60. The duty is owed by the lawyers also. "It is the particular duty of the advocate to see that … at the hearing the court's attention is drawn by him to … the applicable law and to the formalities and procedure to be observed": *Memory Corp*, ibid.”

25. In *Fundo Soberano de Angola v Dos Santos* [2018] EWHC 2199 at [51] and [52] Popplewell J held that the court

> “must be able to rely on the party who appears alone to present the evidence and argument in a way which is not merely designed to promote its own interests, but in a fair and even-handed manner …the ultimate touchstone is whether the presentation of the application is fair in all material respects”.

26. Popplewell J went on to consider the possible consequences of a finding of material non-disclosure or unfair presentation:

> "The court will take into account the importance of the matters which were not disclosed, the nature and degree of culpability, and the adverse consequences to a claimant of losing protection against a risk of dissipation of assets. It is not sufficient to justify regranting the order that it would be justified had the material matters been disclosed and a fair presentation made, because one important factor in weighing the interests of justice is the penal element of the sanction, which it is in the public interest to apply in order to promote the efficacy of the rule by encouraging others to comply." [81]

27. However, Ralph Gibson LJ held in *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350 at 1357:

> ""it is not for every omission that the injunction will be automatically discharged … The court has a discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the ex parte order, nevertheless to continue the order, or to make a new order on terms."

28. Counsel for the Applicant rely on dicta of Andrews J in *SFO v Saleh* [2016] EWHC 2119 at [119]:

> "In *Jennings v Crown Prosecution Service* [2006] 1 WLR 182, the Court of Appeal made it clear that even if there is a non-disclosure of material facts in a case such as this, the fact that the prosecution acts in the public interest will generally militate against discharging an order if, after consideration of all the evidence, the court considers it is appropriate to make such an order. The conduct complained of has to be particularly egregious to justify what the Court of Appeal described as the "ultimate sanction" of discharge. Even if I had been satisfied that there was material non-disclosure in the present case, which I am not, this is nowhere near the type of scenario in which it would be appropriate to exercise the court's discretion to discharge a PFO which is otherwise clearly justified."

Background

29. The First Respondent is an Azerbaijani national who is a member of that country's National Assembly. The Second Respondent is his wife who lives in England. The Third Respondent is a private limited company. London Properties 1 to 20 are registered in the name of the Third Respondent which holds them on trust for the First and Second Respondents. Properties 21 and 22 are registered in the name of the First Respondent. The First Respondent is the owner of the Liechtenstein account. The Respondents moved their family to London over 15 years ago when one of their children required specialist

medical treatment. They bought a family home in London in 2008. They now have four children, two of whom are under 18 and go to schools in England. The Second Respondent continues to live in London but the First Respondent currently resides in Azerbaijan.

30. The First Respondent says that he is an entrepreneur who formed a translation services company in 1987 before working with Phillip Morris, the American tobacco company, in the 1990's. He then established Planet Co. in 1998 which became the exclusive sales and distribution representative for a large German tobacco company. The First Respondent says that between 2000-2002 he received over US$12m in dividends from Planet Co. as shown in an independent auditor's report. The First Respondent then sold Planet Co.'s distribution rights to Vynehill Enterprises Limited in return for substantial commissions which he received between 2002-2016. The First Respondent worked as a sales manager and then general manager for, and in 2006 became a shareholder in, an Azerbaijani pharmaceutical company, Avromed Company LLC ("Avromed"). He was elected to the National Assembly in Azerbaijan in 2010 and so stood down as general manager of Avromed. He sold his 25% shareholding in Avromed to his nephew in 2016. The First Respondent's case is that he was entitled to substantial dividends of approximately US$49m between 2006 and 2016. In 2004, the First Respondent established a tourism company, Tour Invest LLC, which accrued dividends for him of a further US$7.5m. He states that he earned substantial capital gains in excess of US$20m and income of approximately US$3m from investments in the Azerbaijani property sector.

31. In 2017 a group of journalists called the Organised Crime and Corruption Reporting Project ("the OCCRP") wrote a series of articles concerning the so-called "Azerbaijani Laundromat", an unlawful operation which between 2012 and 2014 allegedly laundered the proceeds of corruption and other criminal conduct from Azerbaijan.

32. On 8 January 2019, 1 February 2019, and 22 October 2019, the NCA obtained a series of Account Freezing Orders in respect of UK bank accounts held by the Second Respondent, the Respondents' eldest son and the First Respondent's nephew. On 1 September 2020, the NCA commenced Account Forfeiture Order Proceedings (the "AFO Proceedings") seeking forfeiture of over £15.3 million in respect of bank accounts held by those same respondents. The First Respondent was not a party to those proceedings but he was served with them and his evidence was important to them. The allegations made by the NCA focused on the flow of funds from the Azerbaijani Laundromat via other companies including Avromed Company Limited ("Avromed Seychelles"), and into the relevant accounts. After a hearing in November 2021 lasting several days, the AFO Proceedings concluded with the judgment of District Judge Zani dated 31 January 2022 ("the AFO Judgment") in which he decided that £5.64m of the account funds should be forfeited.

33. The Respondents say that after that judgment UK banks closed their accounts and they had to move money to bank accounts abroad, including in Turkey.

34. The First Respondent has filed three witness statements in support of the Discharge Application. I have received a detailed skeleton argument on behalf of the Respondents and a supplementary skeleton argument which followed service by the NCA of additional material which the NCA obtained from the Azeri Prosecutor

General's Office ("the PGO") in October 2023 after an international letter of request made by the NCA on 7 June 2023.

35. Counsel for the Respondents rely on a summary of "documented legitimate income earned by the First Respondent" appended to their skeleton argument which purports to show income between 2001-2020 of just short of US$100m (£86.7m) and acquisition of property in the UK at a cost of £39.5m. Hence, it is submitted, the First Respondent's long and successful career in business has created more than sufficient funds to purchase the PFO Properties and permits no inference that the source of funds was unlawful conduct.

36. The Respondents submit that large payments by Avromed to companies such as Avromed Seychelles were used to pay international pharmaceutical suppliers. Furthermore, as the OCCRP acknowledged, many recipients of funds which had passed through the Laundromat "would not have understood the problematic nature of the transfers, and cannot be accused of doing anything improper." As already noted, the Respondents' case for discharging the PFO is that (i) there was (and is) no real risk of dissipation; (ii) there were multiple and serious breaches of the NCA's duty of full and frank disclosure/fair presentation at the without notice hearing before Heather Williams J, and (iii) there is no good arguable case against them. I prefer to address those issues in a different order, asking, first whether there is a good arguable case that the PFO Properties are or included recoverable property; second whether there is a risk of dissipation and whether the court should exercise its discretion to make or continue the PFO; and third, whether there were breaches of the NCA's duty at the without notice hearing such that the PFO should, in any event, be set aside.

The Applicant's Case – Recoverable Properties

37. The NCA's case on its without notice application before Heather Williams J and before me, is that there is a good arguable case that the London Properties owned by the Respondents directly or through the nominee services of the Third Respondent, and the Liechtenstein account maintained by the First Respondent, are or include recoverable property.

38. At the without notice hearing, the NCA relied heavily on a detailed first witness statement from Andrew Coles, an accredited financial investigator employed by the NCA ("Coles 1"). He has since provided two further statements in response to points made by the First Respondent in witness evidence of his own. It is striking how comparatively little additional evidence is before me compared with that which was put before Heather Williams J eight months ago: there are some tax returns, the First Respondent's statements, a statement from an employee of a French company (see below), and the PGO disclosure.

39. Mr Coles' evidence within Coles 1 is that the First Respondent was a member of the National Assembly of Azerbaijan and therefore meets the definition of a Politically Exposed Person (POCA 2002 s362B(7), a provision relevant to the making of an unexplained wealth order). He was a long-standing shareholder in Avromed and was also linked to Avromed Seychelles a company incorporated in the Seychelles in 2005. Mr Coles provides evidence of email traffic between the First Respondent and an

employee in the finance department of Avromed in which the First Respondent requested payments to be made on his behalf to his solicitors in connection with his property purchases. He also provides evidence that on the advice of ABLV Bank in Latvia, Avromed set up nominee companies, incorporated in offshore jurisdictions, which banked with ABLV and that made or received payments to and from Avromed Seychelles and the First Respondent.

40. Mr Coles and the NCA claim that there is a good arguable case that assets owned by the Respondents were obtained using the proceeds of unlawful conduct in Azerbaijan having been laundered through the so-called Azerbaijani Laundromat. This operation allegedly allowed large sums of money, estimated to be US$2.9 billion, to move from Azerbaijan through the Danske Bank in Estonia and the ABLV Bank in Latvia. A number of international reports speak to corruption within Azerbaijan including amongst government officials at a high level. Coles 1 sets out details of this Laundromat operation. Roughly half of the sums can be traced to an Azerbaijani company called Baktelekom (not to be confused with a reputable company in Azerbaijan called Baktelecom MMC). Coles 1 refers to an article which claims that Avromed Seychelles and Avromed combined were the second largest recipient of monies from the Laundromat. He says that UK shell companies were used as part of the laundering operation, including UK partnerships known as Polux Management LP ("Polux") and Hilux Services LP ("Hilux"). In September 2018 Danske Bank's governing body published an external report, provided to the court, indicating that major deficiencies in controls and governance had enabled the bank's Estonia branch to be used for criminal activities such as money laundering, and that 75 customers were linked with the Azerbaijani Laundromat. Criminal convictions followed, including the conviction of Danske Bank employee in Estonia, Camilla Christiansen, for her involvement in money laundering between December 2008 and March 2016 which included conduct related to the Laundromat. The Latvian authorities are continuing criminal investigations into the ABLV bank and Mr Coles has provided details of those investigations.

41. Coles 1 includes references to money transfers from Baktelekom to Hilux and Polux, purportedly for the sale of steel piping. The NCA relies on DJ Zani's 522 paragraph AFO Judgment dated 31 January 2022. He found that the explanation that the monies were for the sale of steel piping was false and that the "overwhelming evidence" was that false invoices and contracts were used to mask money laundering activities. He also found that substantial sums of money received by the First Respondent (who had been a source of funds paid into the accounts which were forfeited) were "derived from Hilux and Polux who in turn received such sums from Baktelekom in circumstances that I am satisfied related to money laundering" [paragraph 437 of the AFO Judgment].

42. As already noted, the First Respondent was not a party to the AFO Proceedings before DJ Zani, but considerable evidence was received about his dealings. Referring to the First Respondent as JF, The District Judge found at [469] to [470]:

> "[469] I am satisfied that during the period that JF was a 25% shareholder in Avromed Company LLC he was legitimately entitled to receive dividends in respect of that shareholding from 2007 to late 2016, when he is said to have sold the shares to his nephew, Elman. However it is by no means clear to this court the exact amount of dividends that JF was (a) actually entitled to and (b) is said to have received.

> [470] The information provided on JF`s behalf throws little light on the figures that he was actually entitled to and/or that he did in fact receive by way of share dividends. I am unpersuaded by the suggestion that payments marked `account replenishment` was somehow in error and should have been marked `dividends`."

Approximately £5.2m of the property forfeited in the AFO Proceedings before DJ Zani was found to be traceable back to Baktelekom. Within Coles 1 it is suggested that approximately £2.3m paid for the London Properties can be traced back to Baktelekom. There was no appeal against the orders made following the AFO Judgment.

43. Coles 1 also speaks to substantial payments made pursuant to a purported contract between Avromed and a French pharmaceutical company, Les Laboratories Servier ("LLS"). In the summer of 2016, Avromed made the payments to a nominee company, Bridge Lake Capital, which held an account with ABLV, presenting payment instructions to that effect apparently given by LLS. Equivalent sums were then paid to Avromed Seychelles who then remitted the same amounts to the First Respondent's ABLV account. LLS deny having any copy of the payment instructions and believe that the signature and LLS company stamp on the instructions are forgeries. Mr Coles' evidence is that the funds received by the First Respondent by this means were used to complete the purchases of Properties 4-10 and 12-17. One further piece of evidence adduced since the without notice hearing is a statement from the employee of LLS whose signature apparently appears on the written instruction, stating that it is a forgery.

44. Mr Coles gives evidence of similar mechanisms which led to the receipt by the First Respondent of monies used to complete the purchases of Properties 2 and 3 (by means of a purported contract for the sale of medicines) and the acquisition of Properties 21-22 (by means of a purported contract for sale of medical equipment).

45. Properties 21 and 22 of the London Properties were purchased by the First Respondent for £18.4m and £8.1m in January 2020 and December 2019 respectively. The monies used to fund the reservation fees for the properties included substantial payments from a Danske bank account held by Polux to an Avromed Seychelles account and then onwards to the First Respondent's ABLV account.

46. The tracing evidence is set out in Coles 1 but there is voluminous documentary evidence on which his statement is based, all of which was put before Heather Williams J and is also before this court. In *Magomedov* (above) in which there was a similar volume of material, Butcher J observed at [82],

> "The court has to navigate between Scylla and Charybdis. On the one hand, there is the danger of proceeding on the basis that there is a good arguable case merely because there are complex allegations and an abundance of material, and because the court will not be able to resolve disputed issues. On the other, there is the danger of what has been called conducting a 'mini trial': the court getting too immersed in the detail and seeking to form a view on issues which cannot be resolved at this stage."

47. To help the court steer between the rocks, the tracing evidence was summarised at Annex 1 to the skeleton argument of Mr Sutcliffe KC and Mr Rainsbury for the without notice application. For the Discharge Application they have produced an Annex 2 which is a series of flow charts purporting to show the movements of money described in Annex 1. This was served on the Respondents only shortly before the hearing of the Discharge Application and the Respondents complain that it does not match Annex 1. That is disputed, but I indicated during submissions that although the flowcharts in Annex 2 are potentially very helpful, there was insufficient time to delve into any alleged discrepancies between Annex 1 and Annex 2 and so I would have regard only to Annex 1 when making my determination. The Annexes are different ways of summarising the evidence within Coles 1 and the documentary evidence produced by the NCA to which Mr Coles refers, therefore I am not disadvantaged by having regard to Annex 1 alone.

48. The following list briefly summarises the Applicant's case as to what the evidence shows in relation to the London Properties, identifying dates of acquisition, price on acquisition, and some of the sources of funds received by Avromed Seychelles and then transferred to ABLV accounts held by the First Respondent and used by him to acquire the property in question. In terms of tracing, the properties may be grouped as 1, 2 and 3, 4 to 7, 8 to 16,17 to 20, and 21 and 22.

PFO Property No.	**Property**	**Purchase Date**	**Price**	**Traced Source Funds**
1	The Family Home	(i) 06.10.08 (ii) 04.11.13	(i) Purchase £2.1m + (ii) Lease extended £1.89m	(i) Keynet, Barletta, Rich Gate, Avromed Seychelles (ii) Azeritrans, Dinex, Wigan Alliance, Seychelles
2	Flat 13 Cavendish House	15.02.13	£318,500	Keynet, Rich Gate
3	Flat 14 Cavendish House	15.02.13	£318,500	Keynet, Rich Gate
4	Flat 51 Goldhawk House	17.10.16	£509,950	Brightmax, Alto Sun, Moree Import, Bridge Lake Capital, Keynet

5	Flat 52 Goldhawk House	17.10.16	£374,950	Ditto
6	Flat 63 Goldhawk House	17.10.16	£514,950	Ditto
7	Flat 65 Goldhawk House	17.10.16	£503,452	Ditto
8	Flat 39 Golding House	17.05.17	£492,952	Baktelekom, Hilux, Brightmax, Bridge Lake Capital, Alto Sun, Moree Import
9	Flat 41 Golding House	01.12.16	£489,202	Ditto
10	Flat 42 Golding House	09.01.17	£493.952	Ditto
11	Flat 51 Golding House	17.05.17	£498,702	Ditto
12	Flat 53 Golding House	13.02.17	£459,952	Ditto
13	Flat 54 Golding House	13.02.17	£498,702	Ditto
14	Flat 65 Golding House	15.02.17	£503,452	Ditto
15	Flat 67 Golding House	28.02.17	£498,702	Ditto

16	Flat 68 Golding House	23.02.17	£503,452	Ditto
17	Flat 45, Argent House	04.10.18	£531,335	Moree Import, Alto Sun, Bridge Lake Capital
18	Flat 46, Argent House	04.10.18	£531,335	Ditto
19	Flat 55, Argent House	04.10.18	£536,038	Ditto
20	Flat 56, Argent House	04.10.18	£536,038	Ditto
21	Flat 30, 8 Whistler Square	27.01.20	£18,400,000	Baktelekom Polux, Hilux
22	Flat 23, 8 Whistler Square	20.12.19	£8,100,000	Ditto

49. The fifth column in the table above includes some but not all of the traced sources of funds. In the AFO Judgment, in which the First Respondent is referred to as JF and the Second Respondent as Parvana, DJ Zani found, amongst other things, as follows:

> [465] Having exhaustively considered the evidence filed, I am entirely satisfied that there was a significant Money Laundering scheme in existence in Azerbaijan, Estonia, and Latvia at the relevant time. The core of this operation can be traced back to the set up and functioning of Baktelekom as well as, inter alia, Hilux and Polux.
>
> [468] I am also satisfied that, during the relevant period of time, substantial funds from this criminal enterprise (mainly from and involving Baktelekom, Hilux, Polux, Brightmax as well as from other entities) that will have originated from a money laundering source(s), and were paid into the following accounts:

> (i) Avromed Company (Seychelles) ABLV in Latvia,
>
> (ii) Avromed Company LLP (UK registered) Den Danske in Estonia
>
> (iii) Avromed Company LLP (UK registered) Expobank in Latvia.
>
> (iv) JF – from Brightmax directly.
>
> Substantial payments were then paid across from Avromed Company LLPs accounts to Avromed Company (Seychelles) whereafter certain relevant corresponding sums can be traced to accounts held by JF, Parvana and [the First Respondent's nephew]."

50. Monies moved quickly in and out of the Avromed Seychelles ABLV account in Latvia. For example, on 25 September 2014, US$3.64m was received from Hilux for "medical devices" and on the same day US$1.64m was paid out to the First Respondent for "account replenishment". On 8 October 2014, US$1.64m was received from Hilux for medical devices, and on the next day the same amount was paid to the Second Respondent's account. Many of the payments to the First Respondent are described in the bank statements as "account replenishment" and only a single payment, for US$400,000, on 3 February 2015, is described as "dividends."

51. Mr Coles also provides evidence in relation to what he called the purported sale of shares in Avromed. Mr Coles explains to the court that the First Respondent has claimed to have sold his shareholding in Avromed to his nephew. Payments totalling EUR 8.1m were made by the nephew to the First Respondent's ABLV account. Mr Coles asserts that even if shares were sold to the nephew, investigation of the source of the money to make the purchases has revealed "anomalies". The nephew received remittances from Avromed Seychelles totalling EUR 8.8m and the funds, in turn, came from a supposed contract for "medical goods" with Longford Structure LP. But Longford Structure LP is a dormant entity. One of the payments to the nephew for EUR 2m was labelled "Account Replenishment".

52. Mr Coles gives evidence as to the Respondents' legitimate sources of wealth and income, including the First Respondent's entitlement to dividends and share sales in relation to Avromed, Tour Invest LLC, and ownership of properties in Azerbaijan. Mr Coles notes that at the conclusion of the AFO Proceedings, funds not the subject of forfeiture were sent at the First Respondent's request to a bank account held by him in Turkey, saying "It is therefore my belief that Respondent One has legitimate funds located in that region."

53. Mr Sutcliffe KC for the NCA points out that the First Respondent has chosen not to return to England for the purpose of explaining, in formal interview or otherwise, these flows of funds. His statements, submits Mr Sutcliffe KC, do not engage with the evidence as to the flows of funds, and their sources. He submits that the evidence,

painstakingly gathered by Mr Coles and others, provides ample evidence that the PFO Properties are or include recoverable property.

Respondents' Case – Recoverable Properties

54. It is I believe a fair observation that Mr MacLean KC's submissions did not focus on the tracing evidence on which the NCA so heavily relies, but rather on the NCA's conduct of the without notice application, submitting that it was so deficient that the penal approach remarked upon by Popplewell J at paragraph [81] in *Fundo Soberano de Angola* (quoted above) should apply and that I should discharge the PFO. He also addressed the court in detail on the risk of dissipation, which he urged the court to find was virtually non-existent. I will come to those detailed submissions later in this judgment. His submissions in relation to the tracing evidence were more limited. He submitted that the First Respondent had no operational role in Avromed from 2010 when he became a member of parliament in Azerbaijan. As a minority shareholder in a major pharmaceutical company he was entitled to, and received, substantial dividends. There is, Mr MacLean KC said in oral submissions, no evidence that the First Respondent knew where the funds had come from, asking rhetorically how the First Respondent can be tainted by receipt unless he was aware something unlawful was going on?

55. The Respondents can now rely on evidence adduced since the hearing before Heather Williams J, specifically the PGO disclosure. The documents were requested by the NCA of the PGO by way of an International Letter of Request on 7 June 2023 and were received by the NCA under cover of a letter dated 16 October 2023 but not disclosed until 5 February 2024. On disclosing the PGO material, solicitors for the NCA wrote in their covering letter that these documents were only being disclosed, during the course of an ongoing investigation, because of the highly aggressive approach taken by the Respondents to the way the NCA had presented its case to date, and to avoid any later arguments about transparency. Otherwise, it is implied, they would not have been disclosed. It seems to me however, that they are relevant documents and it is right that they have been disclosed within the Discharge Application. The disclosure includes statements taken from witnesses in Azerbaijan. Within the documents, the PGO states:

> "[n]one of the people listed in para. 39 are or have been subject of criminal prosecution in Azerbaijan. Please note that we do not accept the expression of "Azerbaijani Laundromat" mentioned several times in the request. "Azerbaijani Laundromat" is not a fact or a legal concept but is a journalistic expression used by the OCCRP. After the OCCRP articles were published the relevant authorities looked into the allegations made and also looked into persons and companies. They found no criminality under the laws of the Republic of Azerbaijan by the subjects of your enquiry."

Conclusions – Recoverable Properties

56. The condition for making a PFO under POCA 2002 s245A is that there is a good arguable case that the relevant property is or includes recoverable property (for present purposes I need not be concerned with whether any of the property is associated property within the meaning of the Act). By POCA 2002 s304, recoverable property is property obtained through unlawful conduct and it may be followed into the hands of another on its disposal. Hence, the person against whom a PFO is made need not have been involved in the unlawful conduct that led to the initial obtaining of the relevant property. In this case the NCA does allege that the First Respondent has been at the centre of a money laundering operation. Evidence concerning that allegation may well be relevant to the risk of dissipation and/or the exercise of the discretion whether to make a PFO, but proof of dishonesty or unlawful conduct by the Respondents is not required in order for the conditions under POCA 2002 s245A to be met.

57. The Applicant has put before the court voluminous evidence of flows of money which ultimately provided the Respondents with the means to acquire the PFO Properties (including not only the London Properties, but also funds in the Liechetenstein account and rental money from the London Properties). The AFO Judgment of DJ Zani provides a compelling starting point for consideration of whether those monies are tainted by unlawful conduct, specifically money laundering. In essence, he found that monies passed from the Laundromat through to Avromed Seychelles and into the hands of the Respondents. The Second Respondent was a party to the application before him. There has been no appeal against his decision. More evidence has become available since the AFO Judgment and Mr Coles has set out and produced evidence which is probative of money laundering which resulted in funds obtained from unlawful conduct being transferred to the Respondents. He has provided evidence of the flow of funds and the timing of those flows, which links the monies received by the Respondents with the acquisition of the PFO Properties.

58. I take into account the PGO evidence from Azerbaijan but it must be weighed against the tracing and other evidence and it does not go very far in undermining the NCA's case that the PFO Properties are recoverable. There is little within the PGO disclosure by way of detailed evidence of the investigations that led to the conclusions stated. The PGO evidence cannot cause the court to disregard the volume of evidence of money laundering and the flow of money from that operation into the acquisition of the PFO Properties.

59. Whilst the burden of proof is on the NCA, it is unrealistic for the First Respondent to say that it was not his concern where the funds came from to pay him the dividends to which he was entitled, in particular given the evidence accumulated by the NCA. He has not adduced any evidence of substance which provides a meaningful challenge to the evidence referred to in Coles 1.

60. I also take into account the evidence that the First Respondent has gained substantial income and wealth through legitimate means. I accept at face value for the purposes of the present application, that the First Respondent secured substantial funds through Planet Co., from Azerbaijani property, from his tourism venture, and that he had a substantial shareholding in Avromed. However, the fact that the First Respondent may have enjoyed legitimate sources of substantial income and funds is not in itself an answer to the evidence that he has also enjoyed the benefit of funds obtained through unlawful means. There is sufficient evidence at this stage to link him to Avromed

Seychelles, and to what appear to be money laundering operations that involved that company and the ABLV bank in Latvia. The movements of tainted money were rapid and substantial and came into his accounts before being used to acquire the PFO Properties.

61. The tracing evidence provided by the NCA is compelling and the Respondents have not provided evidence to undermine it. Applying the statutory provisions and the case law set out above, and having considered all the evidence, I am quite satisfied that the NCA has established a good arguable case that the PFO Properties are or include recoverable property. There is a good arguable case that the properties have been acquired using money obtained through unlawful conduct. Furthermore, the evidence adduced establishes a good arguable case that the First Respondent has himself been involved in dishonest money laundering operations which resulted in funds being available to him which he and the Second Respondent used to acquire the PFO Properties.

The Risk of Dissipation

62. When the conditions for making a PFO are met, the court has a discretion whether to make such an order. POCA 2002 s245A does not expressly refer to the risk of dissipation, but if there were no risk at all then the court would be unlikely to exercise its discretion to make a PFO. Before Heather Williams J, the NCA's case as to the risk of dissipation was set out in paragraph 6.3 of the Coles 1:

> "(i) The Properties and the investment account are now believed to have an estimated value of GBP 50 million and EUR 1.2 million and USD 600,000. The Properties are generating a rental income of approx. GBP 1,000,000 per annum.
>
> (ii) Enquiries with Land Registry have revealed that all except Property 21 are unencumbered by virtue of a mortgage or registered charge.
>
> (iii) Respondent Three currently holds sixteen of the twenty two properties in 'trust' on behalf of Respondents One and Two. Therefore, if Respondents One and Two were to instruct Respondent Three to do so, it would be a relatively simple exercise to dissipate the Property and render any judgment against one or more of the Properties more difficult to enforce.
>
> (iv) Evidence obtained by the NCA in the course of the Investigation indicates that the Respondents have links to various overseas jurisdictions, including those with existing secrecy legislation, and that they are able to send, and receive, substantial funds to, and from, these jurisdictions.
>
> (v) Respondents One and Two are Politically Exposed Persons from Azerbaijan, where they own a residential property (and other properties held for commercial purposes) and maintain

> familial and political links there. Respondent One currently holds ministerial office within the Azerbaijan Parliament. Therefore I believe that Respondents One and Two have recourse to substantial funds, political connections, offshore resources and a geographic footprint which would make the transfer of the Properties and the balance of the investment account relatively simple and would put them out of the reach of the NCA's recovery action.
>
> (vi) In the aftermath to the Account Forfeiture proceedings Respondent One instructed his investment manager to remit his remaining assets to an account in Turkey. He has also instructed his agents to remit some of the rental income from five of the Properties to a bank account in Azerbaijan. This lends some weight to my belief that he may attempt to dissipate further assets he holds in the UK."

63. Mr MacLean KC for the Respondents submitted that these assertions were weak, partial, and incomplete. Firstly, there is a factual error at sub-paragraph (v) in that the First Respondent does not hold and has never held ministerial office. Secondly, the London Properties cannot be disposed of easily and swiftly, and their dissipation by the Respondents would require the co-operation of the Third Respondent which is operated by a reputable law firm. The Applicant casts no aspersions on the good faith of the Third Respondent and there is no risk of the properties being disposed of with the Third Respondent's collaboration. Thirdly, the Respondents have accumulated rented properties over time and have continued to do so even since they have known of the OCCRP reports, the NCA's investigations, and the account freezing order applications. Far from dissipating assets, they have continued to accumulate them. Fourthly, Property 1 is the family home, purchased as long ago as 2008, where the Second Respondent and the minor children live. It is highly unlikely to be dissipated. Fifthly, in 2019, following the account freezing orders, the Respondents approached the NCA inviting it to unfreeze the accounts to facilitate the purchase of the London Properties numbered 21 and 22, and offering security over the newly acquired assets to the NCA in return – those were not the actions of individuals likely to dissipate assets. Sixthly, there was nothing suspicious about the movement of funds abroad after the AFO Proceedings because UK banks closed accounts and the Respondents were forced to move non-forfeited monies elsewhere. Seventhly, the NCA took over two years after the Account Forfeiture Order made by DJ Zani to make their PFO application. There was no dissipation during that period and no obvious risk of imminent dissipation requiring an urgent, without notice application.

64. Heather Williams J did not adopt the error about the First Respondent having a ministerial role, which was not repeated elsewhere in the evidence or in submissions before her. She concluded,

> "[11] … The NCA's position is that notice of the application to the first and second respondents is likely to give rise to a significant risk of dissipation of the property in question.

> [12] I accept, having read and considered the material which I will come on to, that there are grounds for believing that the first respondent has been involved in dishonest conduct, including fraud and money laundering. It is believed that the first respondent is principally resident outside the jurisdiction, in Azerbaijan. The first and second respondents are also foreign, Politically Exposed Persons ("PEPs"), who have strong connections overseas. As I have already indicated, the property under investigation is of very considerable value and is currently unrestrained by any court order and, save for property 21, is unencumbered by any mortgage.
>
> [13] My attention in this regard is drawn to paragraph 6.3 of Coles 1, where he says: "In the aftermath to the Account Forfeiture proceedings ... [I will come on to refer to these in more detail] ... Respondent One instructed his investment manager to remit his remaining assets to an account in Turkey. He has also instructed his agents to remit some of the rental income from five of the properties to a bank account in Azerbaijan".
>
> [14] The point is also made that whilst the first and second respondents are aware of previous law enforcement interest in their financial affairs, they are not aware that the NCA is investigating and now seeking to restrain the assets that I have referred to."

65. It is clear that Heather Williams J considered the risk of dissipation when deciding whether to exercise her discretion under POCA 2002 s245A. She later referred to the risk as being "significant". Most pertinently, she accepted the NCA's case that the First Respondent had been involved in dishonest conduct. In her judgment she found that there was a good arguable case that the PFO Properties were recoverable property, meaning that they had been obtained through unlawful conduct. The First Respondent was based abroad, had assets and accounts abroad, the PFO properties were very valuable, and they were capable of being moved out of reach of the enforcement authority. The Respondents were unaware, at the time of the without notice application, that the NCA was seeking to restrain the PFO Properties.

66. Material was before Heather Williams J that supported the Respondents' case that they enjoyed legitimate sources of substantial income. These included an Independent Forensic Auditor's Report by Nexia on Avromed dividends paid to the First Respondent. She was referred to that document at the without notice hearing but she was not referred to the correspondence in November 2019 from Withers LLP on behalf of the Respondents offering the NCA security on Properties 21 and 22, if purchased, in return for unfreezing accounts. That material was before the Judge, but she was not directed to it. Mr Sutcliffe KC submitted to me that the offer had been made as long ago as 2019 and had not been accepted by the NCA because it maintained that the frozen funds were recoverable property. The NCA now relied on later evidence that the funds used to purchase Properties 21 and 22 were themselves recoverable property. Hence the Respondents' offer in 2019 was not relevant. Mr Sutcliffe KC also

submitted that the Third Respondent would be likely to act on instructions from the Respondents, as beneficiaries under the Trust, and that its actions were beyond the control of the NCA unless a PFO were made.

67. As already noted, in *Lakatamia* (above) Haddon-Cave LJ said that where the court accepts that there is a good arguable case that a respondent has engaged in wrongdoing relevant to the issue of dissipation, that finding will point powerfully in favour of a risk of dissipation. Here, Heather Williams J held, and I have found, that there is a good arguable case that the PFO Properties have been obtained through unlawful conduct and that the First Respondent was involved in unlawful conduct. The unlawful conduct involved dishonesty relating to money laundering. That finding was therefore a powerful point in favour of Heather Williams J's finding that there was a "significant risk of dissipation" (paragraph 19). I am not in any way bound by the conclusions reached by Heather Williams J and I take into account the matters submitted on behalf of the Respondents at the hearing before me, the correspondence in 2019 inviting the NCA to unfreeze frozen funds, and the PGO material. I also take into account that the position is now different from that before Heather Williams J: she was dealing with a without notice application whereas I have to consider the risk of dissipation as it is now on the Discharge Application. However, I reach the same conclusion. There is a good arguable case that the PFO Properties are or include recoverable property, that the First Respondent's involvement in unlawful money laundering allowed the Respondents to acquire the PFO Properties, and that, if a PFO were not made, the Respondents would be able to deal with the properties so as to put them out of reach of the NCA and prevent recovery as and when a civil recovery order was sought.

68. In the circumstances, the risk of dissipation is real. It has been established by solid evidence, in particular the detailed tracing evidence to which I have already referred. The unlawful conduct in question involved money laundering and is relevant to the risk of unjustified dissipation. The submissions made on behalf of the Respondents are fairly made but the weight of the evidence is that there is a real risk of unjustified dissipation. Even if the London properties could not swiftly be sold on the open market, they could be swiftly put out of reach of civil recovery by other means. The risk of dissipation is a significant material factor to be weighed in the balance when the court has to consider whether to exercise its discretion to make a PFO. I also have careful regard to the interference with the Respondents' Article 8 and/or Article 1 Protocol 1 rights that a PFO would cause. I am, however, satisfied that such interference would be lawful because it is necessary in pursuit of a legitimate aim, namely the prevention of crime, and it would be proportionate. I am satisfied that, subject to the matters considered in the next part of this judgment, I should exercise my discretion to continue the PFO in respect of the PFO Properties.

The Without Notice Application – Full and Frank Disclosure and Fair Presentation

69. The Respondents submitted that the without notice PFO was wrongly made because the NCA failed to give full and frank disclosure and failed fairly to present the case to Heather Williams J. In their Skeleton Argument, Counsel for the Respondents set out seventeen "counts" against the NCA in relation to the presentation of its case at the without notice application. Counts 1-6 concern "defaults relating to risk of dissipation"

and include an allegation that there was "a wholesale failure" to draw the Court's attention to key authorities and legal principles applying to the risk of dissipation; that the NCA failed to make the point that there was a history of non-dissipation; and that the Applicant falsely stated that the First Respondent held a "ministerial office". Counts 7-10 concern the alleged failure of the NCA fairly to represent the First Respondent's sources of considerable, legitimate funds and its unfair allegation that his position as a member of the National Assembly was "difficult to reconcile" with the accumulation of the London property portfolio. Counts 11 -13 concern the NCA's presentation of the evidence about the Azerbaijani Laundromat. Count 14 alleges a failure to alert the Judge to inconsistency between its application and DJ Zani's judgment. Counts 15-17 concern the NCA's assertion of dishonesty by the First Respondent.

70. The conduct of the NCA, and indeed Counsel for the NCA, is said to have been so "egregious" and "disgraceful" that the court should set aside the PFO, applying the approach described by Popplewell J at [81] of his judgment in *Fundo Soberano de Angola* (above) in order to uphold the interests of justice. It is submitted that the justification that the NCA provided to the court for proceeding without notice was "false and misleading and the NCA must have known that this was the case". The NCA's presentation of its case to Heather Williams J was "littered with false, incomplete and misleading information." Counsel for the Respondents submit that the defaults by the NCA were "appalling" and go so far as to submit that "the level of culpability is very high – indeed, this may well be amongst the worst cases in this respect that the Court is likely to see, whether on the part of enforcement agencies or at all." Even if satisfied that the conditions for making a PFO are now met, it is submitted that I should discharge the without notice PFO on the grounds of the NCA's conduct and failings at the without notice hearing. Hence, I need to consider the hearing in June 2023.

71. I have already outlined the detailed evidence of Mr Coles that was before the Judge. I have had close regard to Heather Williams J's 96 paragraph judgment which reveals the material on which she relied. I have also been provided with transcripts of the hearing before her. The Judge had been given an essential reading list that included a report by Oculus Financial Intelligence Limited which incorporated, in red print, the First Respondent's case in relation to a number of allegations made by the NCA. DJ Zani found that the Oculus report had been prepared on the First Respondent's instructions. The Judge had been given a four hour reading time but told Counsel that she had taken "much longer". She heard submissions at a hearing lasting about one hour and forty minutes on the afternoon of 21 June 2023, took time to consider, and gave judgment on 23 June 2023. She had regard to a comprehensive skeleton argument prepared by Leading and Junior Counsel for the NCA which included Annex 1 setting out a detailed summary of the tracing exercise that had been undertaken in relation to each of the properties under consideration. She had many pages of documentary evidence on which that summary was based, the judgment of DJ Zani, and a libel judgment by Warby J dated 16 April 2019 given in proceedings brought by the First Respondent against the Journalism Development Network Association and one other. In oral submissions she was taken to a further report on which the First Respondent had previously relied, namely a Forensic Accountant's report by Nexia into his shareholding of Avromed and the income generated from his shareholding between 2006 and 2016.

72. Heather Williams J was able to summarise the movement of property and the evidence on unlawful conduct in some detail in her judgment. I am not considering the judgment of Heather Williams J in an appellate capacity but, in any event, Mr MacLean KC has not suggested that she made any error of law. It is evident from her 96 paragraph judgment, that Heather Williams J was satisfied that the test for hearing the application without notice was met, that the NCA had established a good arguable case that the PFO Properties were or included recoverable property, and that there was a "significant" risk of dissipation. I have already observed that there is little by way of new material before me that was not before her. The Respondents have not identified any material that was not put before her that could and should have been put before her. There are therefore no grounds that I can discern on which it can properly be alleged that the NCA was guilty of non-disclosure by withholding, deliberately or otherwise, relevant material from the Judge. Instead, Counsel for the Respondents submit that the presentation of the NCA's case before Heather Williams J was partial and unfair. Such was the volume of material, that it was incumbent on the NCA to draw the Judge's attention to material and factors which weighed against making the PFO. It is submitted that Counsel for the NCA failed to do that.

73. It is quite clear that the NCA did not ignore the case against making a PFO. Coles 1 included a section headed "Full and Frank Disclosure" in which he anticipated documentation and arguments on which Respondents would wish to rely. He accurately predicted the arguments that the First Respondent was legitimately entitled to dividends from Avromed, that the use of "exchange houses" and nominee companies in Azerbaijan was lawful, that the First Respondent had no control over, involvement in, or knowledge or any unlawful conduct committed by others, and that DJ Zani had found that only £5.6m of the claimed £15.4m in accounts he was considering, were obtained through unlawful conduct. Mr Coles told the court that the Respondents had no criminal convictions and the Azerbaijan authorities had not taken any action against them. He alerted the court to the Oculus report and Mr Sutcliffe KC advised the Judge about the Nexia report.

74. In Counsels' skeleton argument on the without notice application, the Judge was referred to the First Respondent's witness statement in his defamation claim which set out the basis of his claims of innocence in relation to benefiting from tainted money. Counsel also referred to "legal arguments which might be made by the respondents", including in relation to the interplay between the PFO application and the earlier AFO Proceedings. I have a transcript of the hearing before Heather Williams J. Mr Sutcliffe KC took the Judge to the Oculus report, identifying several of the arguments within it that the Respondents now make in support of their application to discharge the PFO.

75. In her judgment, Heather Williams J expressly considered whether the NCA had given full and frank disclosure. She referred to matters properly drawn to her attention by Mr Sutcliffe KC for the NCA which were, she considered, "key points from the first respondent's perspective". It is noteworthy that the application was not determined on the papers but that the NCA had sought a hearing. The Judge was given a great deal of material, but she was given an essential reading list, and had time to read and reflect on the material provided. In her judgment, the Judge refers to Leading Counsel for the NCA having taken her through a number of points of disclosure including the Nexia

Report which provides evidence of considerable income received by the First Respondent from his shareholding in Avromed.

76. Hence, there was significant attention given to the Respondents' position by the NCA, Counsel for the NCA, and the Judge. Against that general background, I return to the Respondents' 17 counts against the Applicant in relation to the alleged failure to discharge its duty of full and frank disclosure and fair presentation.

Counts 1-6: Defaults relating to Risk of Dissipation

77. The Respondents allege that there was a "wholesale failure to draw the Court's attention to key authorities and legal principles which apply to the question of risk of dissipation" but Counsels' skeleton argument at the without notice application referred to the factor of "risk of dissipation" being relevant to the exercise of the court's discretion and quoted from Collins J's judgment in *Nuttall v NCA* (above). I have been referred to a number of other authorities but, as I observed earlier in this judgment, I cannot discern a change in the law, as it applies to a PFO, as between *Nuttall* and *Lakatamia* (above). The Respondents complain that it was misleading of the Applicant to suggest that the transfers of monies abroad which followed the closure of their UK bank accounts after the AFO Judgment were "somehow suspicious" but a fair reading of the evidence of Mr Coles and the Applicant's skeleton argument is that they were merely saying that those transfers showed how the espondents had the means swiftly to move funds abroad. A fair point is made that Mr Coles had wrongly referred to the First Respondent holding ministerial office, but this was clearly an error which was not repeated elsewhere in evidence or argument before the Judge, and it was not repeated by her in her judgment. It had no material effect. The remaining counts regarding the presentation of the case on the risk of dissipation are without merit in my judgement – they amount to a complaint that the Applicant did not present the balance of the evidence as showing no, or no substantial risk of dissipation. The duty to give an even handed representation of the issue of the risk of dissipation does not extend to an obligation to concede the Respondents' anticipated case. The Respondents complain of an unbalanced presentation of the risk of dissipation but the matters to which they refer were all before the Judge and she was entitled to take a view of the evidence which differs from the Respondents' case. She was plainly aware that there was a long history to the investigation, that DJ Zani had made an AFO, and that the PFO Property had been accumulated over time both before and after that order. It did not need to be expressly pointed out to her that the London Properties were houses and flats and she knew about the position of the Third Respondent. The fact is, that even so, she concluded that there was a significant risk of dissipation.

Counts 7 to 10: Sources of Income

78. The Respondents' submit at count 7 that it was not even-handed or fair of the Applicants to argue that the First Respondent's "current position as member of the National Assembly of Azerbaijan is difficult to reconcile with the accumulation of

such a large and valuable property portfolio over a short period of time," (NCA's skeleton at paragraph 43.4). Further, the Respondents complain at count 8 that the NCA did not tell the Court about the First Respondent's ownership of Planet Co. and his receipt of US$12m in dividends from that company. Count 9 is that the First Respondent's income from Avromed by way of dividends was not fairly presented. Count 10 is that the sale of Avromed shares to the First Respondent's nephew for just over £8m was not fairly represented.

79. Heather Williams J based her finding that there was a good arguable case that the PFO Properties were or included recoverable property on the tracing evidence not on a discrepancy between provably legitimate income and the cost of acquisition of the properties. However, it is right to note that she did record, as her first "overarching point" that the First Respondent's position as a member of the Azerbaijan National Assembly was difficult to reconcile with the accumulation of such a large and valuable property portfolio. This was a point made by the NCA. Was this misleading or unfair to the Respondents? Had the NCA said nothing about the Respondents' income and wealth other than that he was an MP in Azerbaijan, the Respondents' complaint might have had some substance, but the Applicant not only put a considerable amount of material before the Judge as to the First Respondent's claims to having legitimate sources of substantial income and wealth, but referred to it expressly in submissions, including taking the Judge to the Nexia and Oculus reports. The Oculus Report refers to Planet Co. and the First Respondent's claim to have received US$12m as a shareholder of that company. Whilst there was indeed a large amount of material presented to the Judge, the Oculus report was amongst the list of "essential reading" provided to her. I am satisfied that the NCA gave a fair presentation of the First Respondent's sources of income and wealth. The observation about his wealth being inconsistent with his position as a member of the National Assembly has to be viewed in the overall context.

80. Count 10, concerning the sale of the First Respondent's Avromed shares to his nephew, relates to transactions which DJ Zani held to be opaque. Heather Williams J was made aware of the First Respondent's case that he benefited from the sale of over £8m worth of shares to his nephew because it was in his statement in the defamation proceedings which was within her essential reading list.

81. The Respondents have been very selective about what was said to the Judge at the without notice hearing and their own characterisation at counts 7-10 of the way in which the Applicant presented these aspects of the case before the Judge is itself unfair.

Count 11-13: The Laundromat

82. At counts 11-13 the Respondents complain that the Applicant unfairly represented the First Respondent as being at the heart of the Azerbaijani Laundromat without there being any evidence of such involvement. I have taken care to look at the way in which the Applicant put forward the case before the Judge. The NCA said that there were grounds for believing that the First Respondent had been involved in dishonest conduct, including fraud and money laundering. The NCA's case is that the funds

involved in the money laundering in which the First Respondent is said to be involved, are derived from the Azerbaijan Laundromat. But that is different from alleging that the First Respondent was directly involved in the Laundromat itself. The NCA alleges that the First Respondent made use of a number of shell companies in jurisdictions such as Belize, the Dominican Republic, St Kitts & Nevis, and the Seychelles where the filing of corporate accounts is not required. Again, the NCA's case is that these companies were involved in laundering money through Avromed Seychelles to the Respondents' ABLV accounts. The Respondents complain that the court was given the impression that the First Respondent played an active role in the Laundromat, but that is not a fair characterisation of the way the NCA put the case to Heather Williams J. The Respondents complain that the NCA did not fairly inform the Judge that the OCCRP had acknowledged that payments which flowed through the Laundromat included legitimate business payments, but the articles were suggested as "essential reading" for the Judge and Coles 1 expressly acknowledges that "The NCA has identified recipients of payments that appear to be legitimate supplies and transactions that appear to be genuine trade." Further, the fact that there may have been some legitimate transactions within the huge number of transactions investigated, does not mean that all the transactions were genuine. The NCA relied on tracing evidence purporting to show illegitimate transactions. Counts 11-13 have no merit in my judgement.

Count 14: False Submission that Flows did not Overlap with DJ Zani's findings

83. Mr Coles has acknowledged that he made an error in respect of a small portion of funds applied to the purchases of properties 21 and 22: £860,000 of the total of £26.5m originated from a loan payment of £5.4m which DJ Zani had considered in his AFO Judgment. However, this does not at all undermine the case made in respect of properties 21 and 22. The condition for making a PFO is that there is a good arguable case that the property to which the application related is *or includes* recoverable property.

Counts 15-17: First Respondent's Alleged Lies

84. I can deal with these counts shortly. They amount to complaints that the NCA formed conclusions about evidence with which the Respondents disagree. Those complaints do not amount to a justifiable complaint of a lack of even-handedness or unfair presentation at the without notice hearing. Nor, it appears to me, did the Judge rely on these allegations when making her key decisions on the application.

Conclusions on the Application to Discharge on Grounds of Non-Disclosure and/or Unfair Presentation

85. Counsel for the Respondents pitched their criticisms of the NCA, and indeed NCA's Counsels' presentation of the without notice application, very high. Having scrutinised the complaints made, I find them to be unjustified. Robust defence of the NCA's case

is of course unobjectionable but it is regrettable that the complaints against the presentation by Counsel were couched in overblown terms.

86. Upon analysis, the 17 counts alleged are not made out. There was no material non-disclosure and the NCA's presentation at the without notice hearing was fair to the Respondents. The fact that the Respondents do not agree with the position taken by the NCA in relation to the evidence is not, without more, a basis for complaint about the NCA's conduct on the without notice application. In any event, I am satisfied that none of the matters raised by the Respondents in their 17 counts made any material difference to the decision made by Heather Williams J to make the PFO. Further, for the reasons given earlier, I am satisfied that the PFO should continue and make that determination on the basis of substantially the same evidence that was before Heather Williams J. Given that the PFO was obtained and is pursued by an enforcement authority, it would be rare for the court to discharge the PFO on the "penal" grounds discussed in *Fundo Soberano de Angola* (above) when, on a discharge application the evidence supports the continuation of the order. Certainly, this case falls well short of justifying such a course of action.

Final Conclusions

87. On the evidence before me I am satisfied that the conditions for making a PFO in respect of the PFO Properties are met and that I should exercise my discretion to continue the PFO ordered on a without notice basis by Heather Williams J. There is a good arguable case that the PFO Properties are or include recoverable property. There is solid evidence of a real risk of unjustified dissipation. The interference with the Respondents' Art 8 and/or Art 1 Protocol right is lawful because it is done in pursuit of a legitimate aim, namely the prevention of crime, and is proportionate. This court is not making any finding that the Respondents are guilty of any specific criminal offence. There is a relatively low threshold for making a PFO. No criminal proceedings have been brought against the Respondents and no application for civil recovery has been made. The PFO is an interim holding order.

88. For the avoidance of doubt, the PFO shall continue in respect of all the PFO Properties, including Property 1 and on the same terms as ordered on 23 June 2023. The NCA must either start a claim for a civil recovery order or apply for the continuation of the PFO on or before 22 June 2024, in default of which the PFO shall be set aside.