Neutral Citation Number: [2021] EWHC 2751 (Admin)

Case No: CO/913/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29th September 2021

Before:

THE VICE-PRESIDENT COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)
and
MR JUSTICE JOHNSON

- -

Between:

THE QUEEN (on the application of SULEYMAN JAVADOV AND IZZAT KHANIM JAVADOV)

Claimants

-V-

WESTMINSTER MAGISTRATES' COURT **Defendant**

and

NATIONAL CRIME AGENCY **1st Interested Party**

and

MARTIN BENTHAM **2nd Interested Party**

- -
- -

James Lewis Q.C. and Bart Casella (instructed by Banks Kelly Solicitors) for the Claimants

Andrew Bird Q.C. and Tom Rainsbury (instructed by the Civil Litigation Department of the National Crime Agency) for the 1st Interested Party

The Defendant was not present and was unrepresented.

The 2nd Interested Party represented himself in person.

Hearing date: 29 June 2021

- -

The Vice-President:

The Facts

1. The claimants are nationals of Azerbaijan who have lived in London for at least the last decade. The second claimant has been granted British Citizenship. On 31 July 2018 the National Crime Agency ("NCA") applied *ex parte* for nine Account Freezing Orders ("AFO/AFOs") at Westminster Magistrates' Court in respect of bank accounts held by the first claimant (at Santander, Coutts and Lloyds). The hearing was held in private and without notice. Following the grant of the applications on 31 July 2018, the first claimant indicated to the NCA (on 24 August 2018) that he wanted "*to cooperate*" with the authorities. An enforcement officer can apply in the Magistrates' Court for an AFO if he or she has reasonable grounds for suspecting that money held in an account is recoverable property or is intended by an person for use in unlawful conduct (section 303Z1 of the Proceeds of Crime Act 2002 ("POCA").

2. In a letter dated 7 September 2018, the NCA notified both claimants that two similar applications were to be made in respect of bank accounts held by the second claimant (at the Metro bank and Barclays). No response was received, and no application was made in advance for the hearing to be in private. The two AFOs against the second claimant were granted on 12 September 2018, following a hearing in open court. The second claimant was not present and was unrepresented.

3. Each of the 11 AFOs was granted for a period of six months. Against both applicants it was alleged that the NCA had reasonable grounds for suspecting that the funds held in these accounts were recoverable property. Each of the 11 AFOs was granted for a period of six months.

4. On 23 November 2018, prior to the expiry of the AFOs, the NCA wrote to the claimants giving notice that applications would be made "*to extend*" the AFOs in relation to eight accounts relating to the first claimant (two accounts had been merged) and the two accounts relating to the second claimant. They were, in matter of fact, applications for new orders. Copies of the applications and the notice of the hearing to be held on 10 December 2018 were sent to the claimants at their United Kingdom home addresses. On 27 November 2018 the second claimant tried to contact the relevant financial investigator from the NCA (Mr Quarrelle), indicating she had received the paperwork. There was a conversation between Mr Quarrelle and the first claimant on the following day, during which he repeated his willingness to cooperate with the authorities.

5. On 10 December 2018, the ten AFOs were granted by Westminster Magistrates' Court for a period of 12 months, expiring on 9 December 2019. The hearing was in open court; the claimants were not present and they were unrepresented. No request was made that the application should be heard in private.

6. On 19 November 2019 (three weeks, therefore, before the ten AFOs expired), the NCA contacted Westminster Magistrates' Court to arrange a listing for a contested hearing of the applications that were to be made for fresh orders. This followed correspondence

with the solicitors for the claimants who had indicated they would oppose any application for an "*extension*". The applications were listed for 2 December 2019 with sufficient time set aside. The claimants were informed of this date by letter dated Friday 22 November 2019 and there was no suggestion that the hearing was to be held in private. The applications were filed on Monday 25 November 2019.

7. On Friday 29 November 2019 the NCA received a letter sent as part of an email (timed at 1.31 pm) from the claimants' solicitors, the full text of which is as follows:

> *Dear Sirs,*
> *Re: National Crime Agency v [Mr and Mrs J]*
>
> *Hearing date: 2 December 2019 at Westminster Magistrates' Court*
>
> *1. We write further to previous correspondence and on behalf of [Mr and Mrs J] ("our clients").*
> *2. Thank you for your email enclosing 2 x applications for variations (extensions) to AFO's and appendices on Monday 25 November 2019 at 15:33; and the skeleton argument on Thursday 28 November 2019 at 17:16. We can confirm safe receipt.*
> *3. We have previously repeatedly asked the NCA to indicate its intentions upon the AFO's expiring on 10 December 2019, well in advance of the hearing, to afford our clients an opportunity to respond in a timely manner.*
> *4. We have also requested early disclosure of the documents in support including those obtained from production orders; and the pre-interview disclosure, which should have been served on our clients when they attended the voluntary interview and made full comment without legal representation on 29 July 2019.*
> *5. Despite these efforts, we have only received the written application in support of the extension of the AFO's at 15:35 on Monday 25 November 2019, less than one week before the intended hearing. The applications contain various documents in support. We submit that this is insufficient notice to properly respond to the NCA's application.*
> *6. The NCA has had ample time in which to conduct its investigation at the expense of our clients' accounts remaining frozen. It has already had the benefit of an extension without any opposition from our clients. However, we are also mindful of the fact that the AFO's cannot be in force for more than 2 years, much of which has already lapsed.*
> *7. Accordingly, we will not oppose the NCA's application for further time on the following basis:*
>
> *a. We/our clients have not had sufficient notice to consider and respond to the NCA's application; or make arrangements to instruct counsel to do so.*
> *b. Consenting to the NCA's application for an extension of time is not taken as an admission or acceptance of any of the allegations or claims made against our clients.*
> *c. The NCA confirms by way of return that it will request a private hearing in which to make its application; and will not publicise nor disclose the applications or any ancillary documents to journalists or members of the public. As the NCA is aware, there is a risk of adverse publicity against our clients which will cause substantial reputational damage to our clients at a*

> *time where the NCA is at an early investigative stage and has not proven its case against our clients, nor received our clients' defence position.*
> *8. We would be grateful for confirmation of the above and request that a copy of this letter is placed before the Magistrates.*
> *Yours faithfully, Banks Kelly*

8. Therefore, it was indicated that the applications would be unopposed on the suggested basis, *inter alia*, that the NCA was to confirm by return that it would request a private hearing and it was asked to place a copy of the letter before the court. The justification for the request that that hearing should be in private was, therefore, that, at this early investigative stage and in advance of any proven case or indication of any defence, the NCA was aware of a risk of adverse publicity against the claimants which would cause substantial reputational damage.

9. The NCA responded on the same day by way of email, timed at 5.50 pm, contending that there was no statutory basis for the hearing to be heard in private. The NCA referred to section 121(4) of the Magistrates' Court Act 1980 ("MCA") (see [20] below). The NCA invited the claimants' solicitors to identify the statutory basis for the request for a private hearing and noted "[y]*ou are, of course, entirely at liberty to make representations to the Court at the Hearing, in regard to it being held in private*". The claimants did not respond to this communication. They did not attend the hearing on Monday 2 December 2019, nor were they represented.

10. Given its relevance to the second of the Grounds for Judicial Review, it is to be noted at this stage that District Judge Goldspring indicated that he had read the letter of 29 November 2019 (received at 1.31 pm) along with the NCA's response, as just set out. The judge is recorded (according to the note taken by Mr Shelton from the NCA during the hearing) as having observed "*if they want to make assertions they should be here to make representations*". The hearing took place in open court.

11. The AFOs were granted for six months (expiring on 1 June 2020).

The Issues

12. On 10 February 2021 Swift J granted permission to proceed with this application for judicial review on the basis of the Grounds set out by the claimants in their Amended Statement of Facts and Grounds, namely:

> "(1) Whether under the relevant rules of procedure which apply to proceedings under chapter 3B of the Proceeds of Crime Act 2002, it is possible for a Magistrates' Court to sit in private to hear applications such as those before the Defendant on 2 December 2019 (Ground 1);
>
> (2) Whether the decision that was made by DJ Goldspring on 2 December 2019 rested on a false premise that the Claimants had consented to a public hearing (Ground 2);
>
> (3) Whether assuming the Magistrates' Court had power to sit in private, the decision to proceed in public was Wednesbury unreasonable (Ground 3), and;

(4) Whether DJ Goldspring failed to provide adequate reasons for the decision on 2 December 2019 (Ground 4)."

13. As Mr Andrew Bird QC and Mr Tom Rainsbury for the NCA correctly submit, the claim raises an important point of principle, as well as a point of general practice, concerning the scope and operation of the open justice principle with applications for AFOs under Part 5, Chapter 3B of POCA. There is a need for clarity because POCA and the procedural rules in the Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017 ("the 2017 Rules") do not indicate whether these applications can be determined in private and, if so, when. The Magistrates' Courts Rules 1981 ("MCR") are similarly silent on this issue. The only relevant provision is section 121(4) of the MCA which applies generally to the hearing of complaints. This issue is substantively analysed below.

The Wider Context

14. To help resolve this point of principle and general practice, it has been necessary to sketch AFOs into the broader regulatory landscape that contains related provisions governing multiple aspects of the investigation, preservation and recovery of the proceeds of crime *etc*. This is a complex area, with responsibility being split between different jurisdictions. There are seven principal areas:

    a) civil freezing and recovery of criminal property in the High Court (Part 5 of POCA);
    b) taxation of criminal profits (the NCA can take over the tax collection functions of HMRC under Part 6 of POCA);
    c) search, seizure and summary forfeiture of cash, listed assets and bank balances (summary procedures under Part 5 Chapters 3, 3A and 3B of POCA);
    d) powers of investigation (Part 8 of POCA, with the High Court having jurisdiction over orders which are part of a civil recovery investigation or an exploitation proceeds investigation, along with unexplained wealth orders ("UWO/UWOs"); otherwise, orders that are part of any other form of investigation may be granted by a judge of the Crown Court);
    e) criminal restraint orders (Part 2 of POCA, exercisable by a Crown Court judge);
    f) seizure of realisable property other than cash or "exempt property" (Part 2 of POCA, by an appropriate officer with "appropriate approval");
    g) post-conviction confiscation.

15. There are a variety of different legislative provisions, Rules, Codes of Practice, Practice Directions and Regulations which govern these different powers, or particular aspects of them. Importantly, seemingly linked or complementary provisions may be governed by entirely different regimes. For instance, property freezing orders are made in the High Court, applying the CPR Practice Direction on Civil Recovery Proceedings whereas AFOs are made in the Magistrates' Court, applying the 2017 Rules.

Account Freezing Orders (AFOs)

16. AFOs were introduced into POCA by the Criminal Finances Act 2017 ("CFA") (section 16), and the objectives of the CFA were described in the Explanatory Notes to the Bill, *inter alia*, as follows:

> "Overview of the Bill
> 1. The Criminal Finances Bill seeks to make the legislative changes necessary to give law enforcement agencies, and partners, capabilities and powers to recover the proceeds of crime, tackle money laundering and corruption, and counter terrorist financing.
>
> 2. The measures in the Bill aim to: improve cooperation between public and private sectors; enhance the UK law enforcement response; improve our capability to recover the proceeds of crime, including international corruption; and combat the financing of terrorism. […]"

17. As their title indicates, AFOs are a means of freezing monies held in an account. They are also a statutory precondition to, or foundation for, an application for the forfeiture of frozen funds (section 303Z14(1) of POCA stipulates that an application for a forfeiture order can only be made "*while an account freezing order has effect*"). They come under a summary procedure, the relevant court in England, Wales and Northern Ireland therefore being the Magistrates' Court.

18. AFOs are situated within Part 5 Chapter 3B of POCA (section 303Z1 "*Application for account freezing order*" *et seq.)*. As already indicated, they are materially distinct from the other complementary provisions in Parts 2, 5 and 8 of POCA. It is to be noted particularly that Part 8 contains a wide range of judicial orders that can be made to investigate and pursue criminal property: Production Orders, Search and Seizure Warrants, Disclosure Orders, Customer Information Orders, Account Monitoring Orders and UWOs. The condition for making any of these various orders depends on the type of investigation involved: confiscation investigations, civil recovery investigations, detained cash investigations, detained property investigations, frozen funds investigations, money laundering investigations and exploitation proceeds investigations. There are markedly different governing provisions, for instance, within and between Parts 5 and 8.

19. It is common ground that the Criminal Procedure Rules and the Civil Procedure Rules do not apply to AFOs and that instead there is a specialist set of procedural rules governing these proceedings before a Magistrates' Court, namely the 2017 Rules (see [13] above). By Rule 16:

> "Procedure at hearings
>
> (1) At the hearing of an application under Chapter 3B of Part 5 of the Act, any person to whom notice of the application has been given may attend and be heard on the question of whether the application should be granted, but the fact that any such person does not attend shall not prevent the court from hearing the application.

> (2) Subject to the foregoing provisions of these Rules, proceedings on such an application shall be regulated in the same manner as proceedings on a complaint, and accordingly for the purposes of these Rules, the application shall be deemed to be a complaint, the applicant a complainant, the respondents to be defendants and any notice given under rules 4(4), 5(4), 6(4), 8(4) or 15(4) to be a summons: but nothing in this rule shall be construed as enabling a warrant of arrest to be issued for failure to appear in answer to any such notice.
>
> (3) At the hearing of an application under Chapter 3B of Part 5 of the Act, the court must require the matters contained in the application to be sworn by the applicant under oath, may require the applicant to answer any questions under oath and may require any response from the respondent to the application to be made under oath.
>
> (4) The court must record or cause to be recorded the substance of any statements made under oath which are not already recorded in the written application." (Emphasis added)

20. The hearing of an AFO is, therefore, the hearing of a "*complaint*". Section 121(4) of the MCA (entitled "*Constitution and place of sitting of court*"), states *inter alia*:

> "(4) Subject to the provisions of any enactment to the contrary, a magistrates' court must sit in open court if it is
>
> ...
>
> (d) hearing a complaint..."
>
> (Emphasis added)

21. It is important to have in mind that applications for AFOs can nonetheless be made without notice. By section 303Z1(4) of POCA:

> "An application for an account freezing order may be made without notice if the circumstances of the case are such that notice of the application would prejudice the taking of any steps under this Chapter to forfeit money that is recoverable property or intended by any person for use in unlawful conduct." (Emphasis added)

22. POCA, the 2017 Rules and the MCR do not assist as to whether a Magistrates' Court is permitted to sit in private when considering an application for an AFO. The only relevant provision, therefore, is section 121(4) of the MCA, as quoted at [20] above, which deals generally with hearing complaints in open court in the Magistrates' Court. There have been significant derogations from the "*open court*" principle in the legislative provisions and procedural rules that govern various of the powers complementary to AFOs. By way of example, rule 3(2) of the Magistrates' Courts (Detention and Forfeiture of Cash) Rules 2002 (the "2002 Rules") provides that a justice of the peace may give prior approval for a search for cash under section 290(1) of POCA without a hearing and may conduct any hearing that does take place in private. It is to be noted, however, that the 2002 Rules are silent as to whether private hearings

are permitted as regards the first and the further applications for the continued detention of the seized cash (rules 4 and 5). Applications for Production Orders under section 351(1) of POCA, Disclosure Orders ("DO/DOs") under section 362(1) of POCA and Customer Information Orders under section 369(1) of POCA "*may be made ex parte to a judge in chambers*". Under paragraph 11.1 of the CPR Practice Direction on Civil Recovery Proceedings, an application for an investigative order or warrant in the High Court under Part 8 of POCA in respect of a Civil Recovery Investigation, a UWO, an interim freezing order ("IFO") or an application in respect of an external investigation is to be heard and determined in private, unless the judge directs otherwise. And by rule 47.5(1) of the Criminal Procedure Rules 2020, the court may determine an application for an investigation order at a hearing, in which case it must take place in private unless the court directs otherwise.

23. It follows that there is a notable lack of similarity or consistency between the provisions governing AFOs, on the one hand, and a number of the related, analogous or complementary provisions, on the other, as to whether the court can sit in private or must do so (unless the judge orders otherwise).

24. The lack of a uniform approach to private hearings within Parts 2, 5 and 8 of POCA necessitates particular focussed consideration of the position of AFOs. Seemingly, the obvious starting point is section 303Z1(4) of POCA which contains an important derogation from the principle of open justice, in that an application for an AFO may be made without notice if the circumstances are such that notice of the application would prejudice forfeiture. This is to be read alongside section 121(4) of the MCA (see [20] above) which contains an express exception to the requirement that when hearing a complaint the Magistrates' Court must sit in open court, in that this is "*subject to the provisions of any enactment to the contrary*". An enactment is defined in section 150(1) of the MCA as including (unless the context indicates otherwise) "*an enactment contained in a local Act or in any order, regulation or other instrument having effect by virtue of an Act*".

25. I have no doubt that although section 303Z1(4) of POCA does not expressly provide that a court may sit in private when hearing a without notice application, applying a purposive approach to section 121(4) of the MCA, section 303Z1(4) constitutes an enactment which is "*contrary*" to the usual requirement that the hearing must be in open court. It would substantially, if not entirely, undermine the "*without notice*" element of the application if the hearing nonetheless had to take place in public. Considering the application in open court could prejudice the steps being taken to forfeit money, in that a message could be sent from the court before the order was made and enforced, thereby enabling the dissipation of the funds. It would, furthermore, create an objectionable and illogical difference in approach if an enforcement officer was able to apply to the High Court for a Property Freezing Order ("PFO") as regards the bank accounts under section 245A of POCA in private (pursuant to Part 39.2 Civil Procedure Rules) whilst a similar application in the Magistrates' Court perforce needed to be in public. Accordingly, it is necessarily implied in section 303Z1(4) of POCA that when the application is made without notice, the hearing may also be heard in private.

26. Support for this approach is to be found in *NCA v Simkus* [2016] EWHC 255 (Admin); [2016] 1 WLR 3481 in which case Edis J considered the position of DOs (Part 8 of POCA) and PFOs (Part 5 of POCA). POCA permits PFO applications to be made

without notice (section 245A(3) of POCA). DO applications can be made *ex parte* to a judge in chambers (section 362(1) of POCA). The Practice Direction requires DOs to be heard in private unless the judge directs otherwise. There is no similar provision for PFOs. Against that background, the judge observed:

> "24. Generally where an application is made without notice it will usually be appropriate that it should be heard in private. The same circumstances are likely to justify both results. In my judgment the difference in the statutory language between section 245A(3) and 362(1) is without significance. In the case of both PFOs and DOs they may therefore, by statutory authority, be determined on an application made without notice and in private. The practice direction is in somewhat different terms as between the two types of order to reflect the statutory language but that also is in my judgment not significant. Applications without notice and in private are permissible in both cases where giving notice or hearing the case in public would be likely to frustrate the purpose of the application. Whether that is so or not is a matter for the court and not the NCA, to be determined as the first question when the judge considers the application.
>
> […]
>
> 47. These applications may be heard in private and without notice. They do not have to be. The court will need to be satisfied in each case that the procedure is proper and fair and pays proper regard to the public justice rule and fairness to any person affected by the order. […]"

27. Of note, additionally, in this context is *NCA v Hussain* [2020] EWHC 432 (Admin); [2020] 1 WLR 2145. The NCA had applied, *inter alia*, without notice for an UWO under section 362A of POCA. Pursuant to section 362I of POCA, as with AFOs, the application can be made without notice but there is no provision expressly permitting it to be determined in private. On the issue of whether there could or should be a private hearing, Murray J concluded:

> "88. […] 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 sub-paragraphs of CPR r 39.2(3) are likely to be engaged, most notably, sub-paragraphs (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."

28. The judge went on to explain that he accepted, *inter alia*, the NCA's submissions that publicity would defeat the object of the hearing, in 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. There were linked considerations, which need not be rehearsed here, concerning an application for an IFO. The judge additionally accepted that Mr Hussain's rights under Article 2 ECHR were engaged, given the activities of relevant organised crime gangs and the applications for a UWO and an IFO involved a plain intrusion into his privacy.

29. A clear feature which distinguishes the present situation from that under consideration in *NCA v Hussain* is that Civil Procedure Rule 39.2(1) and (3) were potentially engaged in the latter case, whereas there is no similar relevant provision which applies to AFOs. Rule 39.2(1) establishes that the general rule is for a public hearing, albeit it can be in private if the judge decides it must be held in private, applying criteria set out at Rule 39.2(3). Nonetheless, for the reasons set out above, I am persuaded, that when a judge hears an application without notice under section 303Z1 of POCA, at his or her discretion it can be heard in private. Although this approach will often be necessary – given hearing the case in public would be likely to frustrate the purpose of the application – the judge will nonetheless need to be satisfied that this course "*is proper and fair and pays proper regard to the public justice rule and fairness to any person affected by the order*" (*per* Edis J at [26] above), and in reaching this decision the judge will pay close and careful regard to the specific circumstances of the case. In the majority of cases, however, this should be a decision that is relatively easy to take, without requiring the expenditure of significant time (see [37] below).

30. Additionally, section 6(1) of the Human Rights Act 1998 ("HRA") is an "*enactment*" for the purposes of section 150(1) of the MCA. Section 6(1) of the HRA provides that, *"(i)t is unlawful for a public authority to act in a way which is incompatible with a Convention right".* By section 6(3)(a) of the HRA a public authority includes a court and a tribunal. The two articles of greatest relevance in this context are Articles 8 and 10 of the European Convention on Human Rights ("ECHR"). Article 8(1) of the ECHR provides:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

31. Article 10 provides:

> "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

> (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

32. Article 2 ("*Everyone's right to life shall be protected by law*") and Article 3 ("*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*") may also be relevant. In *In re Guardian News and Media* [2010] UKSC 1; [2010] 2 AC 697 Lord Rodger of Earlsferry at [26] observed:

> "In an extreme case, identification of a participant in legal proceedings, whether as a party or (more likely) as a witness, might put that person or his family in peril of their lives or safety because of what he had said about, say, some powerful criminal organisation. In that situation, he would doubtless ask for an anonymity order to help secure his rights under articles 2 and 3 of the European Convention. […]"

33. The effect of section 6(1) of the HRA is that if a Magistrates' Court considers that an application for an AFO, if made in public, may violate a Convention right, the court will need to weigh the relevant considerations, which will frequently require focus, as just suggested, on Articles 8 and 10 of the ECHR.

34. It is to be noted that the jurisdiction to restrain publicity which was formerly expressed as being part of the inherent jurisdiction of the court at common law is now derived from Convention rights under the ECHR. In *In re S (a Child)* [2004] UKHL 47; [2005] 1 AC 593, Lord Steyn at [23] observed:

> "The House unanimously takes the view that since the 1998 Act came into force in October 2000, the earlier case law about the existence and scope of inherent jurisdiction need not be considered in this case or in similar cases. The foundation of the jurisdiction to restrain publicity in a case such as the present is now derived from Convention rights under the ECHR. This is the simple and direct way to approach such cases. […]"

35. When the application for an AFO is made without notice, the considerations already rehearsed at [22] *et seq.* above are likely to be determinative (although that is not to suggest that section 6(1) of the HRA is in any sense necessarily irrelevant). However, for applications made on notice, section 6(1) of the HRA is of particular significance and it may be necessary for the court to consider various competing Convention rights, and particularly Articles 8 and 10. It is critical to have in mind that neither Article 8 and Article 10 are absolute rights, and they may be departed from in order to give effect (*inter alia*) to the rights of others. However, that said, as it seems to me the starting point is that expressed by Lord Steyn in *In re S (a Child)* at [18]:

> "In oral argument it was accepted by both sides that the ordinary rule is that the press, as the watchdog of the public, may report everything that takes place in a

> criminal court. I would add that in European jurisprudence and in domestic practice this is a strong rule. It can only be displaced by unusual or exceptional circumstances. It is, however, not a mechanical rule. The duty of the court is to examine with care each application for a departure from the rule by reason of rights under article 8."

36. At [28], Lord Steyn quoted approvingly from Lord Nicholls of Birkenhead in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, 200 on the right of the press, subject to limited statutory restrictions, to report the proceedings at a criminal trial without restriction:

> "It is through the mass media that most people today obtain their information on political matters. Without freedom of expression by the media, freedom of expression would be a hollow concept. The interest of a democratic society in ensuring a free press weighs heavily in the balance in deciding whether any curtailment of this freedom bears a reasonable relationship to the purpose of the curtailment."

37. Such an application can usually be determined in a short timeframe. As Maurice Kay LJ observed in *Global Torch Ltd v Apex Global Management Ltd* [2013] EWCA Civ 819; [2013] 1 WLR 2993 at [27]: "*I should add that Lord Steyn's reference to "an intense focus" does not mean that every time a litigant waves an Article 8 flag in support of an application for a private hearing there will have to be a protracted and expensive hearing to determine the issue. Often, indeed usually, experience suggests that the application can be determined very quickly. It also shows that, in most cases falling outside the area of recognized exceptional circumstances (which will often fall within CPR39.2(3)(a)), the open justice principle will prevail*".

38. In a recent iteration of the open justice principle, Warby LJ in *R (Rai) v Crown Court sitting at Winchester* [2021] EWCA Civ 604 at [27] observed, in the context of comments highlighting that not all kinds of speech are of equal value, that "[…] *(s)peech involving the communication to the public of information about what takes place in a criminal court ranks high in this scale of values* […]".

39. Against this background, Mr Bird has, in my view, rightly observed that the first issue is whether the proposed measure will interfere with a person's rights under Article 8 of the ECHR. This will only be the case if the consequences reach a certain level of seriousness. In *H v News Group Newspapers Ltd* [2011] EWCA Civ 42; [2011] 1 WLR 1645, Lord Neuberger of Abbotsbury MR observed:

> "19. The cardinal importance of open justice is demonstrated by what is stated in article 6 of the Convention. But it has long been a feature of the common law. It was famously articulated in the speeches in *Scott v Scott [1913] AC 417* — see particularly at *[1913] AC 417*, 438, 463 and 477, per Viscount Haldane LC, Lord Atkinson, and Lord Shaw of Dunfermline respectively. The point was perhaps most pithily made by Lord Atkinson when he said "in public trial is to be found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect".

> […]
>
> 22. Where, as here, the basis for any claimed restriction on publication ultimately rests on a judicial assessment, it is therefore essential that (a) the judge is first satisfied that the facts and circumstances of the case are sufficiently strong to justify encroaching on the open justice rule by restricting the extent to which the proceedings can be reported, and (b) if so, the judge ensures that the restrictions on publication are fashioned so as to satisfy the need for the encroachment in a way which minimises the extent of any restrictions."

40. It will not usually be sufficient that the publicity is embarrassing or humiliating. In the context of consideration of a proposed anonymity order, Males J in *Armes v Nottinghamshire County Council* [2016] EWHC 2864 at [28(c)] set out, *inter alia*:

> "[…] the first question to be determined is whether identification of the witness would interfere with his or her rights under Article 8. This will only be the case if the consequences of identification reach a certain level of seriousness (or as Lord Neuberger put it in JIH, if the facts and circumstances of the case are "sufficiently strong"). Depending on the subject matter of the case and the nature of the evidence, giving evidence as a witness may be embarrassing or sometimes even humiliating, but this will not generally be enough to justify an order for anonymity by reference to Article 8. Something more is required, although in view of the wide range of circumstances in which Article 8 can apply, I doubt whether that something is susceptible of precise definition."

41. It is to be stressed that in *Armes* the judge lifted the anonymity order when he determined that the consequences for the witnesses (*viz.* the former foster parents of the claimant) of being identified "*are not so severe as to require anonymity in circumstances where (1) serious allegations against them have been proved applying a standard of proof which takes account of the need for strong evidence, (2) those allegations relate to a matter of legitimate public concern and (3) the claimant ought to be free to tell her story as she wishes, including the fact that her allegations against her former foster parents have been upheld*" (at [41]).

42. Males J additionally stressed in *Armes* at [28(d)] that:

> "If identification would interfere with the witness's right to respect for his or her private or family life, it is necessary to consider (in the terms of Article 8.2) whether that interference "is necessary in a democratic society … for the protection of the rights and freedoms of others". The rights and freedoms of others which will generally require consideration are (or at least include) the right to freedom of expression, including the vital freedom of the press to report court proceedings held in public, under Article 10 . A balance therefore needs to be struck."

43. Addressing how the balancing exercise is to be approached, Lord Steyn in *In re S (a Child)* set out four propositions at [17]:

> "[…] First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the

> comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test [...]" (Emphasis as in the judgment)

44. In striking this balance, the principal question is whether there is a sufficient public interest in publicity to justify any resulting interference with Article 8 of the ECHR. In *In re Guardian News and Media* at [52] Lord Rodger put the point thus:

> "[…] the question for the court accordingly is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies (the relevant individual) to justify any resulting curtailment of his right and his family's right to respect for their private and family life."

45. This evaluation will be rooted in the facts of the particular case.

46. Supperstone J in *NCA v Mrs A (Ruling on Anonymity)* [2018] EWHC 2603 (Admin) observed when considering an application for an anonymity order that:

> "There are two aspects to the principle of open justice, as Lady Hale observed in *R (on the application of C) v Secretary of State for Justice [2016] UKSC 2*:
>
> > "The first is that justice should be done in open court, so that the people interested in the case, the wider public and the media can know what is going on. … The second is that the names of the people whose cases are being decided, and others involved in the hearing, should be public knowledge."
>
> An order for anonymity is a derogation from the principle of open justice and an interference with the Art.10 ECHR rights of the public at large, which requires close scrutiny in order to determine whether such restraint from publication is necessary (see general guidance given by Lord Neuberger MR in *JIH v News Group Newspapers Ltd [2011] EWCA Civ 44* at para.21)."

47. It is of relevance that in *NCA v Mrs A*, the judge made a UWO against Mrs A, following a without notice application by the NCA and a hearing in private in accordance with the practice direction for civil recovery proceedings. At the start of the hearing of the application to discharge the order, Mrs A applied for the hearing to be in private. The judge refused the application. However, he made an anonymity order, to remain in force until further order, to protect, *inter alia*, the identity of Mrs A and her husband, Mr A. At the conclusion of the proceedings, the judge lifted the anonymity order, expressing the following:

> "In the light of the facts now known to me following a hearing that extended into a third day, and having considered the evidence in detail and the submissions of counsel, I am not satisfied that non-disclosure of the identity of Mrs A or her husband is necessary in order to protect their interests.

> I am not persuaded that identification of Mrs A or her husband would interfere with her or their rights under Art.8. This will only be the case if the consequences of identification reach a certain level of seriousness (see *Armes v Nottinghamshire County Council [2016] EWHC 2864 (QB)*). I consider that any interference with their Art.8 rights is unlikely to be severe.
>
> However, even if identification would interfere with their Art.8 rights, the question is whether that interference is justified by the requirement of freedom of expression and open justice.
>
> As for Mrs A, there is no evidence that she will suffer adverse consequences. […]"

48. The judge went to reach similar conclusions as regards Mr A. He determined that the evidence relating to any interference with Mrs A or Mr A's private and family life was very general. The judge observed:

> "I am satisfied that the public interest in publishing a full report of these proceedings concerning the first Unexplained Wealth Order outweighs any concerns that the respondent may have about herself or her husband.
>
> Refusing the earlier application for a hearing in private I said there is a clear public interest in the public understanding the legal basis upon which UWOs can be applied for and made, and how these provisions operate in practice. […]"

49. A similar stance had been adopted in *In re Guardian News and Media*. The case concerned a challenge by five claimants to the lawfulness of Treasury directions freezing assets under the Terrorism (United Nations) Measures Order 2006, on the ground that they were suspected of facilitating terrorism. Anonymity orders had been made in their favour on the ground the appellants had successfully contended that the orders are necessary because identifying them as the claimants in these proceedings would infringe their rights under Article 8 of the ECHR to respect for their private and family life.

50. Lord Rodger, giving the judgment of the court, set out that the operation of the freezing order system for those suspected of facilitating terrorism involved a debate of legitimate public interest, and that any damage to the claimants' right to private and family life was incidental (see particularly [69] and [73] in this regard). Lord Rodger posed the following question:

> "63. What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed […]. This is not just a matter of deference to editorial independence. The judges are recognising that editors

> know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.
>
> 64. [...] A report of the proceedings challenging the freezing orders which did not reveal the identities of the appellants would be disembodied. Certainly, readers would be less interested and, realising that, editors would tend to give the report a lower priority. In that way informed debate about freezing orders would suffer.
>
> 65. On the other hand, if newspapers can identify the people concerned, they may be able to give a more vivid and compelling account which will stimulate discussion about the use of freezing orders and their impact on the communities in which the individuals live. Concealing their identities simply casts a shadow over entire communities.
>
> 66. Importantly, a more open attitude would be consistent with the true view that freezing orders are merely indicative of suspicions about matters which the prosecuting authorities accept they cannot prove in a court of law. The identities of persons charged with offences are published, even though their trial may be many months off. In allowing this, the law proceeds on the basis that most members of the public understand that, even when charged with an offence, you are innocent unless and until proved guilty in a court of law. That understanding can be expected to apply, a fortiori, if you are someone whom the prosecuting authorities are not even in a position to charge with an offence and bring to court. But, by concealing the identities of the individuals who are subject to freezing orders, the courts are actually helping to foster an impression that the mere making of the orders justifies sinister conclusions about these individuals. That is particularly unfortunate when, as was emphasised on the appellants' behalf, they are unlikely to have any opportunity to challenge the alleged factual basis for making the orders.
>
> [...]
>
> 73. Although it has effects on the individual's private life, the purpose of a freezing order is public: it is to prevent the individual concerned from transferring funds to people who have nothing to do with his family life. So this is not a situation where the press are wanting to publish a story about some aspect of an individual's private life, whether trivial or significant. Rather, they are being prevented from publishing a complete account of an important public matter involving this particular individual, for fear of the incidental effect that it would have on (the individual's) private and family life."

51. It follows from the matters set out above that, in my view, it is implied in section 303Z1(4) of POCA that when an application for an AFO is made without notice, it is permissible – indeed, it will often be entirely appropriate – for the hearing to be in

private. Otherwise, for applications made on notice, section 6(1) of the HRA may be engaged, with the result that the court may need to consider a range of Convention rights, and most particularly Articles 8 and 10. Mr James Lewis Q.C. and Mr Bart Casella, on behalf of the claimants, emphasised that the grant of an AFO will occur at an early investigative stage, which may well be before any substantive allegation has crystalised. It is suggested that the threshold for granting an AFO is low (reasonable grounds for suspicion: section 303Z3). The claimants rely on *Sir Cliff Richard OBE v BBC and Anor* [2018] EWHC 1837 (Ch); [2019] Ch 169 as authority for the proposition that in general there is no need for anyone outside an investigating force to know of an investigation. In this regard, Mr Lewis contends that AFOs are an investigative tool and a "*holding process*", and given the allegations are likely to "*stick*", the hearings should, if requested, be in private. It is argued that the open justice principle is not engaged merely because there is a court hearing, given many kinds of without notice hearings are heard in private.

52. In a similar vein Mr Lewis relied on *Sicri v Associated Newspapers* [2020] EWHC 3541 (QB)); [2021] 4 WLR 9 as a basis for the proposition that an individual has a reasonable expectation of privacy in respect of information that they had come under suspicion by the state, given the disclosure of such information was likely to have a seriously harmful impact on the person's reputation and thus their private life.

53. Contrary to Mr Lewis's erudite submissions, and particularly the suggestion that the presumptive starting point is that applications of this kind should be held in private, the ordinary rule is that court proceedings take place in public, a rule which can only be displaced in unusual or exceptional circumstances. In this regard there is a significant distinction to be drawn between court proceedings and an investigation such as in the *Sir Cliff Richard* case. As Warby J in *Sicri* observed at [103], court proceedings are, as a rule, open to the public and reportable since "*the court is exercising the judicial power of the state, determining rights and obligations; its workings need to be transparent and open to scrutiny and criticism*". The "*specific and hallowed rationale*" for this principle was expressed by Lord Judge CJ in *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 2) [2011] QB 218* at [38]: "*The public must be able to enter any court to see that justice is being done in that court … In reality very few citizens can scrutinise the judicial process: that scrutiny is performed by the media, whether newspapers or television, acting on behalf of the body of citizens*".

54. Warby J described the approach to civil or criminal trials and other court proceedings in stark terms at [104]:

> "[…] (1) as a rule, legal proceedings are held in public; hearings in private are the exception, and require specific justification; (2) the starting point is that the names of the parties and witnesses are made public; and (3) where information is disclosed in legal proceedings held in public, the starting point is that a person will not enjoy a reasonable expectation of privacy in respect of it."

55. Not only is the presumption that there will be open justice, but the applicant will need to establish consequences more severe than that a hearing in public will result in embarrassment or humiliation. Indeed, I consider the observations set out at [50] above of Lord Rodger in *In re Guardian News and Media* are of particular force in this context. The public can be expected to understand that simply because an individual

has been made the subject of an order of this kind, that does not justify reaching sinister conclusions about him or her. Furthermore, in the absence of sufficiently strong reasons ("*a certain level of seriousness*" per *Males J* in *Armes)*, it would be unjustified to exclude the press and the public or to prevent the publication of a complete account for fear of the incidental effect that the report would have on the individual's private and family life. This is particularly the case given public information about what takes place in a criminal court ranks high in this scale of values relating to speech.

56. Against the background of those overarching conclusions, I turn to the four Grounds of Judicial Review.

Grounds of Challenge

57. **The first Ground**:

> "Whether under the relevant rules of procedure which apply to proceedings under chapter 3B of the Proceeds of Crime Act 2002, it is possible for a Magistrates' Court to sit in private to hear applications such as those before the Defendant on 2 December 2019 (**Ground 1**)"

58. It is self-evident from the conclusions I have set out above that I consider that it is permissible for a Magistrates' Court to hear an *inter partes* application for an AFO in private, if the justification is "*sufficiently strong*". This will require careful examination of the circumstances of the application. However, in this case there is no evidential basis for the suggestion, as advanced by the claimants, that the judge accepted that the court had no jurisdiction to hear the applications in private. Instead – indeed, to the contrary – he simply observed that the claimants needed to make representations in support of their "*assertions*" (in this instance for a private hearing). There is no foundation for the claimants' contention, therefore, that it is to be inferred that District Judge Goldspring accepted the legal position as set out in the NCA's letter of 29 November 2019, namely that there was no statutory basis for the hearing to be heard in private. He made no indication to this effect and took no steps that were predicated on that suggestion. His observation, set out above, tends to indicate a conclusion that is opposite to the claimants' assertion.

59. **The second Ground**:

> "Whether the decision that was made by DJ Goldspring on 2 December 2019 rested on a false premise that the Claimants had consented to a public hearing (**Ground 2**)"

60. It is argued by Mr Lewis that the judge's decision "*suggests that if the Claimants did not consent to a public hearing then they should attend the hearing to make representations"* and that "*in the circumstances the Claimant's non-attendance was treated by DJ Goldspring as consent for a public hearing*". It is suggested this constitutes an error of fact, as the claimants had not consented to a public hearing. I consider that this Ground is wholly without merit. It is clear from the history set out at [7] – [10] above that the decision on 2 December 2019 was not made on the basis of the incorrect premise that the claimants had consented to a public hearing. To the contrary, the evidence demonstrates that District Judge Goldspring was fully aware of

the claimants' opposition to a public hearing. To repeat, the judge had read the two letters and was therefore fully aware of the claimants' wish for there to be a private hearing and I repeat that he simply observed that "*if they want to make assertions then* [they] *should be here to make representations".* That history cannot credibly be interpreted as indicating that the judge concluded that the claimants had consented to a public hearing. Instead, it was an observation directed simply at the need for the claimants to justify any suggestion that the hearing should be in private.

61. **The third Ground**:

> "Whether assuming the Magistrates' Court had power to sit in private, the decision to proceed in public was Wednesbury unreasonable (**Ground 3**)"

62. The sole material before the judge in support of the suggestion that the hearing should be in private was limited to the following short passage in the letter from the claimants' solicitors to the NCA on 29 November 2019 (see [7] above), "[…] *there is a risk of adverse publicity against our clients which will cause substantial reputational damage to our clients at a time where the NCA is at an early investigative stage and has not proven its case against our clients, nor received our clients' defence position*".

63. It is to be observed at the outset that this was not an application addressed to the court but instead it was a condition that the claimants were seeking to impose on the NCA if the former agreed not to oppose the NCA's application for fresh AFOs. Although the claimants asked the NCA to place the letter before the court, they failed to make any application to the judge. Notwithstanding those considerations, I accept that although the matter was put before the court in an unsatisfactory form, it would have been clear to the judge that the applicants wished for the hearing to be in private.

64. The bare assertion set out in the letter, however, is at some very considerable distance from establishing the foundations that are necessary to justify the judge ordering a private *inter partes* hearing on the application for fresh AFOs. It was wholly insufficient for the claimants simply to aver there would be "*substantial reputational damage*" without providing any details of the suggested damage, the relevant personal context or any particulars of the apprehended consequences. This short contention by the claimants was, therefore, wholly general and lacking in any necessary specificity. The authorities make it clear that the duty of the court is to examine applications with care in order to decide whether there should be a departure from the principle of open justice on Convention grounds. This is particularly the position in the present context since, as Lord Rodger observed in *In re Guardian News and Media*, the mere fact that an order of this kind (*viz.* an AFO) has been granted does not justify the press or the public in drawing any kind of adverse inference. The passage from the letter of 29 November 2019, standing alone, did not afford sufficiently strong reasons or the "*certain level of seriousness*" justifying the exclusion of the press and the public, and preventing the publication of a complete account of what occurred. It is to be emphasised that the present application for the fresh AFOs, as with the two earlier public applications for AFOs, was simply to prevent the claimants from transferring funds to people who it is to be presumed had nothing to do with their family life.

65. The claimants clearly had sufficient time to instruct an advocate to apply to the judge for the hearing to be in private; indeed, advocates are frequently briefed over the course

of a weekend and otherwise very shortly before effective hearings. The claimants chose not to take this step. The judge correctly made his decision on the basis of the limited materials before him. There is nothing to indicate that he adopted a materially flawed approach or that the decision to hold the hearing in public was not reasonably open to him.

66. **The fourth Ground**:

> "Whether DJ Goldspring failed to provide adequate reasons for the decision on 2 December 2019 (**Ground 4**)"

67. Given the claimants had failed to advance an application either orally or in writing, or to provide the necessary details to enable the court to make the careful examination that is necessary, there was nothing before the judge to justify him providing detailed reasons. Indeed, as the judge somewhat pithily observed, "*if they want to make assertions then* [they] *should be here to make representations".* As the NCA suggests, in the present circumstances there had been no legal arguments or evidence presented that required resolution by the judge. The failure to give more detailed reasons did not, therefore, amount to a procedural defect vitiating the grant of the AFOs (see *Regina (Newcastle Football Club Ltd and others) v Revenue and Customs Commissioners and another* [2017] EWHC 2402 (Admin); [2017] 4 WLR 187). I would stress that nothing was said by the judge to indicate that he had concluded that he had no jurisdiction to sit in private on an *inter partes* application for fresh AFOs. This ground is, therefore, equally without merit.

Conclusion

68. Although I have concluded that the judge had the power to sit in private on an *inter partes* application for an AFO (as well as on an *ex parte* application), the claimants have failed to make out their case as to any of the alleged errors of fact or law that they have identified on the part of District Judge Goldspring. They have not, therefore, established any unlawful act on the part of the defendant, and accordingly there has been no consequential harm. I would dismiss the claim in its entirety. It follows that the prohibition on reporting, publication, broadcasting, release and disclosure, set out in paragraph 12 of the Order of Swift J of 18 February 2021, is now lifted.

Postscript

69. Although Mr Bentham, the 2nd Interested Party and the Home Affairs Editor of the Evening Standard, was unrepresented, he provided the court with a helpful skeleton argument in advance of the hearing, which was supplemented by his focused, clear and helpful oral submissions. On 15 May 2020, the then Senior District Judge (DJ Emma Arbuthnot) ruled on an application by Mr Bentham for access to documents that had been referred to in open court before District Judge Goldspring on 2 December 2019. The judge considered the competing interests and was guided, in particular, by the decision in *In re Guardian News and Media*. In the event, she ordered access to the documents without the names of the claimants or their precise relationship with Azerbaijan. Other identifying features were removed, such as the names of the relevant companies and the precise addresses referred to in the documentation. She determined there should be no means of identifying the claimants. The judge considered that this

would enable Mr Bentham to write a substantive story, whilst protecting the interests of the claimants at the particular stage that the proceedings had reached. As she observed, if a forfeiture hearing was held, Mr Bentham would then be able to report the unredacted account of the hearing, along with the applications. Therefore, at least in that sense, reporting was not prevented but delayed (see [70] – [75] of the judgment).

70. For my part, I consider that an application for anonymity – if the facts provide sufficient justification – represents a significantly more effective and proportionate approach to protecting the legitimate Convention rights of individuals in circumstances such as these (*e.g.* their right to respect for their private and family life) than suggesting that the entire hearing should be conducted in private. I emphasise, however, that this will be an essentially fact-specific decision, applying the relevant principles, some of which have been discussed above. It is to be stressed, therefore, that an anonymity order will require justification (*viz.* evidence and necessity); the judge will need to perform a balancing exercise of the claimant's rights against Article 10 rights; and each case will turn on its own facts.

71. Finally, by way of historical note, on 27 May 2021 District Judge Baraitser ordered that the anonymity protection should be removed and that the final hearing, listed for 10 days commencing on 5 July 2021, should be in open court. Permission to apply for judicial review of the decision to remove anonymity protection was refused on all grounds by Lavender J on 15 June 2021. The claimants' application for permission to appeal was refused by Singh LJ on 28 June 2021. The final forfeiture hearing in the Magistrates' Court was listed before District Judge Baraitser on 5 July 2021. In the event, the claimants consented to a forfeiture order in respect of £4,033,803.21 held in four accounts held in Mr Javadov's name. This has been widely reported in the press.

Mr Justice Johnson:

72. I agree.