Neutral Citation Number: [2020] EWHC 432 (Admin)

Case Nos: CO/2065/2019, CO/2696/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 February 2020

Before :

THE HONOURABLE MR JUSTICE MURRAY

- -

Between :

NATIONAL CRIME AGENCY	**Applicant**
- and -	
(1) MANSOOR MAHMOOD HUSSAIN	**Respondents**
(2) LAUREL TERRACE LIMITED	
(3) LAND88 LIMITED	
(4) JAYCO88 LIMITED	
(5) CUBIC BUSINESS PARK LIMITED	
(6) 88M GROUP LIMITED	
(7) 2 PARK SQUARE LIMITED	

- -
- -

Mr Andrew Sutcliffe QC and **Ms Anne Jeavons** (instructed by the **Civil Recovery and Tax Legal Department** of the **National Crime Agency**) for the **Applicant**
The Respondents did not appear and were not represented.

Hearing date: 12 July 2019

- -

Approved Judgment

Mr Justice Murray :

1. On 12 July 2019, at the conclusion of a hearing to consider without notice applications by the applicant, the National Crime Agency ("the NCA"), I made:

   i) an unexplained wealth order ("UWO") under section 362A of the Proceeds of Crime Act 2002 ("POCA") against Mr Mansoor Mahmood Hussain, whose identity, until today, was protected by an anonymity order made by Lang J on 4 July 2019, for reasons explained in this judgment; and

   ii) an interim freezing order ("IFO") under section 362J of POCA against Mr Hussain and each of six corporate respondents ("the Other IFO Respondents").

2. The NCA made its application for a UWO against Mr Hussain on 24 May 2019 ("the UWO Application") and its application for an IFO against Mr Hussain and the Other IFO Respondents on 10 July 2019 ("the IFO Application"). Both applications were made without notice.

3. At the conclusion of the hearing, I gave brief reasons for making the UWO and the IFO and indicated that my full reasons for granting each order would follow in a written judgment. This is that written judgment. My original intention was to set out my reasons in general terms in a public judgment, with supplemental reasons set out in a confidential judgment to be handed down at the same time. In light of events subsequent to the hearing but before hand-down of this judgment, as noted in more detail below, it is no longer necessary for there to be a separate confidential judgment.

4. In this judgment, I set out the general principles that apply in relation to the making of a UWO and an IFO. I then deal with the general principles that apply to determine in what circumstances the hearing of an application for a UWO and, where relevant, an IFO must be held in private. I then give my reasons why I determined that it was necessary in this case to hear the UWO Application and the IFO Application in private. Finally, I give my reasons why I determined that it was just, appropriate and proportionate, in this case, to make the UWO against Mr Hussain and to make the IFO against Mr Hussain and the Other IFO Respondents.

5. The UWO Application was made by the NCA on the basis that the NCA suspects that Mr Hussain is involved in serious criminality in connection with the activities of organised crime gangs operating in the Bradford area, the criminality spanning a spectrum of serious crimes, including drugs offences, firearm offences, fraud offences and money-laundering offences. The organised crime gangs concerned are known to be violent. The NCA's case in general terms is that Mr Hussain has been acting as an enabler, laundering the proceeds of the criminal activities of a number of criminals, who are members of those organised crime gangs.

6. The principal evidence supporting the UWO Application is set out in the first witness statement dated 23 May 2019 made by Mr Andrew Coles, a Financial Investigator and member of staff of the NCA, to which numerous exhibits are attached. In his second witness statement dated 3 July 2019, Mr Coles clarified one point and expanded upon another point in the evidence in his first witness statement. The principal evidence supporting the IFO Application is set out in the third witness statement dated 10 July

2019 made by Mr Coles, in which Mr Coles also set out additional evidence of the NCA in support of the NCA's application that this matter be heard in private.

Background

7. Mr Hussain was born in Leeds and is currently 39 years old. According to the evidence of Mr Coles, Mr Hussain is self-employed as the director of a number of companies purportedly engaged in property development and management. Mr Hussain has never been convicted of a criminal offence and has received only one police caution, for battery, which he was given on 28 January 2009 by West Yorkshire Police.

8. The Other IFO Respondents are companies incorporated in England and Wales and registered under the Companies Act 2006 that are wholly owned by Mr Hussain and through which he controls various residential and commercial properties relevant to the UWO Application and, of course, the IFO Application. The Other IFO Respondents are:

    i) Laurel Terrace Limited, which is wholly owned by Mr Hussain and of which he is the sole director;

    ii) Land88 Limited, which is wholly owned by Mr Hussain and of which he is the sole director;

    iii) Jayco88 Limited, which was wholly owned by Mr Hussain and of which he was a director and which, despite having been dissolved by voluntary strike-off on 20 March 2018 from the Companies Register maintained by the Registrar of Companies under the Companies Act 2006, remains the registered owner of a relevant property, namely the one described at [9(iv)] below;

    iv) Cubic Business Park Limited, which is wholly owned by Mr Hussain and of which he is the sole director;

    v) 88M Group Limited, which is wholly owned by Mr Hussain and of which he is the sole director; and

    vi) 2 Park Square Limited, which is wholly owned by Mr Hussain and of which he is a director.

9. The UWO Application concerns the following properties ("the Properties"):

    i) freehold property at 2 Sandmoor Drive, Alwoodley, Leeds LS17 7DG ("2 Sandmoor Drive"), registered at HM Land Registry ("the Land Registry") under Title No WYK417474, the registered owner of which is Mr Hussain;

    ii) freehold property at 3 Laurel Terrace, Armley Leeds LS12 2BZ ("3 Laurel Terrace"), registered at the Land Registry under Title No YWE25690, the registered owner of which is Laurel Terrace Limited;

    iii) freehold property consisting of land on the north west side of Paddock Hill, Mobberley, Knutsford, Cheshire ("Paddock Hill"), registered at the Land

Registry under Title No CH564718, the registered owner of which is Land88 Limited;

iv) freehold property consisting of land on the south side of Doncaster Road, Wakefield, registered at the Land Registry under Title No WYK912235, the registered owner of which is Jayco88 Limited, despite that company having been dissolved by voluntary strike-off on 20 March 2018;

v) freehold property consisting of the Cubic Business Centre, Stanningley Road, Bramley, Leeds, LS13 4EN ("Cubic Business Centre") and land adjoining it, registered at the Land Registry under Title No WYK470774 and YY66852, the registered owner of which is Cubic Business Park Limited;

vi) leasehold property consisting of the ground floor flat at 101 Walton Street, Kensington, London SW3 2HP, registered at the Land Registry under Title No BGL53420, the registered owner of which is 88M Group Limited;

vii) freehold property consisting of 28 Park Square West, Leeds LS1 2PQ, including 13 The Stables, Somers Street, Leeds LS1 2PQ and 11 The Lodge, Somers Street, Leeds LS1 2PQ, registered at the Land Registry under Title No WYK858541, the registered owner of which is 88M Group Limited; and

viii) freehold property consisting of 2 Park Square East Leeds LS1 2NE, registered at the Land Registry under Title No WYK449220, the registered owner of which is 2 Park Square Limited.

10. The nature of the NCA's case in support of the UWO Application and the IFO Application will become clearer when I review the NCA's submissions in relation to each of the statutory requirements for the making of a UWO. In a nutshell, however, the case is that the NCA has sufficient evidence to support a reasonable suspicion that Mr Hussain, who is a known associate of leading members of certain organised crime gangs, acts as a "professional enabler" or professional money launderer for a number of well-known criminals who operate in the Leeds/Bradford area, meaning that he uses specialist knowledge and expertise to find opportunities for his criminal associates to retain and to launder the proceeds of crime. One such way is to channel such proceeds through corporate vehicles in order to fund the purchase of residential and commercial properties, principally held by or through companies that he controls. The NCA suspects that each of the Properties falls into that category.

Procedural history

11. The UWO Application was originally listed before Lang J on 4 July 2019, to be heard in private.

12. At that time, the NCA did not consider, on balance, that it was necessary also to apply for an IFO in connection with the UWO, in the interests of proportionality and taking the least invasive approach. It considered that the effect of service of the UWO, if granted, would carry sufficient weight to prevent Mr Hussain from taking action intended to thwart the UWO or any future civil recovery proceedings.

13. Following informal applications by Bloomberg LP ("Bloomberg") and the Press Association ("the PA") challenging the decision to hear the UWO Application in private ("the Press Applications"), Lang J adjourned the hearing to 12 July 2019 in order to permit Bloomberg and the PA to prepare and submit written submissions in support of the Press Applications in accordance with CPR r 39.2(5).

14. On 8 July 2019 Reynolds Porter Chamberlain LLP ("RPC"), solicitors for Bloomberg and the PA wrote to the court indicating that Bloomberg and the PA no longer wished to challenge the decision to hear the UWO Application against Mr Hussain in private and therefore wished to withdraw the Press Applications.

15. In its skeleton argument for the hearing on 12 July 2019 in relation to the Press Applications, the NCA indicated that it had spent considerable time preparing to address the issues of law and practice raised by those applications, including gathering evidence set out in the third witness statement of Mr Coles.

16. Following the adjournment on 4 July 2019, the NCA received information that it considered altered the risk profile so that an application for an IFO would also be necessary. Accordingly, the NCA made the IFO Application on 10 July 2019, supported by evidence from Mr Coles set out in his third witness statement. As the UWO Application had been made without notice, the NCA was required by section 362J(5) of POCA to make the IFO Application without notice.

17. Although the Press Applications were withdrawn, the NCA considered that they raised fundamental issues of broad principle as to the nature and operation of the UWO jurisdiction and, in general, the need for privacy in relation to applications for a UWO to protect the integrity of the NCA's investigation to which the UWO relates, as well as to protect the rights of the respondent to the UWO. Therefore, the NCA urged me to rule on the issue of principle raised by the now-withdrawn Press Applications, first, addressing the general UWO jurisdiction and the need for privacy in a public judgment and then, secondly, dealing with the particular circumstances of this case in a confidential judgment to be handed down at a hearing in private.

18. Since the UWO and IFO were made, the existence of the UWO and the IFO have ceased to be confidential and have, in fact, been superseded by a property freezing order made on 12 February 2020 at a hearing in public by Supperstone J. For that reason, there is no longer a need for a separate confidential judgment. All my reasons are therefore set out in this judgment. I am also making an order today discharging the anonymity order made by Lang J on 4 July 2019 in relation to Mr Hussain.

The legal framework for UWOs

19. UWOs were introduced under Part 8 of POCA by the Criminal Finances Act 2017 ("the CFA 2017"). The relevant provisions were brought into effect on 31 January 2018 by the Criminal Finances Act 2017 (Commencement No 4) Regulations 2018 ("the 2018 Regulations"). On the same date the Home Office issued a revised Code of Practice under section 377 of POCA ("the Revised Code of Practice") to take account of the amendments made by the CFA 2017. A revised Practice Direction for Civil Recovery Proceedings was also brought into force, reflecting the addition of UWOs and related IFOs.

20. UWOs are measures intended to assist in building evidence to support a case for civil recovery of the proceeds of crime under Part 5 of POCA. Sections 362A-362I of POCA set out the principal provisions relating to UWOs. Sections 362J-362R set out the principal provisions relating to IFOs made in connection with a UWO. Sections 362S-362T, not relevant in this case, deal with the enforcement abroad of UWOs.

21. Section 362A(1) of POCA provides that the High Court may make a UWO on the application of any "enforcement authority" in respect of any property if the court is satisfied that the statutory requirements for making the UWO are fulfilled. The NCA is one of the enforcement authorities specified in section 362A(7). Subsections (2) to (6) of section 362A provide:

> "(2) An application for an order must—
>
> (a) specify or describe the property in respect of which the order is sought, and
>
> (b) specify the person whom the enforcement authority thinks holds the property ('the respondent') (and the person specified may include a person outside the United Kingdom).
>
> (3) An unexplained wealth order is an order requiring the respondent to provide a statement—
>
> (a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,
>
> (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),
>
> (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and
>
> (d) setting out such other information in connection with the property as may be so specified.
>
> (4) The order must specify—
>
> (a) the form and manner in which the statement is to be given,
>
> (b) the person to whom it is to be given, and
>
> (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

> (5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.
>
> (6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements)."

22. Section 362B of POCA sets out the requirements for the making of a UWO in respect of any property. Section 362B(2) provides that the court must be satisfied that there is reasonable cause to believe that the respondent holds the property ("the Holding Requirement") and that the property is worth more than £50,000 ("the Value Requirement").

23. Section 362B(3) of POCA provides that the court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property ("the Income Requirement").

24. Section 362B(4) of POCA provides that the court must be satisfied that either:

    i) the respondent is a "politically exposed person", as defined in section 362B(7) ("the PEP Requirement"); or

    ii) there are reasonable grounds for suspecting that:

        a) the respondent is, or has been, involved in serious crime (whether in part of the United Kingdom or elsewhere); or

        b) a person connected with the respondent is, or has been, so involved.

    In this case, the NCA says that Mr Hussain falls into the latter of the two categories above ("the Serious Crime Requirement").

25. Before turning to consider in more detail each of the relevant requirements for making a UWO, I summarise the effect of a UWO:

    i) A UWO requires the respondent to provide a "statement" setting out the information required by section 362A(3) of POCA, which I have set out above.

    ii) A UWO may require the respondent to produce "documents" of a kind specified or described in the order (section 362A(5)).

    iii) If the respondent fails "without reasonable excuse" to comply or purport to comply with the requirements imposed by the UWO within the period specified in the UWO, the property is presumed under section 362C(2) to be recoverable property unless the contrary is shown. In other words, the property is presumed to have been obtained through unlawful conduct for the purpose

of civil recovery proceedings under Part 5 of POCA, but the presumption is rebuttable.

iv) If the respondent complies or purports to comply with the UWO, the presumption in section 362C(2) will not apply, but instead the provisions of section 362D will apply, meaning that the enforcement authority will need to determine what, if any, enforcement or investigative proceedings are to be taken in relation to the property under Parts 2, 4, 5 or 8 of POCA. If an IFO is in place, then section 362D(3) provides that the enforcement authority needs to make that determination within 60 days of the date of compliance.

26. It is not a criminal offence to fail to comply with a UWO, however under section 362E(1) of POCA it is an offence for a person, in purported compliance with a requirement imposed by a UWO, to make a statement that the person knows to be false or misleading in a material particular or recklessly to make a statement that is false or misleading in a material particular.

The Holding Requirement

27. A person "holds" property under POCA if they have an "interest" in it, namely, any legal estate or equitable interest in or power in respect of the property: sections 414(3)(b) and (za) of POCA. It is possible for more than one person to hold a property at the same time: section 362B(5)(a).

28. Under section 362H(2) of POCA, a person will be taken to hold property, for the purposes of a UWO application, in the following cases:

i) where the person has "effective control" over the property (section 362H(2)(a));

ii) where the person is the trustee of a settlement in which the property is comprised (section 362H(2)(b)); and

iii) where the person is a beneficiary (whether actual or potential) in relation to such a settlement (section 362H(2)(c)).

This list of cases is not exhaustive.

29. In relation to section 362H(2)(a) of POCA, a person will be taken to have effective control over property if, from all the circumstances, it is reasonable to conclude that the person exercises, is able to exercise or is entitled to acquire "direct or indirect" control over the property. In the NCA's skeleton argument for the UWO Application, Ms Anne Jeavons, junior counsel for the NCA, submitted that this is a wide definition, capable of encompassing persons who are, among other things, in possession of the property. I agree. That view is reinforced by paragraph 71 of the Explanatory Notes to the CFA 2017, which reads:

> "Section 362H provides a broad definition of how an individual may 'hold' property, for the purposes of sections 362A and 362B. The definition is specifically broad enough to address

> circumstances where property is held in trust or owned in a complex corporate structure arrangement."

30. A company or other body corporate may hold property, regardless of whether it is incorporated or formed under the law of a part of the United Kingdom or elsewhere (section 362H(5)).

31. Under section 362B(2) of POCA, there must be "reasonable grounds to believe" that the person holds the property. It is for the enforcement authority to satisfy the court that this threshold is met. In relation to this aspect of the Holding Requirement, Ms Jeavons in her skeleton argument for the UWO Application referred me to the judgment of Lord Hughes in *Re Asset Recovery Agency (Jamaica)* [2015] UKPC 1 at [19]:

> "'Reasonable grounds for believing a primary fact, such as that the person under investigation has benefited from his criminal conduct, or has committed a money laundering offence, do not involve proving that he has done such a thing, whether to the criminal or civil standard of proof. The test is concerned not with proof but the existence of grounds (reasons) for believing (thinking) something, and with the reasonableness of those grounds. Debate about the standard of proof required, such as was to some extend conducted in the courts below, is inappropriate because the test does not ask for the primary fact to be proved. **It only asks for the Applicant to show that it is believed to exist, and that there are objectively reasonable grounds for that belief.** Nor is it helpful to attempt to expand on what is meant by reasonable grounds for belief, by substituting for 'reasonable grounds' some different expression such as 'strong grounds' or 'good arguable case'. There is no need to improve upon the clear words of the statute, which employs a concept which is very frequently encountered in the law and imposes a well-understood objective standard, of which the judge is the arbiter. Reasonable belief in the presence of stolen goods in premises was the historic test for the grant of a search warrant at common law … . The same test is made the condition of exercise of several police powers … . Nor is its use confined to matters of criminal procedure: see for example section 2(1) of the Misrepresentation Act 1967, establishing a right to damages in civil claims arising out of contracts." (emphasis supplied)

32. Ms Jeavons submitted that the test for whether the applicant, in this case the NCA, believes something is subjective. As the passage above indicates, Lord Hughes considered that "believing" something is analogous to "thinking" it. Ms Jeavons further submitted that this is consistent with section 362A(2)(a) of POCA, which requires the NCA to specify in the application who it "thinks" holds the property. Ms Jeavons submitted that "belief" does not require a firm conviction, however it is "a more positive frame of mind than suspicion", as observed by Collins J in *R (Errington) v Metropolitan Police Authority* [2006] EWHC 1155 (Admin) at [27].

Ms Jeavons also referred me to the following passage in the judgment of Laws LJ in *A v Secretary of State for the Home Department* [2005] 1 WLR 414 (CA) at [229]:

> "Belief and suspicion are not the same, though both are less than knowledge. Belief is a state of mind by which the person thinks that X *is* the case. Suspicion is a statement of mind by which the person in question thinks that X *may be* the case." (emphasis in original)

33. Finally, in relation to the interpretation of the phrase "reasonable grounds to believe", Ms Jeavons submitted that whilst the question of whether the NCA holds a belief is subjective, the question of whether there is "reasonable cause" for that belief is objective. She submitted that, following the reasoning of Lord Hughes in the case of *Re Asset Recovery Agency (Jamaica)* in the passage quoted above, it is not necessary for the NCA to prove to the civil standard that the respondent holds the property. Indeed, any such belief may subsequently prove to be incorrect. The court is concerned with whether the opinion is one which a reasonable person could, in the relevant circumstances, hold: *A v SSHD* (Neuberger LJ) at [364]. Further, a belief may be held on the basis of information which has not been proved in the ordinary sense of the word: *A v SSHD* (Pill LJ) at [30].

34. I accept and agree with these submissions of Ms Jeavons on the proper interpretation of "reasonable grounds to believe" for the purposes of the Holding Requirement.

The Value Requirement

35. The Value Requirement is only met if the court is satisfied that there is reasonable cause to believe that the value of the property in relation to which an applicant is seeking a UWO is greater than £50,000. Where the property comprises more than one item of property, the reference to "value" is the total value of those items (section 362B(10) of POCA). The words "reasonable cause to believe" in relation to the Value Requirement have the same meaning as in relation to the Holding Requirement. That is obvious as a matter of statutory construction, as well as common sense.

The Income Requirement

36. In order for the Income Requirement to be met, the court must be satisfied that there are "reasonable grounds for suspecting" that the "known sources" of the respondent's "lawfully obtained income" would have been insufficient for the purposes of enabling the respondent to "obtain" the property.

37. Income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises: section 362B(6)(c) of POCA. A source of income is a "known source" if it is income (whether arising from employment, assets or otherwise) that is reasonably ascertainable from available information at the time of the making of the application for the UWO: section 362B(6)(d).

38. The terms "reasonable suspicion" and "obtaining property", in relation to the Income Requirement, require a bit more explanation. Ms Jeavons submitted in the NCA's skeleton argument for the UWO Application that "reasonable suspicion" is a "state of

conjecture or surmise where proof is lacking", relying on the following passages from the judgment of the Privy Council, delivered by Lord Devlin, in the Privy Council case of *Hussein v Chong Fook Kam* [1970] AC 942 (PC) at 948B, 948H and 949B-C:

> "Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'. Suspicion arises at or near the starting-point of an investigation of which the obtaining the prima facie proof is the end. When such proof has been obtained, the police case is complete … .
>
> …
>
> Their Lordships have not found any English authority in which reasonable suspicion has been equated with prima facie proof.
> …
>
> There is another distinction between reasonable suspicion and prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. … Suspicion can take into account also matters which, though admissible, could not form part of a prima facie case. Thus the fact that the accused has given a false alibi does not obviate the need for prima facie proof of his presence at the scene of the crime; it will become of considerable importance in the trial when such proof as there is being weighed perhaps against a second alibi; it would undoubtedly be a very suspicious circumstance."

39. Ms Jeavons submitted that the fact of the NCA's suspicion is a subjective question. The court's assessment of whether there is "reasonable cause" for this suspicion is, again, objective. It is not necessary to prove that the suspected fact is, in fact, true. Indeed, it may ultimately prove to be incorrect. The proper question, Ms Jeavons submitted, is whether the NCA's suspicion, viewed objectively and in the round, is one which a reasonable person could hold.

40. I accept and agree with these submissions of Ms Jeavons as to the proper interpretation of the words "reasonable suspicion" in relation to the Income Requirement. Ms Jeavons drew my attention to the Revised Code of Practice at paragraphs 176-178:

> "**Particular action to be taken before making an application**
>
> 176. The enforcement authority should carefully consider the value of evidence that may be obtained through a UWO. A UWO provides law enforcement with a tool to obtain information and documentation in relation to property that appears to be disproportionate to the known income of an individual or company. A fundamental aim of the power, therefore, is to access evidence that would otherwise not be available. Although not an absolute requirement, the applicant

> should consider whether alternative tools of investigation could be used in obtaining any relevant documents or information.
>
> 177. Whether there are reasonable grounds for suspecting that there is insufficient lawfully obtained income to explain the wealth (i.e. holding of the property) will depend on the circumstances in each case, and should be carefully considered. Applicants should be able to explain the basis for their suspicion by reference to disclosable intelligence or information about, or some specific behaviour by, the individual or company concerned (including open source material from overseas where there may be public registers relating to property and public servants income).
>
> 178. Applicants should take reasonable steps to liaise with other agencies in order to:
>
> - establish whether they already own material that explains a person's wealth, and"
> - ensure appropriate action, thereby avoiding duplicating enquiries that may already be underway."

41. This guidance is presumably intended to ensure fairness to a respondent and reduce the risk that an applicant will miss important information when considering whether there is reason to suspect that a respondent has insufficient lawfully obtained income to explain the holding of the relevant property.

42. Finally, in relation to the proper interpretation of the words "obtaining property" for purposes of the Income Requirement, the position is more straightforward. As I have already noted in relation to the Holding Requirement, section 414(3)(a) of POCA provides that property is "obtained" if a person "obtains an interest in it", an "interest" in relation to land in England and Wales or in Northern Ireland being "any legal estate or equitable interest or power" in relation to the land (section 414(3)(b)).

43. Section 362H(2) of POCA provides that a person is to be taken to "hold" property where, among other things, the person has effective control, is a trustee of a settlement in which the property is comprised or is a beneficiary (actual or potential) in relation to such a settlement. Section 362H(4) provides that where a person holds property by virtue of section 362H(2), "references to the person obtaining the property are to be read accordingly", aligning the test for holding and obtaining property.

44. Section 362B(6) provides that, for purposes of determining whether there are reasonable grounds for suspecting that the known sources of a respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain property:

> "(a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purpose of obtaining the property;
>
> (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;"

The Serious Crime Requirement

45. In order for the Serious Crime Requirement to be met, the court must be satisfied, under section 362B(4)(b) of POCA, that there are "reasonable grounds for suspecting" that:

> "(i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or
>
> (ii) a person connected with the respondent is, or has been, so involved."

In relation to this provision, the words "reasonable grounds for suspecting" should be interpreted consistently with the approach discussed above in relation to the Income Requirement.

46. In relation to the words "a person connected with the respondent" in section 362B(4)(b)(ii) of POCA, section 362B(9)(b) cross-refers to section 1122 of the Corporation Tax Act 2010, which sets out a number of cases where a person will be determined to be connected to another person. Relevantly for present purposes, subsections (3) and (4) of section 1122 of the Corporation Tax Act 2010 provide as follows:

> "(3) A company is connected with another person ('A') if –
>
> (a) A has control of the company, or
>
> (b) A together with persons connected with A have control of the company.
>
> (4) In relation to a company, any two or more persons acting together to secure or exercise control of the company are connected with –
>
> (a) one another, and
>
> (b) any person acting on the directions of any of them to secure or exercise control of the company."

47. In relation to being "involved" in serious crime, section 362B(9)(a) of POCA provides that:

> "(a) a person is involved in serious crime in a part of the United Kingdom or elsewhere if the person would be so

> involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act);"

48. Section 2(1) of the Serious Crime Act 2007 provides as follows:

> "(1) For the purposes of [Part 1 of the Serious Crime Act 2007], a person has been involved in serious crime in England and Wales if he –
>
> (a) has committed a serious offence in England and Wales;
>
> (b) has facilitated the commission by another person of a serious offence in England and Wales; or
>
> (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in England and Wales (whether or not such an offence was committed)."

49. It will be seen from this that "involvement" in serious crime by a respondent does not necessarily involve the respondent's having "committed" a serious offence or even having "facilitated" the actual commission of one, namely, in any case falling within section 2(1)(c) of the Serious Crime Act 2007.

50. In relation to the Serious Crime Requirement, it is the NCA's case that Mr Hussain has been involved in serious crime in England and Wales by virtue of falling with section 2(1)(c). In relation to that provision, it is necessary to consider the meaning of the words "facilitate" and "serious offence".

51. Taking first the term "serious offence", section 2(2) of the Serious Crime Act 2007 provides that an offence is a "serious offence" in England and Wales if, at the time when the court is considering the application or matter in question, the offence:

> "(a) is specified, or falls within a description specified, in Part 1 of Schedule 1 to the Serious Crime Act 2007; or"
>
> (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified.

52. Part 1 of Schedule 1 to the Serious Crime Act 2007 includes the following serious offences, considered by the NCA to be relevant to its application for a UWO in this case:

i) drug trafficking (paragraph 1);

ii) armed robbery (paragraph 5);

iii) money laundering (paragraph 6);

iv) fraud (paragraph 7);

v) offences in relation to public revenue (paragraph 8); and

vi) blackmail (paragraph 11).

53. As to whether a respondent has conducted himself in a way that was likely to "facilitate" the commission by himself or another person of a serious offence (whether or not such an offence is committed), section 4(3) of the Serious Crime Act 2007 provides that the court must ignore –

> "(a) any act that the respondent can show to be reasonable in the circumstances; and
>
> (b) subject to this, his intentions, or any other aspect of his mental state, at the time."

54. Although there appears to be no reported decision considering the meaning of the word "facilitate" under the Serious Crime Act 2007, Ms Jeavons submitted that valuable guidance is provided by the approach of the Court of Appeal (Criminal Division) in *R v K* [2018] EWCA Crim 1432, in which the Court of Appeal was called upon to consider the interpretation of the words "facilitates" in section 4(1A) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The Court of Appeal said the following at [46] in relation to the offence under consideration (facilitation of the trafficking of persons for exploitation):

> "46. ***Actus reus:*** In the context of the varying types of criminal trafficking at which these provisions are aimed, the two words 'arranging' and 'facilitating' travel are necessarily broad and should be construed accordingly. 'Arranging' is a common word which in our view needs no further explanation to the jury. 'Arranging' would include such matters as transporting Mr Hussain, procuring a third person to transport Mr Hussain, or buying a ticket for Mr Hussain. 'Facilitating' is intended to be different from 'arranging' and would include 'making easier'. It is not sensible to lay down precise definitions of these terms."

55. I accept and agree with Ms Jeavons's submission that I should take a similar approach to the interpretation of the word "facilitate" in section 2(1)(c) of the Serious Crime Act 2007 for the purposes of the Serious Crime Requirement.

The PEP Requirement

56. As already noted, the PEP Requirement is an alternative to the Serious Crime requirement. Although not relevant to the case of Mr Hussain, it is necessary to say a few words about the PEP Requirement in anticipation of the consideration below of the general principles of privacy raised by the Press Applications.

57. Section 362B(7)-(8) of POCA provides:

> "(7) In subsection (4)(a), "politically exposed person" means a person who is —
>
> > (a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State,
> >
> > (b) a family member of a person within paragraph (a),
> >
> > (c) known to be a close associate of a person within that paragraph, or
> >
> > (d) otherwise connected with a person within that paragraph.
>
> (8) Article 3 of Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 applies for the purposes of determining —
>
> > (a) whether a person has been entrusted with prominent public functions (see point (9) of that Article),
> >
> > (b) whether a person is a family member (see point (10) of that Article), and
> >
> > (c) whether a person is known to be a close associate of another (see point (11) of that Article)."

58. Both the High Court and the Court of Appeal have had occasion to consider the PEP Requirement in some detail in the case of *National Crime Agency v Hajiyeva*, the judgment of the High Court with neutral citation [2018] EWHC 3524 (Admin) having been reported at [2018] 1 WLR 5887 (QBD). The judgment of the Court of Appeal (with the case name *Hajiyeva v National Crime Agency*) was handed down on 5 February 2020 with neutral citation [2020] EWCA Civ 108.

59. As noted by the Court of Appeal in *Hajiyeva v NCA* at [14], section 362B(7)(a) has been amended by the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019, but not in a way that was material to that appeal (or, of course, to this case). The effect of the amendment was simply to remove the implicit reference to the United Kingdom as being "another" EEA state.

60. At paragraph 15 of its judgment in *Hajiyeva v NCA*, the Court of Appeal set out the text of relevant recitals from Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L141/73 ("the Directive"). The recitals set out the rationale for including transactions with "politically exposed persons" within the scope of the requirements in the Directive.

61. As noted at recital (33) of the Directive:

> "(33) The requirements relating to politically exposed persons are of a preventive and not criminal nature, and should not be interpreted as stigmatising politically exposed persons as being involved in criminal activity. Refusing a business relationship with a person simply on the basis of the determination that he or she is a politically exposed person is contrary to the letter and spirit of this Directive … ."

62. The other recitals, however, make clear that transacting with a politically exposed person may expose the financial sector to significant reputational and legal risks, particularly with any such person in a country where corruption is considered to be widespread.

The legal framework for IFOs

63. An IFO is an order that prohibits the respondent to a UWO, and any other person with an interest in the property, from in any way dealing with the property, subject to certain exclusions (section 362J(3) of POCA).

64. An application for an IFO must:

i) be made by the same enforcement authority that applied for the UWO to which the IFO relates and be made in the same proceedings as those in which the UWO is made (section 362J(4) of POCA); and

ii) be made without notice, if the UWO application was without notice (section 362J(5)).

65. The principal conditions for the court's making an IFO are that:

i) the court has made a UWO in respect of the relevant property (section 362J(1)-(2) of POCA);

ii) the IFO is being considered in "the same proceedings" as those in which the UWO was made (section 362J(4)(b)); and

iii) it is "necessary" to make an IFO "for the purposes of avoiding the risk of any civil recovery order that might subsequently be obtained being frustrated" (section 362J(2)).

66. In relation to the question of whether an IFO is necessary for the relevant purpose, the Revised Code of Practice at [200] states:

> "200. The enforcement authority should consider whether to apply for an interim freezing order. This should be considered on the individual facts of the case, but could include the following factors –

- The likelihood, based on available evidence or the nature of the case, that the property may be dissipated;
- The value of the property;
- Other interests in the property. This may include the complexity of the ownership arrangements of the property;
- The location of the respondent, in particular if they are, or are normally, overseas;
- The ability to monitor the property by other means; for example, by way of the Land Registry;
- In relation to residential property, that there is no likelihood of the property being disposed of in the time period of the UWO;
- A realisation that a case will be expected to progress more quickly if relevant property is frozen."

67. Where an IFO has been made, if the respondent complies, or purports to comply with the related UWO, then, under section 362D(3) of POCA, as I have already noted at [25(iv)] above, the enforcement authority must determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property covered by the UWO within a period of 60 days starting with the day of compliance ("the Determination Period"). The enforcement or investigatory proceedings contemplated are confiscation proceedings under Part 2 (England and Wales) or Part 4 (Northern Ireland) of POCA, civil recovery proceedings under Part 5 of POCA or investigatory proceedings under Part 8, chapter 1 of POCA ("Relevant Proceedings").

68. The court may vary or discharge an IFO at any time (section 362K(1) of POCA).

69. The court must discharge an IFO in certain circumstances set out in subparagraphs (3)-(5) of section 362K of POCA. Those provisions provide for three "cases" in which the court must discharge the IFO, but two of the cases are each, in turn, divisible into two sub-cases. Broadly, the court must discharge an IFO in the following situations:

    i) the respondent has complied or purported to comply with the requirements of the UWO before the end of the period for compliance stipulated in the UWO ("the Response Period") pursuant to section 362D(6) and either:

        a) the enforcement authority has not made an application to bring Relevant Proceedings in relation to the property covered by the IFO before the end of the 48-hour period following the end of the Determination Period; or

b) the enforcement authority has made an application to bring Relevant Proceedings in relation to the property covered by the IFO before the end of the 48-hour period following the end of the Determination Period and the Relevant Proceedings have been determined or otherwise disposed of;

ii) the respondent has not complied or purported to comply with the requirements of the UWO before the end of the Response Period and either:

a) the enforcement authority has not made an application to bring Relevant Proceedings in relation to the property covered by the IFO before the end of the 48-hour period following the end of the Response Period; or

b) the enforcement authority has made an application to bring Relevant Proceedings in relation to the property covered by the IFO before the end of the 48-hour period following the end of the Response Period and the Relevant Proceedings have been determined or otherwise disposed of;

iii) the court has received notification under section 362D(4) in relation to the property concerned that the enforcement authority has determined that no Relevant Proceedings ought to be taken in relation to the property.

For purposes of determining the 48-hour period referred to above, no account is to be taken of Saturdays, Sundays, Christmas Day, Good Friday and bank holidays (section 362K(7)).

70. Section 362L of POCA makes clear that the power to vary an IFO includes the power to make exclusions from the IFO, either by excluding property or by exempting property from the prohibition in the IFO on dealing with property. Section 362L(3) specifies that, among other things, an exclusion may be made:

i) to meet a person's reasonable living expenses; or

ii) to enable a person to carry on any trade, business, profession or occupation.

71. Where the court exercises its power to make an exclusion in the IFO to enable a person to meet legal expenses that the person has incurred or may incur in respect of proceedings under Part 8, chapter 2 of POCA (which relates to investigatory proceedings in England and Wales and Northern Ireland, including the provisions on UWOs and IFOs), the court must comply with certain requirements specified in section 362L(5) of POCA and have regard to certain matters specified in section 362L(6).

The privacy issues raised by the Press Applications

72. As made clear by CPR r 39.2 (General rule – hearing to be in public), the general rule is that a hearing is to be open and held in public. Open justice is a fundamental constitutional principle. A hearing will be held in private only where strictly necessary to secure the proper administration of justice, after the court has satisfied

itself that relevant considerations render it strictly necessary and after the court has considered any duty to protect or have regard to a right to freedom of expression which may be affected. CPR r 39.2(3) sets out various relevant considerations:

> "(3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –
>
> (a) publicity would defeat the object of the hearing;
>
> (b) it involves matters relating to national security;
>
> (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
>
> (d) a private hearing is necessary to protect the interests of any child or protected party;
>
> (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
>
> (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
>
> (g) the court for any other reason considers this to be necessary to secure the proper administration of justice."

73. Open justice is, therefore, the starting point and the default position. To the extent that there are restrictions on reporting, it is also necessary to consider Article 10 of the European Convention on Human Rights ("ECHR") as incorporated into English law by the Human Rights Act 1998.

74. The rule of open justice is, of course, not absolute. CPR r 39.2(3) stipulates that a hearing *must* be held in private if the court is satisfied as to one or more of the matters set out in that rule. Mr Andrew Sutcliffe QC, leading counsel for the NCA, submitted, in relation to the issues raised by the Press Applications, that subparagraphs (a), (c), (e) and (g) of CPR r 39.2(3) each apply in this case in relation to the UWO Application and the IFO Application.

75. Mr Sutcliffe also noted that the open justice principle is occasionally expressly derogated from by statute and submitted that the statutory material and guidance underpinning UWOs fall into this category, anticipating that UWO applications will generally be made without notice and determined in private.

76. Section 362I(1) of POCA expressly provides that an application for a UWO may be made without notice.

77. The revised Practice Direction provides at paragraph 11.1 as follows:

> "11.1 The application [for a UWO and a related IFO] will be heard and determined in private, unless the judge hearing it directs otherwise."

78. The presumption, therefore, is that the hearing will be private. In relation to court documents, the revised Practice Direction provides at paragraphs 9.1-9.3 as follows:

> "9.1 CPR rules 5.4, 5.4B and 5.4C do not apply to an application under Part 8 of [POCA] (including an application for an unexplained wealth order or an interim freezing order) …, and paragraphs 9.2 and 9.3 below have effect in its place.
>
> 9.2 When an application is issued, the court file will be marked 'Not for disclosure' and, unless a High Court judge grants permission, the court records relating to the application (including the application notice, documents filed in support, and any order or warrant that is made) will not be made available by the court for any person to inspect or copy, either before or after the hearing of the application.
>
> 9.3 An application for permission under paragraph 9.2 must be made on notice to the appropriate officer, or (in the case of an application for an unexplained wealth order or an interim freezing order) the enforcement authority, in accordance with CPR Part 23."

79. Mr Sutcliffe submitted that three important points can be drawn from the above provisions. First, he submitted, it is clear that there is a strong presumption of privacy built in to the UWO regime. It is not a matter of the NCA having to make an application to depart from a starting point of a public hearing. It is for those seeking to challenge the privacy and/or to obtain copies of court documents to make an application to do so.

80. Secondly, Mr Sutcliffe submitted, these measures are not simply about preventing the removal of property by the respondent before the order can be granted. The status of a UWO application is not tied to the existence or status of an IFO application, the latter being concerned with the risk of dissipation of property. To the contrary, section 362J(5) of POCA provides that an application for an IFO must be made without notice if the UWO application to which it relates was made without notice, rather than the other way around. This demonstrates that a UWO application is not made without notice for property preservation purposes. Mr Sutcliffe noted that further support for this point is to be found in the Revised Code of Practice at paragraph 38, which states in relevant part:

> "… In deciding whether an application should be made without notice, the appropriate officer should consider the benefit of not holding the proceedings after giving notice to all parties. An obvious and common reason would be so as not to alert the person(s) connected to an investigation that it is ongoing. On notice proceedings might enable the person to move material or information and thereby frustrate the investigation. … ."

81. Mr Sutcliffe submitted that a UWO is, of course, fundamentally about obtaining information and documentation and not the risk of dissipation of property. This is consistent with the policy underlying CPR r 39.2(3)(a).

82. Thirdly, Mr Sutcliffe submitted that, as paragraphs 9.2, 9.3 and 11.1 of the revised Practice Direction make clear, the presumptive position is that the hearing of an application for a UWO will be in private and the relevant court documents will not be made available. That position is not dependent upon whether the relevant UWO application has been made on notice or not. It specifically concerns, he submitted, the need for privacy of the hearing and related court documents. The presumption of privacy thus applies equally to applications made on notice, making clear that the need for privacy is not only about the potential impact of the respondent being on notice to the NCA's investigation, but it is also concerned with the rights of the respondent. This is consistent with the policies underlying subparagraphs (c), (e) and (g) of CPR r 39.2(3).

83. Mr Sutcliffe acknowledged that it would not invariably be the case that a UWO application would have to be without notice and heard in private. The facts of each case need to be considered carefully by the enforcing authority before making its application and by the court. He submitted, however, that the starting point of an application without notice and a hearing in private, as set out in the statutory provisions and supporting material for UWOs, was driven by a clear logic and set of policies, which he summarised as follows:

    i) First, where the application is made without notice (as permitted by section 362I(1) of POCA), the jurisdiction recognises that in all likelihood, publicity would defeat the object of the hearing (subparagraph (a) of CPR r 39.2(3)).

    ii) Secondly, the application necessarily contains significant amounts of sensitive information, both confidential and personal, about the respondent. Subparagraph (c) of CPR r 39.2(3) is also plainly engaged; but equally (if not more importantly) where the application is without notice and the respondent unaware of it, subparagraph (e) of CPR r 39.2(3) is also engaged.

84. In relation to the second of these points, Mr Sutcliffe amplified the point as follows:

    i) The considerable media interest in UWOs is undeserved. A UWO is merely a tool designed to assist with information-gathering during the early preliminary stages of an investigation, where there is a dearth of information available to the NCA. Consequently, the threshold tests for the application are relatively low. The Holding Requirement and the Value Requirement are not difficult to satisfy. As to the Income Requirement and the Serious Crime Requirement,

each depends on there being reasonable grounds for suspicion and no more. The test for "suspicion" is fairly low, and may be established by reference to evidence that would fall short of that necessary to establish actual involvement in crime, as noted by the Privy Council in *Hussein v Chong Fook Kam* at 948B, 948H and 949B-C (see [38] above).

ii) Consequently, a UWO application is designed (A) to assist the NCA at the very early stages of its investigation, at a time when it has relatively little information and (b) to be an information-gathering tool. The obtaining of a UWO does not mean that the NCA will necessarily proceed with a civil recovery investigation or proceed to take advantage of any further or more intrusive investigative measures available to it.

iii) The result is that a UWO application necessarily sets out in detail the fact that the NCA *suspects* that:

a) if the PEP Requirement applies, the respondent is a politically exposed person who has been involved in (most likely) embezzlement and corruption; or

b) if the Serious Crime Requirement applies, as in this case, the respondent is a person who has been involved in very serious criminality, such as, among other things, human trafficking, arms offences, drugs offences, fraud offences and money laundering offences.

iv) The UWO application sets out the foregoing detail, together with detailed information about the respondent's income and finances, yet this is done at a stage where the investigation, and underlying evidence, is embryonic. Some of the information will be from public sources, but much of it will be likely to have come confidentially from other authorities and agencies, as required by paragraph 178 of the Revised Code of Practice (see [40] above) and other third parties.

v) Plainly the content of that confidential information, if made public, is likely to have a personal and reputational impact on the respondent. The notion that the press or any other member of the public should be able to hear of the NCA's suspicions as to the respondent's character and criminal involvement, and details of the amount and suspected source of the respondent's wealth, in circumstances where the respondent is not even aware of the fact that the hearing is happening, let alone has the opportunity to seek to protect his confidentiality and reputation, is obviously unfair to the respondent, not to mention contrary to the interests of justice. Plainly, therefore, subparagraph (e), as well as subparagraph (c), of CPR r 39.2(3) is engaged.

vi) Indeed, even if the application is on notice, for similar reasons subparagraph (g) of CPR r 39.2(3) would also almost certainly be engaged. There is no justification for a respondent's character being put forward for the type of public trial by media that often follows any media interest, at such an early stage of the investigation. Indeed, were that invariably a risk, then proportionality might require in practice that the NCA would have to apply a

far higher threshold test as to the evidence and certainty of guilt than the statute requires before proceeding to make an application. That outcome would undermine the intended function of the UWO jurisdiction.

85. For the foregoing reasons, Mr Sutcliffe submitted, it is wholly unsurprising that the architects of the UWO jurisdiction envisaged the need for, and put in place safeguards to protect, the privacy of the hearing and outcome of the application for a UWO. To the extent that it is considered necessary to go behind the reasoning of the statutory and supporting regime, he submitted, it is plainly the case that numerous triggers in CPR r 39.2(3) independently apply, namely, subparagraphs (a), (c), (e) and (g), which cumulatively establish an overwhelming case for having the hearing of an application for a UWO in private in the vast majority of cases.

86. In his submissions, Mr Sutcliffe also dealt with the question of whether the court needed to undertake a balancing exercise, considering the respondent's rights under Article 8 of the ECHR and weighing them in the balance against the rights of Bloomberg and the PA (or any other relevant news organisation) under the Article 10 of the ECHR. He submitted, however, that such an exercise was unnecessary in this case, given the clear application of CPR r 39.2(3), which required the court to hold the hearing in private. There are other potential rights of the respondent, for example, under Articles 2 and 6 of the ECHR, which would also need to be taken into account, he submitted, which would make the exercise not at all straightforward.

87. Finally, Mr Sutcliffe submitted that the NCA had given serious consideration to the question of whether a hearing in public, but with reporting restrictions in place, would be sufficient, but had concluded that that approach would be insufficient. It being the case that a number of subparagraphs of CPR r 39.2(3) independently apply, the hearing must be in private. Reporting restrictions alone, for example, would leave the risk of "jigsaw identification". This is not a case, he submitted, where the sole concern is that Mr Hussain will thwart the UWO before it is served on him. Other issues and concerns are engaged, including the potential impact on Mr Hussain of any publicity relating to the making of the UWO.

88. I accept and substantially agree with these submissions of Mr Sutcliffe. For the reasons he gives, in light of the nature and purpose of the UWO application, CPR r 39.2(3) is highly likely to be engaged, requiring the court to hold the hearing in private to secure the proper administration of justice. Given, in particular, (i) the very early stage of an investigation at which a UWO application will be sought by an enforcement authority, (ii) the relatively low threshold for obtaining a UWO under section 362B of POCA and (iii) the potentially disproportionate personal and reputational impact on a respondent of the fact that a UWO has been obtained if that fact is publicised, several subparagraphs of CPR r 39.2(3) are likely to be engaged, most notably, subparagraphs (a), (c), (e) and (g), particularly in a case such as this where the UWO application involves consideration of the Serious Crime Requirement. This was anticipated by the statutory framework and guidance applicable to UWOs, which makes it clear that, while close and careful regard must be had to the specific circumstances of each case, the presumptive starting point is that a UWO application will be made without notice and that the hearing of the UWO application and any related IFO application will be in private.

89. In this case, it was clear, for reasons given below, that the presumptive starting point applied in this case and that it was necessary for the proper administration of justice that the hearing be conducted in private. In particular, I was satisfied of the matters set out in subparagraphs (a), (c), (e) and (g) of CPR r 39.2(3).

90. I agree with Mr Sutcliffe's submission that it is not necessary in this case to go further and undertake a balancing exercise of the type carried out by Sharp J (as she then was) in *DFT v TFD* [2010] EWHC 2335 (QB) at [15]-[19], weighing the Article 8 ECHR rights of the respondent against the Article 10 ECHR rights of Bloomberg and the PA, particularly bearing in mind that other ECHR rights of the respondent are also potentially engaged and would need to be considered, most notably, his rights under Articles 2 and 6 of the ECHR. I also agree that reporting restrictions would be insufficient. Given my conclusion on the application of CPR r 39.2(3), the hearing was required to be held in private, as I ruled at the time.

Supplemental reasons for ordering that the hearing be conducted in private

91. Mr Sutcliffe made the following additional submissions in support of the NCA's application that, in this case, the UWO Application and the IFO Application should be made without notice and the hearing conducted in private:

    i) Publicity would defeat the object of the hearing, engaging subparagraph (a) of CPR r 39.2(3), for the following reasons:

        a) The NCA considered that there was a material risk that Mr Hussain might move or cause to be moved information and documentation potentially relevant to a possible civil recovery investigation in advance of a UWO being made.

        b) Whilst the NCA had originally considered that an IFO was not required, it reached that view on the basis that the UWO Application would be made without notice. Putting Mr Hussain on notice of the application would likely have triggered the risk that ultimately necessitated the IFO application. Given the NCA's obligation to consider proportionality, the NCA had considered that, if the hearing was not on notice, the judicial weight that comes with a court order would have been sufficient to dissuade Mr Hussain from transferring any of the Properties once he was served with the UWO. The NCA considered that following the adjournment of the hearing on 4 July 2019, the risk profile changed. Evidence in support of that view was given in Mr Coles's third witness statement dated 10 July 2019 at paragraphs 24-30. In particular, it came to the attention of the NCA that one of the Properties, 3 Laurel Terrace, was to be transferred to a new owner, although the NCA was not able to identify the intended transferee. Accordingly, the NCA determined that there was a need for an IFO and made the IFO Application. Had the UWO Application and the IFO Application been made on notice, there is a material risk that the purpose of obtaining a UWO would have been defeated.

    ii) It would be unjust to Mr Hussain, engaging subparagraphs (e) and (g) of CPR r 39.2(3), for the hearing not to be conducted in private. For reasons

detailed in Mr Coles's third witness statement, the NCA considered that there was a significant concern over Mr Hussain's rights under Article 2 of the ECHR. The organised crime gangs involved in this case are known for violence. There was a genuine and well-founded concern that publicity over the subject and nature of the UWO might give rise to a threat to Mr Hussain's person. So long as the UWO was not publicised (and Mr Hussain did not personally publicise it, which he was highly unlikely to do in the circumstances), the level of threat-to-life ("TTL") in relation to Mr Hussain would be considered low. However, as at the point of service of the UWO, the NCA would be alert to the possible need to trigger its TTL procedures. Should the existence and nature of the UWO become widely known (and particularly, in a manner that the NCA was unable to manage or control), the TTL risk to Mr Hussain would be likely to escalate.

iii) The UWO Application and the IFO Application involved consideration of detailed personal and confidential information about B, his finances, and his wealth, engaging subparagraph (c) of CPR r 39.2(3).

iv) As detailed in the NCA's submission regarding satisfaction of the Serious Crime Requirement, Mr Hussain is suspected of involvement in serious crime. It would plainly be an intrusion into his privacy for those suspicions to be aired in public, at a stage where they are no more than suspicions. A UWO offered Mr Hussain the chance satisfactorily to explain his wealth and to maintain his good character. Publicity of the NCA's interest would severely undermine that. For these reasons, subparagraphs (c), (e) and (g) of CPR r 39.2(3) were engaged.

v) The UWO Application concerned the operation of organised crime gangs in the UK. Publication of the NCA's suspicions, and publicising the UWO Application, carried the risk of prejudicing the NCA's wider investigation. Given that it is highly unlikely that Mr Hussain would choose to publicise the existence of a UWO, media reporting of the UWO in any way likely to identify the subject or content of the wider investigation could well prejudice the nature of that ongoing investigation. On that basis, subparagraph (g) of CPR r 39.2(3) was engaged.

92. I accept these submissions of Mr Sutcliffe, which are amply supported by the evidence set out in Mr Coles's witness statements and the exhibited supporting documentation.

Supplemental reasons for making the UWO against the first respondent

93. In her skeleton argument in support of the UWO Application, as supplemented at the hearing, Ms Jeavons submitted that each of the necessary requirements, the Holding Requirement, the Value Requirement, the Income Requirement and the Serious Crime Requirement, is satisfied in this case.

94. In relation to the Holding Requirement, Ms Jeavons submitted that the requirement is met by the fact that Mr Hussain:

i) is the registered legal owner of 2 Sandmoor Drive; and

ii) is (a) the sole shareholder and (b) either the sole director or, by virtue of his sole shareholding, a director with significant control of each company that owns one of the other Properties.

95. In relation to the Value Requirement, Ms Jeavons submitted that this requirement is met by the fact that the collective purchase value of the Properties, which were purchased by their current owners between 2005 and 2018, was over £7,500,000. The Properties were estimated to be worth about £9,970,000 at the time of Mr Coles's first witness statement.

96. In relation to the Income Requirement, Ms Jeavons submitted that there is reasonable cause for suspicion that the known sources of Mr Hussain's lawfully obtained income would have been insufficient to obtain the property, therefore satisfying the Income Requirement. The evidence supporting this suspicion is set out in detail in Mr Coles's first witness statement.

97. Ms Jeavons submitted that:

i) as a result of section 362H(2) of POCA, Mr Hussain is to be taken to have "obtained" the Properties by virtue of having obtained and having "effective control" over each Property (section 362H(2)(a));

ii) applying the assumption in section 362B(6)(b) of POCA, it is to be assumed that Mr Hussain obtained each of the properties "for a price equivalent to its market value", having regard to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property (section 362B(6)(a));

iii) assuming that Mr Hussain has properly declared all his personal income to the tax authorities and would have done so to any finance provider in relation to the purchase of a Property, Mr Hussain's personal income appears to have been vastly insufficient to have funded the purchase of a property portfolio worth between nearly £10,000,000; and

iv) the NCA's investigation of the relevant company tax returns filed at Companies House for the Other IFO Respondents as well as the relevant Land Registry records in relation to the Properties shows that the seed capital for the purchase of each Property must have come from a non-bank, third party source, which, given Mr Hussain's many connections to known criminals and the direct use of some of the Properties by those persons, provides significant support for the NCA's suspicion that the seed capital likely derived, in whole or in part, from the proceeds of serious crime.

98. As the UWO Application was made without notice and the facts are therefore not contested, it is not necessary for me to rehearse the facts in detail in order to make findings. I simply note the following. In relation to Mr Hussain's personal income, his declared net income to HM Revenue & Customs between the tax years 1998/1999 and 2003/2004 was negligible, being under £500 for two of the years and nil for four of the years. In the following years to 2016/2017, his annual net income was less than £10,000 (and generally closer to £7,000), with the sole exception being 2015/2016 where it was £30,280 due to a dividend received. Judging by his tax returns,

Mr Hussain does not appear to have any income from share options, dividends or savings interest.

99. Mr Coles set out in his evidence, in relation to each Other IFO Respondent and the relevant Property that it purchased, the NCA's analysis of the relevant company's financial condition, resources and sources of funding. One simple example concerns Land88 Limited, which purchased Paddock Hill for £200,000 despite having, over the relevant period, filed only dormant accounts indicating that it has neither assets nor cash. The analysis of the position in relation to each of the Other IFO Respondents is more involved, but the common theme is that the NCA's analysis fails to provide a clear explanation for how the relevant company was able to fund the purchase of the Property it owns.

100. Ms Jeavons also noted as part of the relevant background that Mr Hussain has been the owner and/or director of some 77 companies between 2000 and 2019, a list of which was exhibited to Mr Coles's first witness statement. Apart from the Other IFO Respondents (other than Jayco88 Limited), most of these companies are listed as either dissolved, dormant or non-trading. Ms Jeavons noted that, while the NCA has not individually investigated all of those companies, the NCA has proceeded on the basis that Mr Hussain's declarations to the HM Revenue & Customs will have included all legitimate income received by him from those companies.

101. Ms Jeavons submitted that, on the basis of the foregoing, the Income Requirement is satisfied.

102. In relation to the Serious Crime Requirement, Ms Jeavons submitted, in summary, that the NCA suspects Mr Hussain of acting as a professional enabler and serial money launderer for a number of individuals involved in organised crime gangs, specifically an organised crime gang operating in the Bradford area operated by the Khan family, headed by Mr Mohammed Nisar Khan, known locally as "Meggy", and his brother, Mr Shamsher Khan, and an organised crime gang operating across the north of England run by Mr Dennis Slade, there being a degree of connection between the individuals involved in the two organised crime gangs.

103. In his evidence, Mr Coles sets out in detail the alleged and known criminal activities of a number of individuals suspected or known to be involved in serious criminality, particularly in relation to drug disputes, gang violence, armed robbery and serious fraud. These individuals include:

    i) Mr Mohammed Nisar Khan, who is currently serving a life sentence for the murder of Mr Amriz Iqbal and believed to be responsible for numerous serious assaults, including attempted murder, as well as involvement in the illicit trafficking of drugs and firearms on his own behalf and that of other organised crime gangs, with a significant record of previous convictions, largely for violence and drug-related crimes;

    ii) Mr Shamsher Khan, who is known to the police for violence and drug-related offences, as well as obtaining mortgages by fraud and money laundering offences;

iii) Mr Dennis Slade, who was the head of an organised crime gang involved in cash-in-transit robberies involving firearms, which operated across the north of England, and who has various convictions for, among other things, burglary, theft, handling stolen goods and crimes of violence including assaults occasioning grievous bodily harm (GBH) and actual bodily harm (ABH) as well as suspected connection to two murders for which he was arrested but not charged;

iv) Ms Maxine Valentine, Mr Slade's estranged wife, who is said to have enjoyed a lavish lifestyle on her husband's criminal earnings and who was convicted at Teesside Crown Court on 28 January 2011 on two counts of money laundering, for which she received a sentence of 12 months' imprisonment;

v) Mr Simon Morris, who has previous convictions for dishonesty offences, has also been implicated in Mr Slade's fraud offending and was arrested by West Yorkshire Police in connection with a multimillion pound property fraud along with a Mr Irfan Ali, who is a close associate of Mr Mohammed Khan; and

vi) Mr Brian Morris, father of Mr Simon Morris, who also has previous convictions for dishonesty offences and was arrested alongside his son and Mr Ali in connection with the multimillion pound property fraud to which I have just referred.

104. In his evidence, Mr Coles sets out the details of Mr Hussain's involvement with these individuals. Some of the highlights are:

i) Mr Hussain has, since 2005, frequently been stopped by the police while in Mr Mohammed Khan's company and has been observed spending time in his company on other occasions;

ii) Mr Hussain frequently drove Mr Mohammed Khan to and from Leeds Crown Court and attended with him during the trial of Mr Dennis Slade;

iii) Mr Mohammed Khan is connected to a company, Twenty Four Seven Security Services (UK) Limited, which uses one of the Properties, the Cubic Business Centre, as its business address and displays its signage at another of the Properties, 3 Laurel Terrace;

iv) Mr Hussain travelled to Malaga with Mr Khan for a trip lasting less than 24 hours, purportedly to attend the opening of a nightclub there;

v) Mr Hussain paid Mr Mohammed Khan's son's private school fees for a period of just over two years in the sum of just under £10,000;

vi) Mr Hussain funded Mr Shamsher Khan's confiscation order in the amount of £134,000 following his conviction for mortgage fraud offences, the source of those funds suspected by the NCA to be funds held, directly or indirectly, by Mr Hussain for or on behalf of Mr Mohammed Khan;

vii) Mr Slade gave the address of one of the Properties, 2 Sandmoor Drive, the Property held in Mr Hussain's own name, as his home address during his trial,

without, it appears to the NCA, Mr Slade's having paid any rent in relation to that Property;

viii) Ms Valentine has stated to the authorities that 2 Sandmoor Drive is "part-owned" with a friend, and she was regularly driven to and from Leeds Crown Court by Mr Hussain during Mr Slade's trial there;

ix) Mr Hussain provided Mr Slade with a luxury residence, The Lodge, owned by another company owned or controlled by Mr Hussain, following Mr Slade's release from prison;

x) Mr Hussain visited Mr Slade regularly in prison, sending money to the prison for Mr Slade and advancing funds to Mr Slade's daughter;

xi) Mr Hussain has been a business partner of Mr Brian Morris, the two having been co-directors of a company called B.M. Car Parks Limited and potentially in relation to another company called Ideal Properties, which makes Mr Brian Morris a "connected person" in respect of Mr Hussain under section 1122(4) of the Corporation Tax Act 2010, to which section 362B(9)(b) of POCA cross-refers for the purpose of the test of connection; and

xii) the West Yorkshire Police have shown evidence to the NCA indicating that Mr Hussain has been involved in property business dealings with Mr Simon Morris.

105. As a result of its investigation, the NCA have concluded that there are reasonable grounds to suspect that Mr Hussain and his corporate vehicles, including the Other IFO Respondents, which are "connected" with him, have conducted themselves in a way that was likely to facilitate the commission:

i) of serious offences within England and Wales, namely money laundering offences contrary to sections 327-329 of POCA, by way of concealing, disguising, converting, transferring, and/or being involved in arrangements concerning, and/or acquiring, using and/or having possession of the proceeds of the above identified criminality; and

ii) of serious offences by the persons identified at [103] above, of the underlying serious crimes respectively identified, by way of providing a money-laundering service and thereby enabling those criminals to retain the benefit of their criminality over the years, and, as a result, facilitating their continued offending.

106. Moreover, the NCA suspects that Mr Hussain has not merely been involved in at least one serious offence, thereby satisfying the Serious Crime Requirement, but rather plays a wider role in relation to organised crime in the Bradford area, standing at the centre of a network of organised crime as a designated "cleanskin", namely, a person with no serious criminal convictions to this name, who enables those operating the criminal activities of the organised crime gangs with which he is connected by providing a money-laundering service. So, the NCA submits that Mr Hussain's activities not only facilitate the commission of individual serious crimes, but they also

facilitate organised crime on a large scale, which is a further factor exacerbating the seriousness of the criminality in which it is suspected that Mr Hussain is involved.

107. Having reviewed the evidence provided by Mr Coles in his first witness statement and considered the submissions made on behalf of the NCA, I concluded that the Holding Requirement, the Value Requirement, the Income Requirement and the Serious Crime Requirement were amply satisfied. The remaining question, therefore, was simply whether it was appropriate in all the circumstances for me to exercise my discretion to make the UWO. I concluded that it was, for the following reasons:

i) the statutory requirements were met;

ii) the aim of the measure was to improve the ability of the authorities to investigate and, where appropriate, recover the proceeds of crime, which is a legitimate aim;

iii) having reviewed the terms of the UWO with counsel, I was satisfied that it was no wider than appropriate and that it was proportionate, with a view to enabling the NCA to determine whether to commence civil recovery or other proceedings;

iv) there are relevant safeguards in the legislation, for example:

a) a UWO does not confer the right to require a person to answer any privileged question nor to produce privileged or excluded material (section 362G(2) of POCA);

b) a statement made in response to a UWO may not generally be used in evidence against the respondent in criminal proceedings (section 362F);

c) the statutory presumption in section 362C(2) that relevant property is recoverable property where the respondent fails to comply or purport to comply with the UWO may be avoided if there is a "reasonable excuse" for non-compliance (section 362C(1)) and may subsequently be resisted if "the contrary is shown" (section 362C(2)).

108. In terms of proportionality, the NCA considered that it could not achieve the necessary objectives by less intrusive means. The primary alternative would have been to seek a disclosure order ("DO") under section 357 of POCA, with disclosure notices ("DNs") being issued to various third parties from whom information would be sought. The NCA had several reasons for discounting this approach:

i) it would require identifying relevant third parties upon whom to serve DNs, whilst in this case many of the sources of funding are completely unknown (or even which solicitors acted on the various transactions);

ii) the transactions go back farther than six years, which is the usual document retention period for many financial institutions;

iii) the use of DNs would alert third parties to the fact that the NCA is interested in the source of Mr Hussain's wealth, which would arguably be more intrusive than a UWO;

iv) the use of a DO and DNs would be less practical and cost-effective than a UWO in a case such as the present one where the nature of Mr Hussain's suspected role as an enabler and money-launderer necessarily makes the sources of funds likely to be disparate and complex.

109. Ultimately a UWO would be less intrusive in its impact, Ms Jeavons submitted on behalf of the NCA, given that failure to comply with a UWO is not a criminal offence, unlike failure to comply with a DO, unless the respondent knowingly or recklessly makes a false or misleading statement in their response (section 362E(1) of POCA).

110. As far as Mr Hussain's human rights are concerned, including his rights under Article 8 and under Article 1 of Protocol 1 of the ECHR, are concerned, the NCA submitted that the proposed UWO pursued a legitimate aim, would be in accordance with the law and would be justified and proportionate in all the circumstances.

111. As far as proportionality and having regard to Mr Hussain's human rights are concerned, I accept and agree with the submissions made by Ms Jeavons on behalf of the NCA.

112. In compliance with its duty of full and frank disclosure of all material facts and to pursue reasonable lines of enquiry before making the UWO Application, the NCA noted various points "putting on its defence hat" (as per *National Crime Agency v Simkus* [2016] EWHC 255 (Admin) at [27]-[35] and [46]), which were set out in section 10 of Mr Coles's first witness statement. These involved various arguments that Mr Hussain might possibly seek to run when put on notice of the UWO rebutting the submission that one or more relevant elements of each of the key requirements for obtaining a UWO were satisfied. None of the points raised, in my view, had any real force. It is important to bear in mind the relatively low threshold for obtaining a UWO, but also the limited effect of a UWO and the various statutory safeguards to which I have already referred.

113. Having reviewed with counsel the form of UWO sought by the NCA, I concluded that the terms of the UWO were appropriate and proportionate in light of the evidence, and I therefore made the UWO on the terms sought.

Reasons for making the IFO against Mr Hussain and the Other IFO Respondents

114. Mr Sutcliffe made the following submissions in support of the IFO Application against Mr Hussain and the Other IFO Respondents:

i) the requirements of section 362J(4) of POCA are satisfied in that the application is made by the NCA, which is the same authority that applied for the UWO, and it is sought in "the same proceedings" as those in which the UWO was made; and

ii) the NCA considers that it is "necessary" to make an IFO for the purposes of avoiding the risk of any recovery order (that might subsequently be obtained)

being frustrated, for the reasons explained in Mr Coles's third witness statement, namely:

a) the NCA had received specific information from the Money Laundering Reporting Officer of the relevant firm, that Mr Hussain intended to transfer 3 Laurel Terrace;

b) on 26 June 2019 Mr Coles was further notified by the Land Registry that an application had been lodged by the solicitors' firm in question;

c) no information concerning the application was available to the NCA, and despite a request by Mr Coles pursuant to section 7 of the Crime and Courts Act 2013, on 2 July 2019 the Money Laundering Reporting Officer of the relevant firm responded refusing to provide any information about the transfer, including as to the intended transferee; and

d) a search of the Land Registry on 9 July 2019 indicated that no transfer had yet taken place.

115. Mr Sutcliffe submitted that this evidence demonstrated that there was a clear risk of imminent dissipation of 3 Laurel Terrace, justifying the IFO Application. The NCA now applies for an IFO in relation to that Property. Furthermore, he submitted, given the NCA's suspicion that all of the Properties are held or controlled by Mr Hussain as forms of investment of the proceeds of crime on behalf of third parties, then if the intent to transfer 3 Laurel Terrace was pursuant to a request from a relevant third party in order to realise funds, then if only 3 Laurel Terrace were frozen, it is likely that Mr Hussain would transfer another of the Properties in order to realise funds. Accordingly, he submitted, the NCA considered there to be a risk of dissipation in relation to all of the Properties and therefore it sought an IFO in respect of all of them.

116. The cumulative value of the Properties was believed to be just under £10,000,000. All of the Properties were then currently unrestrained. Some of them were also unencumbered, meaning that it would be easy for Mr Hussain to release equity from them, which could be dissipated quickly and with ease. All except one of the Properties was held by one of the Other IFO Respondents. Accordingly, it was necessary to make the IFO (but not the UWO) against each of the Other IFO Respondents as well as Mr Hussain.

117. Having considered that nothing significant arose by way of the NCA's compliance with its duty of full and frank disclosure and having reviewed with counsel the form of IFO sought, I was satisfied that the relevant statutory requirements for the IFO were met and that the terms of the IFO were appropriate and proportionate.

Conclusion

118. For the foregoing reasons, at the conclusion of the hearing I was satisfied that:

i) it was strictly necessary to conduct the hearing of the NCA's applications for a UWO against Mr Hussain and an IFO against Mr Hussain and the Other IFO Respondents in private; and

ii) in all the circumstances, it was just, appropriate and proportionate to make:

a) the UWO sought by the NCA against Mr Hussain; and

b) the IFO sought by the NCA against Mr Hussain and each of the Other IFO Respondents.