

**IN THE HIGH COURT OF JUSTICE**

23 June 2023

BEFORE:

**MRS JUSTICE HEATHER WILLIAMS**

BETWEEN:

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**NATIONAL CRIME AGENCY**

Applicant

- and -

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

Respondents

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**IN PRIVATE**  
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**JUDGMENT**  
(Approved)

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Andrew Sutcliffe KC and Tom Rainsbury represented the NCA

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(Official Shorthand Writers to the Court)

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1. **MRS JUSTICE HEATHER WILLIAMS:** By application notice dated 23 May 2023, the National Crime Agency (“NCA”), applies for a Property Freezing Order (“PFO”), in relation to three named respondents, pursuant to section 245A of the Proceeds of Crime Act 2002 (“POCA”). A PFO prohibits any person to whom the order applies from in any way dealing with the property specified in the order, save to the extent that there are any exclusions.
2. The NCA is an enforcement authority which applies for the PFO pursuant to its statutory functions, including its functions of investigating and recovering the proceeds of crime in Parts 5 and 8 of POCA and the crime reduction function under section 1 of the Crime and Courts Act 2013, in order to preserve the assets pending the completion of its ongoing civil recovery investigation.
3. The first respondent is Javanshir Feyziyev. He is an Azerbaijani national and a member of the National Assembly of Azerbaijan. He has leave to enter the United Kingdom by virtue of the Tier One investor visa issued to his wife.
4. The second respondent is his wife, Parvana Feyziyeva. She is an Azerbaijani national who lives in the United Kingdom along with the couple's children.
5. The third respondent, Withers Worldwide LLP, is a private limited company and the registered legal owner of 20 of the properties that are the subject of this application. Information indicates that these properties are held on trust for the first respondent or in some instances, the first and second respondents jointly.
6. The PFO is sought in respect of: (i) 20 leasehold properties in London that it is said the third respondent holds as nominees for the first and/or first and second respondents; (ii) two further leasehold properties in Whistler Square, London, in relation to which the first respondent is the registered owner, items 21 and 22 on the list I have been provided with; (iii) the balance of an account held in the name of the first respondent at the LGT Bank Liechtenstein; and (iv) rental income from the 22 properties.
7. The estimated value of the property is said to be over £50 million.

8. The NCA relies on a witness statement from Andrew Coles, an accredited financial investigator employed by the NCA, dated 18 May 2023 and a second statement from Mr Coles, dated 19 June 2023. I will refer to these documents as Coles 1 and Coles 2. Mr Coles has conducted the relevant civil recovery investigation on behalf of the NCA. There is also extensive exhibited documentation to Coles 1.
9. I was also provided with a proposed draft order before the outset of the hearing. The hearing was listed for two hours on Wednesday afternoon, based on the time estimate provided by the NCA. In the event, there was insufficient time, once submissions had concluded, for me to consider the matters raised orally and for me to give judgment. I therefore adjourned the hearing for judgment to be given this morning, that is to say Friday, 23 June 2023. At my suggestion, counsel has helpfully provided a revised draft order in the interim, to take account of certain points that I raised during the hearing on Wednesday.

Application made without notice

10. Pursuant to section 245A(3) of POCA, 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". The present application is made without notice.
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.
15. In light of these points and the material that I have considered, I fully accept the force of these concerns and accept that the circumstances come within the criterion I have referred to in section 245A(3).
16. I probed the position regarding the third respondent with Mr Sutcliffe KC at Wednesday's hearing. It is not suggested, and I stress this, that the third respondent is itself responsible for any unlawful conduct or other wrongdoing. In essence, it is said that giving the third respondent notice of the application could prejudice enforcement because there is some ambiguity or uncertainty as to whether or not the third respondent would regard the situation as coming within section 333A of POCA, which makes it a criminal offence for a person to disclose certain matters relating to POCA investigations. The NCA's position is that there is a risk the third respondent could form the view that this section is not engaged by disclosing details of the PFO application, as there is no investigation into a money laundering offence under Part 7 of the Act. If the third respondent did not regard the situation as coming within section 333A, it is likely that they would wish to disclose matters to the first and second respondent, not least in order to take instructions and to be able to respond, as the third respondent will not have direct knowledge of the wrongdoing alleged.
17. In the circumstances, I am satisfied that the test is met and that the application was properly made without notice in relation to the third respondent as well.

### Hearing in private

18. Having considered the submissions made in counsel's skeleton argument, and accepting that this application was properly made without notice, I permitted the hearing on Wednesday and the giving of this judgment to be conducted in private. I am conscious that the "presumptive starting point" is that proceedings should be in public, see *DPP v Briedis* [2021] EWHC 3155 (Admin) at paragraph 34 and also, of course, that any incursion upon the fundamental principle of open justice must only be to the extent that is strictly necessary.
19. Pursuant to CPR39.2(1) and (3), the court may sit in private where one of the circumstances listed in (3) applies and it is necessary to do so to secure the proper administration of justice. Here, in light of the material relied upon by the NCA that I will come on to refer to, I am satisfied that limb (a) is established, namely that publicity would defeat the object of this without notice hearing. This follows from the fact that I am satisfied that in the circumstances, it was proper for the application to be made without notice, as a public hearing would substantially undermine that without notice application, given the significant risk of dissipation of the property in question that I have already identified. I am also satisfied in the circumstances at this stage, that limb (e) also applies, as it is the hearing of an application made without notice and it would be unjust to the respondents for there to be a public hearing, given the nature of the conduct that is alleged in relation to the first and second respondents, which they have not had an opportunity to respond to at this stage. I am also satisfied that for these reasons, it is necessary to sit in private to secure the proper administration of justice.
20. For similar reasons, I was satisfied and am satisfied that it was proper for the hearings to be listed in an anonymised way on the court listings and for the publication of the court's direction on Wednesday that the court sit in private to be deferred, as I will go on to indicate.
21. In arriving at an assessment of what is necessary in the circumstances and the extent to which open justice is interfered with, I take into account the fact that these incursions are only intended to operate for a limited period, so as to enable the court's order to be

served on the respondents before they become aware of these proceedings. The risk of dissipation will then be substantively ameliorated after service.

22. As regards the position of the respondents, whilst I propose to make an order providing for publication of the court's judgment and order in an unredacted form 14 days after service of the proceedings on them have taken place, I will also include provision in the order for that period to be extended, should the respondents make an application to restrict publication and/or seek anonymity, until that application has been considered and determined by the court.

#### The legal framework

23. Section 245A of POCA provides:

"(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."
24. An application for a PFO must be made by an “enforcement authority”, as set out in section 245A(1). The NCA is an enforcement authority for these purposes, see section 316(1). The application must be made in the Administrative Court to a High Court Judge, in accordance with CPR Part 23, paragraph 2.1 and also paragraph 5.1 of the Practice Direction - Civil Recovery Proceedings (“PDCRP”).
25. The application must be supported by written evidence which: (i) sets out the grounds on which the PFO is sought; and (ii) gives details of each item or description of property in respect of which the PFO is sought, including an estimate of the value of the property, whether the property is alleged to be recoverable or associated property, the facts relied upon in support of that allegation and in the case of associated property, who is believed to hold the property, see paragraphs 4 - 5.5 of the PDCRP.
26. A PFO which is made before a claim for a recovery order has been commenced must: (i) specify a period within which the enforcement authority must either start the claim or apply for the continuation of the order while it carries out the investigation; and (ii) provide that the order will be set aside if the enforcement authority does not start the claim or apply for its continuation before the end of the period, see paragraph 5A of the PDCRP.

27. Proceedings for a recovery order may be taken by the enforcement authority in the High Court against any person who the authority thinks holds recoverable property, see section 243.

28. As I have already referred to, section 245A(4) and (5) provide that the court may make a PFO if it is satisfied:

"There is a good arguable case that the property to which the application for the order relates is or includes recoverable property and ... that if any of it is not recoverable property, it is associated property".

29. Case law has considered the meaning of "good arguable case". In *Briedis* (which I have already referred to) at paragraph 8, this was described as a "relatively low" threshold. In *The Niedersachsen* [1984] 1 All ER 398, a freezing order case, Mustill J held at 404:

"... 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".

30. Recoverable property is: (i) property "obtained through unlawful conduct", including where such property has been disposed of and it can be followed into the hands of another, see section 304(1) of POCA; (ii) property which "represents" property obtained through unlawful conduct, including where such property has been disposed of and it can be followed into the hands of another, see section 305(1); and (iii) profits accruing from recoverable property, see section 307(1).

31. "Property" is broadly defined in section 316(4) as follows:

"Property is all property, wherever situated and includes –

- (a) money,
- (b) all forms of property, real or personal, heritable or movable,
- (c) things in action, and other intangible or incorporeal property."

32. However, section 282A provides that where property is outside the UK, the court may not make certain orders, including a PFO, "unless there is or has been a connection ... between the case and the relevant parts of the United Kingdom". Schedule 7A specifies a number of "connections" for these purposes. The relevant part of Schedule 7A for present purposes are:

"2. There has been a connection where the property in question has been in the relevant part of the United Kingdom but only if it was recoverable property in relation to the unlawful conduct for some or all of the time it was there.

"5.1. There is or has been a connection where a person described in subparagraph 2 – (a) is linked to the relevant part of the United Kingdom, (b) was linked to that part of the United Kingdom at a time when the unlawful conduct or some of the unlawful conduct was taking place or, (c) has been linked to that part of the United Kingdom at any time since that conduct took place."

33. As to what constitutes "property obtained through unlawful conduct", conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part: section 241(4). Where conduct occurs in a country outside of the United Kingdom, it is unlawful conduct, if it is unlawful under the criminal law in that country and, if it occurred in a part of the United Kingdom, it would be unlawful under the criminal law of that part, see section 241(2).

34. The unlawful conduct may be that of the person obtaining the property or others, section 242(1).

35. As emphasised in *NCA v Azam* [2014] EWHC 2722 at paragraph 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."

36. The court is entitled to take a "global approach", when deciding whether property is recoverable, see *ARA v Jackson* [2007] 2553 at paragraph 116, where it was said:

"It is ... the whole picture painted by the totality of the evidence which has to be balanced ... I do not consider it essential that the court consider each property transaction on an item-by-item basis".

37. The drawing of inferences may be particularly relevant where the unlawful conduct relied on is money laundering, see *SOCA v Namli* [2013] EWHC 1200 at paragraph 47. For example, the court is entitled to draw inferences from the absence of identifiable lawful income to warrant a lifestyle, the lack of documents, the telling of lies and the way in which property has been handled. And in that regard I am referred to the following authorities: *Olupitan v ARA* [2008] EWHC Civ 104 at paragraph 16, *SOCA v Gale* [2009] EWHC 1015 at paragraph 118 and *Muneka v Commissioners of Custom and Excise* [2005] EWHC 495 (Admin) at paragraphs 11 and 12. As was said in *Namli* at paragraph 49:

"Putting this in this crude terms, ... 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".

38. Section 245(1) identifies that "associated property" means property of any of the following descriptions which is not itself recoverable property: (a) any interest in recoverable property; (b) any other interest in the property in which the recoverable property subsists; (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant; and (d) if recoverable property is part of a larger property, but not a separate part, the remainder of that property.
39. As I have already noted in respect of section 245A(1), the court has a discretion whether to make a PFO if the statutory test is satisfied. At this stage the court must consider amongst other things, whether the making of a PFO will interfere with rights under the European Convention on Human Rights ("ECHR"), including Article 8, ECHR, and Article 1 of Protocol 1 and if so, whether such an interference is justified in the circumstances.
40. Another relevant, but not mandatory factor, is whether there is a risk of dissipation. As identified in *Nuttall v NCA* [2016] EWHC 1911 (Admin) at paragraph 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 investigation 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 assets, he will not be likely to grant the order. But it has never been considered, nor does section 2458A require that a risk of dissipation had to be proved."

41. Section 245C of POCA includes a power to make exclusions from the prohibition on dealing with property, including for the purposes of enabling a person to meet his or her reasonable living expenses, legal expenses and/or to carry on any trade or business. Paragraph 5B.1 of the PDCRP provides that, where the court makes a PFO without notice, it will "normally" make an "initial exclusion" from the order which will "not normally exceed £3,000" for the purposes of enabling the respondent to meet their reasonable legal costs so that they may take advice, prepare a statement of assets and apply for the order to be varied or set aside. However, paragraph 7A.4 of the PDCRP provides that the court will not make an exclusion, including an initial exclusion, if it is satisfied the person has property to which the PFO does not apply from which he or she may meet those costs.

#### Formal requirements

42. I am satisfied that the formal requirements contained in the legislation and in the PDCRP have been complied with in this instance.

#### The threshold test

43. The relevant circumstances are extensively detailed in Coles 1 and the supporting exhibits which I have read and considered. I have also considered all of the matters referred to by Mr Sutcliffe in his oral submissions to me and considered counsel's

skeleton argument. I have been assisted too by Annex 1 to the skeleton argument, which sets out a detailed summary of the tracing exercise that has been undertaken in relation to each of the properties and is, in effect, a distillation of Mr Coles' material.

44. It is unrealistic to attempt to summarise the detail of each of the transactions and the information revealed by the investigations and tracing exercises in relation to each of the properties in this oral judgment at this stage of the proceedings. Further, as I have already referred to, the case law indicates that I should evaluate the position on a global basis at this stage. In the circumstances I will provide a brief summary of some of the significant aspects that emerge and I will also identify some overarching points, but I emphasise that I have considered the material as a whole.
45. The first respondent was a shareholder of Avromed Company LLC between 2006 to 2016, which was incorporated in Azerbaijan in 2001. Its ostensible business was the importation and distribution of Western pharmaceutical products. As detailed in Coles 1, the first respondent also has links to Avroned Seychelles, a company incorporated in the Republic of Seychelles in 2005; and to what he terms the Avromed “nominee companies” which are described at paragraphs 2.18 - 2.23 of Coles 1.
46. Mr Coles states, and I accept, that there is a good arguable case that the assets which are the subject of this application are or include property which is or represents property obtained through unlawful conduct, including corruption and fraud in Azerbaijan and money laundering, forgery and the creation of false instruments in Estonia and Latvia, false accounting and/or obtaining services by deception on the transferring banks.
47. For the purposes of this application, Mr Sutcliffe indicated that he relied in particular upon fraud and corruption, false accounting and/or obtaining services by deception in relation to the banks in Estonia and Latvia and money laundering.
48. In summary, Mr Coles states there is a good arguable case that the assets that were obtained using the proceeds of unlawful conduct in Azerbaijan were laundered through a money laundering mechanism in Estonia and Latvia which has been dubbed the

Azerbaijani Laundromat with the provision of false information to the transferring banks, which it had said had lax controls.

49. In short it is said that the Azerbaijan Laundromat allowed the removal of large sums of money from Azerbaijan which were routed through the Danske Bank in Estonia and the ABLV Bank in Latvia. Money was moved in a series of transactions between various shell companies and was purportedly justified by fraudulent or forged documentation and by the use of false payment narratives.
50. Overall, Coles 1 says that the scale of money routed from Azerbaijani by these means is estimated at US\$2.9 billion and that in turn roughly half of these sums can be traced back to an Azerbaijan company called Baktelekom (spelt with a “k”, in distinction from a reputable company of a similar name).
51. One of the examples given in Coles 1 concerns money transfers from Baktelekom to companies, Hilux and Polux Management LP purportedly for the sale of steel piping. In turn, funds held by Hilux and Polux were received by the first respondent on a number of occasions.
52. In this particular regard I also note that on 31 January 2022 in the City of Westminster Magistrates' Court, where an Account Forfeiture Order was made totalling approximately £5.6 million in respect of bank accounts held by the second respondent, by her older son and by a nephew of the first respondent, the District Judge was satisfied to the civil standard of proof that the sale of steel piping narrative was a false one and that the monies related to money laundering.
53. Particular emphasis was given in the oral submissions, by way of illustration, to properties 21 and 22, which are the most expensive. They were purchased by the first respondent for £18,400,000 on 27 January 2020 in the case of property 21 and for £18,100,000 on 20 December 2019 in the case of property 22. Tracing of the monies used to fund the reservation fees for these properties indicates that a substantial payment was made from a Danske Bank account held by Polux to the Avromed Seychelles account and then to in turn to the first respondent's ABLV account.

54. I was also shown what are described as the “Pivot Tables” which indicate the scale and frequency of the movement of money in relation to the Polux bank account. Similar table shows very substantial transfers, often close together in time, in relation to Baktelekom, Hilux and Avromed.
55. Returning to properties 21 and 22, as set out in detail by Mr Coles and as summarised at paragraphs 42 and 43 of counsel's Annex 1, there is a good arguable case that the deposits, which were paid from the first respondent's ABLV account, were in turn funded by payments that can be linked back via Avromed Seychelles to Hilux and to Baktelekom.
56. Further, as set out by Mr Coles and as summarised at paragraphs 44 to 45 of counsel's Annex 1, there is also a good arguable case that the completion monies for the purchases were funded by sums that were falsely described as loans and by the provision of security over assets that were the proceeds of unlawful activities of the kind I have described.
57. Coles 1 also refers to eight bank transfers that took place between November 2016 and June 2017 of monies totalling 8.1 million euros to the first respondent's ABLV EUR account from his nephew, Elman Javanshir's ABLV account. Ostensibly the payments were for the sale of the first respondent's shareholding in Avromed. However, for the reasons identified by Mr Coles, I accept there is a good arguable case that the alleged shares sale was used as a means to extract corrupt funds out of Azerbaijan. In turn these funds are said to have been used to complete the purchases of properties 8, 11 and 17.
58. Coles 1 also identifies why an explanation that was previously provided by the first respondent in defamation proceedings (that I will refer to subsequently) relating, it was said, to the use of “Exchange Houses” as a means to pay suppliers because of restrictions on accessing hard currency in Azerbaijan, is simply not a credible one.
59. In his oral submissions Mr Sutcliffe took me through what I will refer to as the March transfers. These concerned 12 transfers of money that were made in a single week in March 2016 into the Avromed Seychelles account from 12 different sources. The

amounts involved totalled US dollars 3,333,623 and in turn \$3,500,000 was transferred on 17 March 2016 to the first respondents ABLV bank account and this was used in relation to completion monies for properties 4 - 7.

60. By way of further example, Mr Sutcliffe took me to the statements in respect of the first respondent's ABLV account for the period August 2010 to May 2018. He observed that they showed numerous very substantial credits from suspect entities including Avromed and also a company known as Brightmax Export Limited. Further, many of these payments are simply described by the opaque designation "account replenishment".
61. In appendix A to Coles 1, Mr Coles sets out in detail why he believes that there is a good arguable case that each of the properties listed in the application constitutes or includes recoverable property, given their transactional history. As I have indicated, I do not propose to detail this in this relation to each of the properties, but I am satisfied by his analysis.
62. I also note and accept the following overarching points to which my attention was drawn.
63. Firstly, that the first respondent's current position as a 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.
64. Secondly, with the exception of the original purchase of property 1 in 2008, all of the real property was acquired during or after the reported operation of the Azerbaijani Laundromat, which is said to have operated between August 2012 and December 2014.
65. Thirdly, as I have already touched on, in January 2022, Account Forfeiture Orders (hereafter AFOs) were made totalling approximately £5.6 million in the Westminster Magistrates' Court proceedings that I have referred to. Mr Coles says in Coles 1 at paragraph 3.30:

"The funds that were forfeited were held by relatives of Respondent One, his wife (Respondent Two), Orkhan Javanshir (the couple's eldest son), and Elman Javanshir (a nephew of Respondent One) ... Those individuals had received the forfeited funds either from Respondent One or from bank accounts held by a Avromed entity".

66. Fourthly, the real property in the present application, that is to say properties 1 to 22, has, in overall summary, been acquired with monies that can be traced back to Baktelekom, Hilux, Polux, Brightmax and/or Avromed Seychelles. Further, the Liechtenstein account has been credited with sums that can be traced back to Hilux, Brightmax and Avromed Seychelles. In turn, these are all companies which are believed to have played a prominent role in the Azerbaijani Laundromat.
67. Fifthly, in addition to the traceable link to the specific companies, the evidence shows that the first respondent has made use of a huge number of shell companies with an opaque ownership and management structure and located in jurisdictions where the filing of corporate accounts is not required. The use of those companies and their corporate directors and partners have created layers of anonymity masking their true owners' identity. Many of these companies have no identifiable footprint despite the large amounts of money involved. As I have already noted, it is said with some force in Coles 1 that the explanation for using these entities as Exchange Houses, as the first respondent called them in the defamation proceedings, is not credible for the reasons identified in Coles 1, in particular at paragraphs 3.100 - 3.102.
68. Sixthly, transfers took place between multiple company accounts across multiple jurisdictions including Russia, the United Kingdom, the Seychelles, the Marshall Islands, Panama, BVI, Hong Kong, St Kitts and Nevis, the Dominican Republic, the UAE and Belize. The provision of corporate bank accounts linked to the shell companies enabled funds to circulate in a manner which hid their true origin and allowed the funds to be remitted to "safe jurisdictions" for introduction into the United Kingdom. In this regard see in particular Coles 1 at paragraph 3.26.
69. Seventhly, the laundering took place principally through accounts operated by two banks, as I have already referred to, based in Estonia and Latvia. Both banks have

been subject to public allegations and findings of money laundering since the Azerbaijani Laundromat was first reported in 2017.

70. Eighthly, in addition to those that I have already referred to, Mr Coles gives a number of examples that demonstrate the various unlawful means that have been used in an attempt to legitimise these transfers, by, for example, using false descriptions of services for which it is said that the monies represent payment for, also by forging and creating false instruments such as alleged contracts, loan agreements and payment instructions. In the AFO proceedings, District Judge Zani said:

"I am satisfied that there is overwhelming evidence that the 'invoices' and 'contracts' purporting to support legitimate (and very substantial) business transactions between Baktelekom, Hilux and Polux were entirely fictitious and were produced in order to deceive the bank into opening accounts and allowing the later flow of very significant sums into and out of their accounts so as to mask the underlying money laundering activities of those orchestrating the accounts."

71. Lastly, that supporting documents were provided with the apparently false narratives that I have already referred to. The payment descriptions had a number of unusual features, including, the repeated use of the description "account replenishment". Another common description is "trade balance payment". The same spelling mistakes are made in references for transfers from more than one company. Also there are payment references with invoice dates on the same date, or the day before, the payment in question, which, as Mr Coles says, is surprisingly expeditious for a substantial payment in an arm's length commercial transaction.
72. So I bear in mind cumulatively the effects of all those points.

#### Dual criminality

73. As I have noted when summarising the relevant POCA provisions concerning what amounts to unlawful conduct, conduct which occurs outside the United Kingdom is

unlawful conduct if it is unlawful not only under the criminal law of the United Kingdom, had it occurred here, but unlawful under the law of the country where it did occur. Mr Sutcliffe accepts that I do not have direct evidence at this stage of the relevant foreign criminal law. He invites me to infer for the purposes of this application that the conduct I have referred to would plainly be unlawful in Azerbaijan, Estonia and Latvia. I am willing to draw that inference at this stage.

#### Property 23

74. I also need to consider property that is based overseas. This only applies to property 23, the Liechtenstein account. I accept Mr Sutcliffe's submission that there is a sufficient link to England and Wales based on the first part of paragraph 5 of schedule 7A of POCA (which I have already read out) by virtue of the fact that the first respondent has resided and continues to reside for part of the year with the second respondent in London. This was something that the first respondent himself stated in the witness statement that he made for the defamation proceedings.

#### Associated property

75. It is said that property 21 is the only instance where associated property is involved. This concerns a loan of £6,927,803 towards the purchase of the property from the Bank of Eurasia OJSC. Accordingly there are no instances where the NCA has not established the identity of the holder of associated property and accordingly the condition prescribed by section 245A(6), which I referred to earlier, does not arise in this instance.

#### The duty of disclosure

76. In arriving at these conclusions I have satisfied myself that the NCA has given full and frank disclosure of matters that are or could be adverse to this application. I have taken the matters that have been raised into account.

77. A series of matters are identified at paragraphs 10.1 - 10.10 of Coles 1 and I confirm that I have borne these in mind. I also confirm that I have read the first respondent's witness statement from the defamation proceedings that he bought in respect of two articles published in September 2017 concerning the Azerbaijani Laundromat. The proceedings were the subject of a confidential settlement and the case did not proceed to trial. The public order recorded the first respondent's denials of wrongdoing which are set out in his witness statement, but the articles remain accessible and thus their removal does not appear to have been part of an agreement.
78. During his oral submissions, Mr Sutcliffe rightly and properly drew my attention to key points - from the first respondent perspective - made in that witness statement, including: his denial of any wrongdoing; his denial of any connection to the Azerbaijani ruling class; his description of having a more limited role in relation to Avromed than had been suggested; and that he sought to provide an explanation for the source of certain monies, for example he said he received very substantial dividends from his Avromed shares during the period 2006 - 2016 in the order of £22 million. However, I understand that no supporting documentation was provided in that regard and since that time the detailed enquiries described by Mr Cole have undermined that explanation.
79. The first respondent also made the point that the conveyances of the various properties were undertaken by reputable solicitors. Whilst that is undoubtedly the case, it is very likely they were not in possession of the nature and level of information that Mr Coles has produced.
80. I note that the first respondent was not a party to the AFO proceedings and that neither he nor other family members give evidence or submitted witness statements in those proceedings. I have seen a report prepared by Oculus Financial Intelligence, which the District Judge found was prepared on the first respondent's instructions. Quite properly, Mr Sutcliffe also drew my attention to points made in this report by or on behalf of the first respondent. In addition to matters that I have already mentioned, this included that it was said there was an unconscious bias operating in relation to the first respondent as an Azerbaijani; he denied any connection to Baktelekom; and he sought

to explain the "account replenishment" designation as a description selected and applied by the bank. I have borne all these points in mind.

81. In addition, legal arguments that the respondents might rely upon are identified and considered at paragraph 59 of counsel's skeleton to which I have had regard. These include explaining why the present proceedings do not represent a collateral challenge to the outcome of the AFO proceedings. In short, whilst findings were made that I have already referred to, none of the money flows considered in Coles 1 overlap with the property that was the subject of District Judge Zani's findings.
82. In his oral submissions, out of an abundance of caution, Mr Sutcliffe drew my attention to the District Judge's findings at paragraph 478 of his judgment that the first respondent had received payments totalling US dollars 2,800,000 from Avromed's ABLV bank account on 22 August and 3 November 2012, but it had not been possible to trace back where these payments originated from. Mr Sutcliffe explained, and I accept, that this tracing back process has now been possible and indeed the figure in question corrected, as set out by Mr Coles and summarised at paragraph 13 of counsel's Annex 1. Accordingly, understood in this way, the position advanced in these proceedings does not undermine any findings made by the District Judge.

#### The court's discretion

83. As I am satisfied that the threshold test prescribed by section 245A(4) and (5) is met, I must consider whether it is appropriate in the exercise of my discretion to make the PFO sought. I bear in mind all the points that I have already identified without repeating them. For these reasons, I am satisfied that in the circumstances such interference as there is with the respondents' Article 8 and/or Article 1 Protocol 1 rights is lawful because it pursues a legitimate aim, namely the prevention of crime, and is proportionate and strikes a fair balance. As I have found, there is a good arguable case that the property is or represents property which has been obtained through unlawful conduct and I accept that the NCA has considered whether alternative methods are available, but has concluded that the necessary objectives cannot be achieved by less

intrusive means. I bear in mind that the respondents will have, under the terms of the order, the right to apply to vary or discharge the PFO if so advised. I also bear in mind that there is a significant risk of dissipation for the reasons that I have already identified.

The terms of the order

84. As I have already indicated, I have been provided with an updated version of the order and I will work from that, although it is to be tweaked slightly further and counsel has kindly agreed to provide a further copy after today's hearing. But I can deal with all the substantive points at this stage.
85. The order appropriately contains a Penal Notice warning the respondents and any person who knows of the order of the consequences of non-compliance.
86. What are currently paragraphs 6 and 7 of the order sets out the prohibition and specifies the properties to which it applies, as required by section 245A(2). The prohibition is limited to the assets which are the subject of the application.
87. What are currently paragraphs 10 - 13 of the draft order include disclosure provisions requiring: (i) the respondents to serve each month bank statements showing any mortgage payments in respect of the property to the respondents; (ii) to serve within 14 days a witness statement listing the names of all occupiers and/or tenants of the properties as well as copies of current tenancy agreements and the details of any management company / estate agents instructed in the letting of the properties; (iii) the third respondent to provide details of the current Persons with Significant Control of the company; and (iv) the respondents to serve a witness statement notifying the NCA in the event of any change of circumstances. I am satisfied that the court has power under CPR 25.1(1)(g) and/or the inherent power under section 37 of the Senior Courts Act 1981 to make such orders and that it is appropriate to do so as regards ensuring the effectiveness of the PFO.

88. As regards section 37(1) of the Senior Courts Act, the statute provides "the High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases to which it appears to the court to be just and convenient to do so". I note that in *AJ Bekhor & Company v Bilton* [1981] 1 QB 923 at 942 it was said:

"Where the power exists to grant the remedy, there must also be inherent in that power the power to make ancillary orders to make that remedy effective."

89. What are currently paragraphs 15 and 16 of the draft order include the standard provisions for any person affected by the PFO to apply to vary or discharge it.

90. Service is dealt with in paragraph 17 to 20. I indicated on Wednesday that I took the view that it was insufficient for the NCA to simply rely on CPR 23.9 and that specific provision should be made for alternative service given the means of service that was envisaged. I was satisfied that the conditions for alternative service in CPR 6.27 are made out, that there is good reason for doing so in the circumstances; and I am satisfied that service by these means is likely to bring the matter to the first and respondents' attention. In short, the order as now tweaked since Wednesday, provides for alternative service on the first respondent by delivering copies to the residential address which is where the second respondent is understood to live; and for service on the second respondent at the same address, in both instances the documents are to be delivered by hand to that address; and service on the third respondent is to be by delivering copies by hand to its registered address.

91. The next part of the order, what is currently paragraph 21 onwards, deals with publication and open justice matters. As I have already alluded to, I intend, subject to any application made by the respondents, that this order should be made public and published on the judiciary website, along with the judgment being made public, 14 days after the date when the respondents are served with the order. However, if the respondents within the 14 day period apply to the court to restrict publication and/or anonymity, the period will be extended until the court has had the opportunity to consider and determine that application; and provision is to be made for the NCA to keep the court updated as to the position in that regard.

92. At what is now paragraph 34, provision is made for third party costs, that is to say that the NCA will pay the reasonable costs of third parties incurred as a result of complying with the order.
93. Paragraphs 35 and 36 deal with duration, indicating that the NCA must either commence a civil recovery claim or apply for the continuation of the PFO whilst it continues to carry out the civil recovery investigation, with a specified period, failing which the current order will be set aside. The period that I have provided for is 12 months from now. That is the period that the NCA considers is likely to be sufficient to complete the investigation.
94. The order does not include an undertaking as to damages as there is no requirement to give such an undertaking in POCA proceedings.
95. I am satisfied that it is not necessary or appropriate to include exclusions in this order. I have already referred to the statutory provisions in that regard. In these circumstances all but two of the assets that are listed in the order are real property and there is no suggestion that the respondents require the Liechtenstein account and/or rental income from the properties in order to maintain their basic legal or living expenses.
96. I therefore make the order in the terms that I have indicated. That concludes this judgment.