In the Westminster Magistrates' Court

Before :

Senior District Judge

Goldspring

Between :

THE CHIEF CONSTABLE OF DEVON AND CORNWALL POLICE

-and-

(1) Emory Andrew Tate (EAT)

(2) Tristan Tate (TT)

(3) J

RULING

Introduction

1.The Chief Constable of Devon and Cornwall (CCDC) seeks Asset Forfeiture Orders (AFO's) pursuant to section 303Z14(4) of the Proceeds of Crime Act 2002 ("POCA") in respect of funds in 7 bank accounts which are currently subject to Asset Freezing Orders obtained by the Applicant pursuant to s.303Z(1) POCA. The applications are dated 5 January 2024. This court granted an anonymity order (press restriction) in respect of J at an earlier hearing, that order remains extant, the respondent continues to only be referred to as J in this ruling.

2. In fact, only 6 of these accounts , 1 and 3-7 are now applied for under AFO applications, account 2 is now, for reasons set out below, subject to an application to forfeit Cryptocurrency.

3. The Applicant's original applications for account forfeiture orders in respect of the Gemini Account (account 2), was opposed by J solely on the basis that this was not an order the magistrates' court had the power to make, because the funds in the Gemini Account did not amount to fiat monies as required by s.303Z14(4) of the Proceeds of Crime Act 2002 ("POCA").

4.The Applicant did not concede the point and the matter was litigated at the hearing on 8th and 9th of July 2024. The Applicant called evidence and advanced a case that the funds in the Gemini Account were in fact in monies in fiat as required by section 303Z14(4).

5. This , it turns out, was wrong as a matter of fact, so much is now conceded by the applicant in a statement by DC Hughes dated 3rd of September 2024, consequently all parties agreed the funds in the Gemini Account are, and always have been, in cryptocurrency and not as originally argued, fiat currency.

6. The Applicant invited the court to grant a crypto wallet freezing order, in respect of the Gemini account numbered 00000030 containing USDC 88,922.901835 ("the Gemini Account") .

7. To give effect to that concession, at a hearing on the 7th of November 2024 I dismissed the application for an account forfeiture order in respect of the Gemini Account, set aside the account freezing order and granted a crypto wallet freezing order.

8. An application for a crypto asset forfeiture order was then laid by the Applicant and DC Hughes was sworn and adopted the evidence she gave in the POCA proceedings, in July. This judgment deals with that application as it now stands.

9. J now accepts the correct process has been adopted but submits the court ought not to make a forfeiture order of the Cryptocurrency because-*:*

> *a. The application for a crypto wallet freezing order is not one that the Applicant could have made on 12 October 2022 when the account freezing order was made, because the statutory provisions were not in force at that time. The Applicant has benefitted from having obtained an unlawful order which has been in place for nearly two years, and by the change in the law which now permits the magistrates' court to make a crypto wallet freezing order.*
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> *b. The Applicant has only recently taken the necessary steps to discover the complete factual position in relation to the funds in the Gemini Account, but these enquiries should have been conducted much earlier. DC Hughes' recent witness statement reveals that she did not conduct sufficient enquires at the time the account freezing order was made on 12 October 2022 or before making an application for forfeiture. It should have been clear that such enquiries were required because there was no information about precisely what the Court was being asked to freeze/forfeit*
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> *c. The enquiries made of Gemini in October 2022 resulted in DC Hughes receiving the information that the balance of the funds in the Gemini Account would equate to the equivalent of 88,922.901835 (USDC) in fiat currency on date of any forfeiture. While it appears that DC Hughes was informed that the funds were in fiat currency, she was not told what fiat currency it was in or how much of that fiat currency there was. In fact, the repetition of the point that the balance will equate to the 88,922.901835 (USDC) on the date of forfeiture creates an overwhelming inference that the funds were cryptoassets, which would only be converted if a forfeiture order were made.*
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> *d. The Applicant did not obtain or adduce any evidence demonstrating that the cryptocurrency had been paid into a safeguarding account, much less what that account was, nor the amount of converted fiat currency that was obtained. Enquiries that have been made after the hearing have revealed how easy it would have been to obtain this information.*
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> *e. The Applicant should not be permitted to benefit from the fact that it obtained an unlawful order because it failed to conduct sufficient enquiries to ascertain what currency the funds were in and instead was satisfied with the apparent assertion that they were in fiat currency.*

f. The Applicant has made its application in relation to these funds, and it was the wrong one; it should not be permitted a second opportunity.

The applicants case

10. The applications in respect of the 6 remaining accounts are made under both limbs of s.303Z14(4) POCA, which provide the grounds for forfeiture as either or both of -

a. The frozen funds are recoverable property (property obtained through unlawful conduct) ("Limb A");

and/or

b. The frozen funds were intended by any person (including the Respondents) for use in unlawful conduct ("Limb B").

11. The applicants case is that Limb A is engaged, because the frozen funds are property obtained through unlawful conduct, either in the UK , offences of Cheating the Revenue ,in respect of income tax, corporation tax and/or VAT contrary to Common Law and / or Money laundering contrary to s.327–329 POCA.

12. Alternatively, / or additionally the Romanian offences (EAT and TT only) of Tax/VAT evasion by the Respondent brothers in Romania contrary to Law No. 241/2005 on preventing and combating tax evasion, Article 9(1)(a) and/or 9(1)(b) (exhibits KH/15c, KH/15e and AIH/1) and / or Money laundering by the Respondent brothers in Romania contrary to Law No. 129/2019 for the prevention and combating of money laundering and terrorism financing, Article 49(1) (exhibits KH/15a at A/304, AIH/2, KH/41 and KH/41a).

13. The applicant further submits that further or in the alternative Limb B that the frozen funds were intended by the Respondents for use in unlawful conduct, in that the funds were intended to be used in the commission of Cheating the Revenue (as above) or Money laundering (as above) and / or the Romanian offences (EAT and TT) Tax evasion by the Respondent brothers in Romania (as above) and / or Money laundering by the Respondent brothers in Romania (as above).

14. Between 2017 and 2022 the Respondent brothers earned vast amounts of money . The frozen accounts are UK personal accounts controlled by the Respondent brothers. The 'income' received into these accounts (and the related accounts in exhibit KH/2) is striking, as are the brothers' displays of and boasting about their wealth.

15. The applicant alleges that between 2014 and 2022, the brothers appear to have 'earned' approximately £21 million, despite having no significant qualifications, business experience, established companies, shares, intellectual property or similar assets. The evidence shows that this money was received from:

a. "Adultwork", which is an online adult services platform including web cam models.

b. "Only Fans". Fenix International Ltd is the owner of Only Fans, a UK based digital content platform where anyone may upload 'content' for payment, tending to be pornographic.

c. "Stripe", is a payment processing platform providing payment services on behalf of businesses.

d. "Dek-Co" , is a UK payment platform which processes payments on behalf of Paxum Inc, with whom the Respondent brothers both have accounts.

e. Global account (another financial account which accepts credits and debits).

16. They further allege that since at least 2013, the Respondent brothers have not paid tax or VAT in any jurisdiction , in particular the UK or indeed their stated domicile of Romania – either in a personal capacity or in respect of corporate entities owned or controlled by them .

17. Police enquiries show that two relevant corporate entities registered by the Respondent brothers in Romania are Talisman Enterprises SRL ("Talisman") and Emory Andrew Tate and Sons SRL. The Applicant notes:

a. Talisman was registered in Romania by TT in 2017:

i. EAT was a 5% shareholder and administrator, and TT was a 95% shareholder and administrator

ii. On 22 August 2022, the company changed its business activity to "activities of web portals, data processing, web page administration and related activities"

iii. Talisman declared a turnover in Romania (in 2017, 2019, 2020 and 2022) however this was a fraction of the monies earned during the same period, and the low level of turnover declared ensured its profits fell below the Romanian tax threshold.

18. They further allege that by contrast to its under-declarations, this company purchased land and property in Romania in December 2018, January 2020 and February 2021 for a total purchase price of in excess of Euros 857,000 (exhibit AIH/2).

19. They rely on a screenshot of the Cobratate Hustlers University/War Room website from open-source images of its privacy policy webpage in August 2022. This was stated to be effective from 16 January 2019 and made clear that Talisman "operates the www.cobratate.com website (the 'Service')".

20. The applicant suggests that this demonstrates that the website was operated by Talisman still in August 2022. In December 2022 (after the Respondent brothers' arrest), the website was taken down and rebranded to The Real World, owned by to New Era Learning

21. They also rely on a statement by Sarah Richards, Tax Partner at Sedulo Group, which explains the Romanian tax and VAT regime.

Emory Andrew Tate and Sons SRL was registered in Romania in 2021:

i. EAT was a 5% shareholder, TT was a 95% shareholder, until 22 August 2022 when an associate was appointed as sole shareholder and the company changed its name to Posillipo Enterprises-FZCO with a registered office in the UAE. This company was not registered in the Administration of Public Finances Taxpayers' Register, Tax Returns and Balance Sheets Service; nor was it registered with financial statements and reports (exhibit AIH/2).

ii. The company owns extensive land and properties in Romania, which (exhibit AIH/2) were purchased in November and December 2021, March 2022 (total purchase price Euros 908,000).

iii. Money was used to furnish an interior space that appears to be unrelated to the company's programming/IT service provision, including luxury car purchases, maximum security safe, audio-video systems, surveillance systems, other luxury purchases (AIH/2). The Profira Report also points to deposits into the company's account by EAT, TT of circa Euros 1,421,000 as well as cash deposits made without supporting documents, and describes the company as "merely a 'front' through which the Respondent brothers conduct their business of an entirely different nature, other than 'Web portal activities'". TT was apparently, "uncooperative and reluctant to provide the information and documents requested for the operations carried out on the account."

22. Apart from Talisman , the Respondent brothers have not registered for tax, including income or corporation tax, or VAT with either the UK or Romanian tax authorities (see also the statement of HM Inspector of Taxes Paul McShane, 17 June 2024).

23. Her statement goes on to explain that Romania is not a tax haven. It is a member of the European Union, with regimes for income, corporate tax and VAT, the subject of national and EU law (see e.g. statement of Sarah Richards, and exhibits KH/41 and KH/41a in respect of its anti-money laundering regime).

24. In support of the averred criminality to which the applicant points they rely on EAT's public and open comments about his contempt for authorities, payment of tax, and how he has avoided doing so in the past. See for instance:

a. The YouTube video exhibited at MWS/130723/1, transcribed at exhibit SLB/01, A/477:

"… every single system in the world is based on complicity they cannot enforce systems the IRS cannot enforce you to pay your taxes the police cannot enforce you to wear a mask there are not enough enforcers everything is based on complicity if you refuse to comply permanently you will be amazed how far you can get as an individual and I mean this so let me give you an example my tax affairs are fully in order in Romania because I pay three percent [sic]2 but when I lived in England I refused to pay tax it was 40 so they started sending me letters and threatening me you know what you do you know what most people would do reply to the letter get a clever accountant guess what I did ignore the letters ignore ignore ignore then they start sending people around to my house where's Andrew oh he's not here ignore ignore ignore there becomes a point where there's a cost benefit analysis where they sit down and go we don't know where this guy is we don't even know how much money he has we don't know if he's gonna pay he might have left the country this is a waste of our time and they give

And

b. YouTube video exhibited at MWS/050324/1, transcribed at exhibit SLB/02, A/479:

"… tax is also another important element for controlling your woman they're not going to pay anybody tax because you're getting paid in Bitcoin so you don't need to pay tax to anybody tell your girl that you're paying the tax because girls are lazy and girls are stupid and

girls don't understand how taxes work so the girls working with you and you're like oh okay yeah we've made this much money but I'm going to pay the tax to make sure we don't get in trouble she'll sit there go okay okay now that allows you to do two things one is another control element I work with him my tax is not a problem if I do it alone I have to deal with taxes taxes are complicated it's a control element so I used to pay my girls 30 percent so for every ten thousand dollars they made I'd give them three and I'd keep seven they thought they were on fifty percent and I said that the disparity was because of taxes so you're on fifty percent and we had to pay the tax first and then it's 50 50 …"

EAT has also given an interview following the making of the AFrO's, published on YouTube on 23 December 2022 (exhibit MWS/050324/2, transcribed at exhibit JH/01, A/490) in which he is recorded to state inter alia:

a. "Money for me is a tool and I use it to get whatever I want and bend the world. I can never be poor. You could take all of my money today. I'll be a millionaire again in two weeks" A/490;

b. A conspiratorial interpretation of the freezing of his accounts, "… It all ties into how deep you go into the matrix. Is the money that you have yours? Is the house that you own yours? Is any of it yours? You piss off a government. Piss off a government and tell me what's still yours. And you'll soon learn that none of it is yours …" A/505;

c. A disavowal of ownership, "I don't own anything … I don't own anything. I'm just some dude … [interviewer] I think you have a Bugatti though don't you? When you say nothing do you mean nothing? Do you not own it? Okay that's good [EAT] I don't own anything …" A/506. There is mirth, later in the interview, when this edifice breaks down: "I mean there's been properties I bought a year ago. I've already made six [interviewer] which you don't own [EAT] Well I'm sorry. There's people I know who have bought houses a year ago and they've made 60 to 70 percent a year …"; "I don't have any companies" A/531;

d. "… I don't have any money. I don't have any of that stuff anymore because … I don't look at the price of anything. I don't look at the price of anything. If a new car launches and I want it I just say give me this … Yeah. Literally. Give me give me one. What options? All of them. Just tick every box by and cars turn up at the house …" A/513;

e. "I was always fairly well off. But in the last I'd say three last three years I got to a point where money is truly not real. Money has no value whatsoever for me anymore. So if I want something I'll just buy it and I'll spend. I spend ridiculous amounts of money on stupid things" A/513;

f. Reference to a million-pound-a-month lifestyle, followed by a comment by the interviewer, "OK that you're taxed on as well. So it's slightly less than that … [EAT] But depending where you pay tax" A/515;

g. Later, promoting relocation to Dubai, EAT states (incorrectly) "There's zero percent taxes" A/530 and "let's say you had an online company which is based out of Dubai and you're making money online and the money is banked in Dubai. You don't owe the UK a fucking thing a penny" A/531.

25. Neither Tate has served any response to the application, they initially served a report by an accountant which was subsequently abandoned , they sought to rely on comment and assertion made by their solicitors in correspondence, that correspondence is NOT evidence, it is inadmissible,

the effect of this is that the respondents have provided no evidence in support of their case and the applicants invites me to draw an adverse inference from that failure, I deal with this issue later in this ruling.

26. The applicant further submits that the detailed schedules and account information in the chart provided demonstrates that the monies are " washed and hidden " because the movement of money defies commercial logic, and instead have all the hallmarks of money laundering: washing funds between accounts held or controlled by the Respondent brothers, and spending on property and luxury goods, including exceptionally high value motor vehicles .

27. They allege that the purpose of the movements is to disguise the origins of the money so as to avoid coming to the attention of tax authorities in the UK and Romania (or indeed any other jurisdiction).

28. It is common knowledge within publicly available material(and is the Applicant's understanding) that they moved, physically, to Romania around the end of 2017. They do not have Romanian Citizenship, but hold residency permits current to 2026.

29. Since then, the applicant submits that the Respondent brothers have continued to open financial accounts in the UK, using UK identification and holding out their address as being in Luton, to receive business revenues and launder funds . They also registered UK companies, which were dissolved by Compulsory Strike Off for failing to file company accounts.

a. Goosefamoose Ltd (2 November 2020 – 4 April 2022) (TT).

b. Scorpius Ltd (21 April 2022 – 26 September 2023) (TT).

c. The Cannon Run (EAT was a director from March 2022 – 15 December 2022).

30. It is further alleged that the Respondent brothers did not register for, declare or pay tax or VAT in either the UK or Romania during the relevant period (save for an under-declaration in respect of Talisman. Instead, they used multiple accounts and a high volume of transactions to move and disguise funds, including abusing the identify of J in order to disguise the source of funds, thereby evading fiscal liabilities. The funds were instead used for property purchases, luxury goods, and to pay co-defendants and expenses connected with the offences for which they are currently indicted in Romania.

31. The accounts into which the revenues received from Hustlers University and the War Room were paid could not be traced by the Romanian Prosecutor's Office and the investigation is continuing into this as part of Case File 1305/D/P/2022 of 15 June 2023 which has been severed from the other allegations. The offences being investigated include money laundering, as provided for in Art. 49(1)(a) and (b) of Romanian Law 129/2019 on preventing and combating money laundering and terrorist financing. The investigation relates to monies obtained in Romania by TT, EAT and Georgiana Naghel from criminal activities: "from 2021, on the territory of Romania … obtained money from criminal activities, which they transferred through bank accounts, cryptocurrency trading platforms, and invested in companies, securities and real estate in Romania and abroad, subsequently transferred the shares, through which they acquired the assets, in the names of intermediaries, with a view to concealing and disguising the illicit origin of those assets, and in order to assist the defendants Andrew Tate and Tate Tristan to evade prosecution, trial and execution of sentence." Finally, the applicant submits that it is relevant and supportive of their case that the Respondent brothers chose not to provide any evidence of tax or VAT returns or tax or VAT payments in response

to the AFrO applications, or in response to the Applicant's evidence for the present AFoO applications; nor any witness statements.

32. The Tate brothers (and J) served no evidence in response, no tax returns, no financial records or witness evidence either personally or through others but submitted the evidence simply demonstrates the legitimate earnings from online sites controlled by them and legitimate and transparent movement of those funds and that the evidence does not demonstrate any criminality, and if they are wrong about that ,had they cheated the revenue, only the liability to tax becomes the pecuniary advantage not the whole amounts.

The Legal Framework

33. I heard competing submissions on the scope and interpretation of the case law on the relevant issues, I have largely adopted the legal framework as submitted by the applicant, partly because I agree with their analysis but also because I reject the alternative submissions on behalf of the Tate brothers.

34. The AFO(AFoO) forfeiture applications are sought pursuant to section 303Z14(4) of POCA:

35. The court or sheriff may order the forfeiture of the money or any part of it if satisfied that the money or part –

(a) Is recoverable property, or

(b) Is intended by any person for use in unlawful conduct.

36. The burden is on the Applicant to satisfy the Court of one or both of those tests, satisfaction being a higher threshold than the grounds for an AFrO which require only "reasonable grounds to suspect" (s.303Z1 POCA).

37. The standard of proof is civil (the balance of probabilities) (s.241(3) POCA).

38. By s.304(1) POCA, recoverable property is, "property obtained through unlawful conduct".

39. By s.241 POCA, "unlawful conduct" includes:

a. Conduct occurring in any part of the UK is unlawful conduct if it is unlawful under the criminal law of that part (s.241(1)).

b. Conduct which occurs in a country or territory outside the UK and is unlawful under the criminal law applying in that country or territory, and if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part (s.241(2)).

40. By s.242 POCA, "Property obtained through unlawful conduct" is defined as follows:

(1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct—

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

41. By s.240(2) POCA, "The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property."

42. Case law has emphasised that s.303Z14(4)(a) and (b) provide two distinct routes for an AFoO, (Limb A and Limb B). It is permissible for an applicant to base an AFoO application on both limbs at the same time, see e.g. R.(Angela Deacon) v Wimbledon Magistrates' Court & The Metropolitan 22 Police [2021] EWHC 3358 (Admin) at [14]-[15], a case which concerned a cash forfeiture application under s.298(2) POCA (worded identically to s.303Z14(4)):

> "14. The first question relates to the suggested alternative bases under section 298. There has been some debate before me whether, as matters proceeded in front of the Magistrates, both bases were in fact in play – in other words limbs (a) and (b) of section 298. I am satisfied they were. Section 298 asks in terms whether the court is satisfied that the cash is either recoverable property or intended by any person for use in unlawful conduct. I see no limitation within that provision to suggest that a prosecutor must put the case on the basis of one or the other, or that the court can only consider one or the other. It seems to me, on a straightforward reading of the provision, that it is for the court to ask itself whether it is satisfied of one or other, or possibly even both. So, there is no obvious difficulty in the statutory language.
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> 15. That analysis is supported by various cases I have been referred to, specifically Fletcher v The Chief Constable of Leicestershire Constabulary [2013] EWHC 3357 (Admin), Sandhu v The Chief Constable [2019] EWHC 3316 (Admin) and Campbell v Bromley Magistrates Court [2017] EWCA Civ 1161. Those cases suggest that the issue is a short and simple question, whether the terms of the statute are satisfied, and that question is for the court. In addition, I have been assisted by the case of Muneka v Commissioner of Customs & Excise [2005] EWHC 495 (Admin) which bears some analogy with this case. In Muneka the court was faced with arguments under both limb (a) and limb (b) and the High Court upheld the Magistrates' conclusion that having rejected the case under limb (a) the Magistrates could nonetheless go on to consider the case under limb (b) and conclude as they did." [emphasis added]

Limb A

43. Limb A requires the Applicant to establish on the balance of probabilities that the money in the frozen accounts was obtained through unlawful conduct (s.242(2)(b) POCA). It is not enough to establish only that it was obtained through criminal conduct of a kind which could not be identified.

44. Thus, under Limb A, the Applicant needs to satisfy the Court that the monies (or part thereof) in the 7 accounts that are the subject of the AFoO applications were obtained by unlawful conduct, and would need to specify what that unlawful conduct actually was (see Angus v UKBA [2011] EWHC 461 (Admin)).

45. Some assistance on the meaning of the requirements of Limb A is to be found in the judgement of Mostyn J in R.(Fresh View Swift Properties Ltd) v Westminster Magistrates' Court [2023] EWHC 605 (Admin) [2023] 1 W.L.R. 3321 ("Swift View"):

"9. The question I have to answer is, therefore: Was (i) property (ii) obtained (iii) by 2 3 (iv) conduct which was (v) unlawful?

10. There is no authority that specifically addresses the meaning of these words as they are used in Part 5 of the Act. [He then states that case law does not assist with this analysis].

11. In my judgment, the meanings of these words are clear.

12. I address each of the requisite five elements in turn.

(i) Property. A forfeiture application under Part 5 of PoCA is an action against the property itself as an in rem proceeding. Such an application is always against an identified asset in specie. Where it is money in an account, that money must have been previo usly frozen. Where an order is made, it is against that money in that account. It is not a judgment for a general, liquidated sum. Such an in rem process was well described in United States v Contorinis (2012) 692 F 3d 136 , 146, where the civil forfeiture regime is much the same as ours: "In civil forfeiture, the United States brings a civil action against the property itself as an in rem proceeding—'it is the property which is proceeded against, and … held guilty and condemned as though it were conscious instead of inanimate and insentient'."

(ii) Obtained. "To obtain" means to come into possession of something. The use of the past participle means that in the past someone came into possession of the property. The use of this verb does not carry with it an implication that that person either ga ined ownership of the property or necessarily derived benefit from it.

(iii) By. The word "by" when used in a phrase as a preposition, signifies who or what has done something, or how something has been done. To be precise, the word forms a prepositional adverbial phrase describing how something has happened. Here the happening is the obtainment and the cause is the unlawful conduct.4

(iv) Conduct. The obtaining of the property must have been by a person's conduct. "Conduct" is a noun which means, according to the Oxford English Dictionary, "the action of conducting or leading … the 4 In fact, s.304(1) POCA uses the word "through". action of the person or thing that leads". The use of the word "conduct" in section 242 in my judgment therefore requires demonstration of some human action or steps to a particular end.

(v) Unlawful. The conduct must have been unlawful. Where it occurred in any part of the UK it is unlawful conduct if it is unlawful under the criminal law of that part. If it occurred overseas it must be contrary to the criminal law of the overseas place and, if it had occurred

in a part of the UK, must be contrary to the criminal law of that part. As this is an action in rem it does not matter who was guilty of unlawful conduct. The only requirement is that the property was obtained by someone's unlawful conduct. While the words require that the property must have been obtained by the unlawful conduct of an individual they do not require that individual to have owned the property at any point or for that individual to have benefited from the transaction in any way."

46. He concluded at [24]:

> "… Section 303Z14(4) then gives the court a formal discretion whether or not to order forfeiture. It says "The court … may order the forfeiture of the money or any part of it …" However, in my judgement, findings that lead to the discretion being exerciseable should almost invariably result in the discretion being exercised in favour of forfeiture. In my judgement, the district judge was therefore right to make the primary decision to order forfeiture of that sum in that account."

Cheating the Revenue / tax evasion – pecuniary advantage

47. In Ahmed v Revenue and Customs [2013] EWHC 2241 (Admin) ("Ahmed"), Carr J (as she then was) dealt with an appeal against an AFoO. The appellant/ defendant operated a legitimate business during which he dishonestly under-reported proceeds of sales and thereby evaded tax over a number of years. He kept the under-reported revenue in cash at his home address.

48. appeal, the Court held that this was wrong in law: the order should have been limited to the amount that represented the pecuniary advantage derived from the tax not paid [53] (applying s.340(6) POCA (see §80 below)). The learned Judge also stated that as Part 5 of POCA provides for civil, not criminal, sanctions, there was an "even greater argument for proportionality" [51] and that, further or in the alternative, to order forfeiture of the entire sum would be disproportionate on the facts, applying R v Waya [2012] UKSC 51; [2013] 1 AC 294 [53]-[57].

49. Ahmed can be distinguished from the present case, however, because the seizing authority in Ahmed did not put its forfeiture case on the additional/alternative Limb B basis; there was no evidence that the appellant had intended to use the cash in future unlawful conduct; all he did was keep the cash in his house.

50. This authority is limited to the approach to be taken in respect of Limb A cases and limited to the narrow facts that arose in that case, pecuniary advantage from Cheating the Revenue with no subsequent laundering of funds. The present case is vastly different, and the Applicant relies additionally on money laundering offences as the basis for the AFoO applications under Limb A and Limb B.

Limb B

51. To engage Limb B, it is not necessary to show that the frozen funds in the 6 accounts the subject of the AFoO applications were obtained by unlawful conduct at all. This is clear from the wording of s.303Z14(4)(a) and (b) POCA (see §72 above). An AFoO may be made if the Court is satisfied either that the money or part:

a. Limb A – is recoverable property; or

b. Limb B – is intended by any person for use in unlawful conduct.

52. “For use” is not defined in POCA. The meaning of the noun form was considered in an asset forfeiture case, Begum v West Midlands Police [2013] 1 WLR 3595 at [17]:

> “[17] The word ‘use’ is employed as a noun in section 298(2)(b) and in other sections where that word appears in this part of the 2002 Act. The noun ‘use’ has various connotations, but in this case I think that its sense, when used in conjunction with some other noun (such as ‘cash’ as in this instance) is that of ‘the application’ of the other thing (in this case the cash) for some purpose which, in this case, is that of intended unlawful conduct …”

53. It is therefore clear that Limb B is a forward-looking provision and deliberately so. The purpose of this legislation is to remove monies that derive from unlawful conduct, but of course also to remove monies that may derive from non-criminal sources but which the Court is satisfied are intended for use in unlawful conduct, and thereby prevent future criminality.

54. This is consistent with the preamble of POCA, in which one of its purposes is stated as “An Act … to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct.”

55. Support for this analysis is found in Sandhu v Chief Constable of the West Midlands Police [2019] EWHC 3316 (Admin). Sandhu concerned a cash forfeiture application under s.298(2)(b) POCA which is worded identically to s.303Z14(4)(b). At [30], the Court described Limb B as “a provision which in appropriate circumstances would permit the seizure of money of undoubtedly innocent origin.”

56. See also Fletcher v Chief Constable of Leicestershire [2014] Lloyd’s Rep. F.C. 60, another s.298 POCA case, in which an honest man found a large amount of cash which was subsequently made the subject of a cash forfeiture order. On appeal by way of case stated, Lewis J considered Limb A and particularly Limb B, and concluded at [34]:

> “Parliament intended to enable property obtained through unlawful conduct or intended for use in unlawful conduct to be liable to forfeiture as appears from the preamble and the structure of the Act. Section 298(2)(a) and (b) achieve that purpose. The Act was not intended to restrict forfeiture to cases of property being obtained through criminal conduct. It intended to provide for forfeiture in a broader range of cases. The fact there may be very many cases where property could be forfeited under 298(2)(b), but could not be forfeited under section 298(2)(a) of the 2002 Act would not, therefore, lead to results which are contrary to the Parliamentary intention. In the circumstances, therefore, in my judgment, on a proper interpretation of section 298(2)(b), the cash was capable of being forfeited in the present case on the basis of the inferences that the Crown Court drew.”

Limb B and money laundering offences (s.327-329 POCA)

57. The money laundering offences alleged are:

a. S.327 POCA: Concealing, disguising, converting or transferring criminal property or removing criminal property (Archbold 26-11). Concealing or disguising criminal property

includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it: s.327(3).

b. S.328 POCA: Entering into or becoming concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

c. S.329 POCA: Acquiring, using or having possession of criminal

58. By s.340(11). money laundering is an act which:

a. constitutes an offence under section 327, 328 or 329,

b. constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

c. constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

d. would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

59. For a money laundering offence to be established, it is necessary to show that the conduct occurred in respect of "criminal property" which is defined in s.340 POCA in very wide terms, including:

s.340(2) Criminal conduct is conduct which—

a. constitutes an offence in any part of the United Kingdom, or

b. would constitute an offence in any part of the United Kingdom if it occurred there.

(3) Property is criminal property if—

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property, real or personal, heritable or moveable; (c) things in action and other intangible or incorporeal property.

60. Thus, the effect of s.340(3)(a) POCA is the concept of "fungibility", meaning (in a Cheating the Revenue / tax / VAT evasion case), that the criminal property is the entirety of the undeclared turnover, and not merely the tax due, because the benefit is represented in part by that sum.

61. In Sandhu the Applicant alleged Limb B on the basis that the future offence (the offence for which the property was intended for "use in unlawful conduct") was a money laundering offence under s.327-329 POCA. The case concerned a large quantity of cash. The key points were:

a. The applicant asserted that the circumstances were such as to give rise to an irresistible inference that it could only be derived from crime and therefore the seized cash was intended to be used for money laundering offences in the future [3].

b. It was not suggested that the applicant was able to prove that the source of the cash was a specific crime, or crimes, or one of a specific type of crime.

c. At [10], the Court (referring to Limb A and Limb B) stated that the provisions "refer to the two distinct situations of property obtained through unlawful conduct and property which is intended to be used in unlawful conduct."

d. At [19]-[22], the Court cited with approval the previous decision of the Administrative Court in Fletcher, see above. Lewis J held that "the Crown Court had been entitled to find on the balance of probabilities that the cash had originally been obtained by unlawful conduct of an unidentifiable kind, and that the hider had intended to use it in unlawful conduct, because almost any use of the cash would almost inevitably have involved an offence under section 327 of the 2002 Act."

e. At [20], the Court observed that in Fletcher, Lewis J:

"… noted that the second limb focuses on whether the cash is intended by any person to be used in unlawful conduct as that term is defined in section 241 of the 2002 Act. He referred to R v Anwoir and others [2008] EWCA Crim 1354 ("Anwoir"), in which the Court of Appeal, Criminal Division had held that for the purposes of sections 328 and 340 of the 2002 Act, there were two ways in which the prosecution could prove the property derived from crime: "a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime".

f. At [22] the Court in Sandhu referred to the conclusion in Fletcher [34] which has already been quoted at §77 above.

g. The Court in Sandhu then concluded (emphasis added):

"26. At the heart of Mr Schofield's argument was his submission that section 242(2)(b) is of general application in any circumstances in which forfeiture is sought of cash said to have been acquired by criminal conduct and, in particular, is applicable to both the first and second limbs of section 298(2). We are unable to accept that submission. It is in our view clear that section 242(2)(b) does no more than provide a definition, for the purposes of Part 5 of the 2002 Act, of the words 'property obtained through unlawful conduct'. We see no basis on which that definition can be said to be relevant to the distinct situation, contemplated throughout Part 5, of property which is intended to be used in unlawful conduct. In the present case the relevant unlawful conduct is conduct which constitutes an offence under section 327 of the 2002 Act."

… 28. As for the second limb, the decision in Fletcher is directly in point, and we respectfully agree with Lewis J's analysis in that case.

29.As we have indicated, the unchallenged finding of the Crown Court in the present case was that the cash seized from the appellant came from some form of criminal activity, although the type of activity could not be identified, and that the appellant intended at some future time to conceal, transfer or convert it. Anwoir, which is Court of Appeal authority binding on this court, makes clear that for the purposes of section 327 of the Act, it is not necessary to show the precise type of crime from which the property was acquired if the circumstances are such as to give rise to an irresistible inference that it could only be derived from crime. In those circumstances the Crown Court was in our judgment correct to order forfeiture. It was entitled to infer on the balance of probabilities that the cash came from criminal activity and that the appellant's intended use of it would constitute a money laundering offence. The cash was therefore 'criminal property' as defined in section 340(11) of the 2002 Act, and the appellant's intended use of it would be a criminal offence and would thus be 'unlawful conduct' as defined in section 241(1).

Thus, all the necessary elements for an order pursuant to section 298(2)(b) were established.

30. We agree with Mr Schofield that this interpretation produces what may at first glance seem an odd result, in that it appears to relieve the relevant authority of a burden which it would carry if it brought its application under subparagraph (a). However, like Lewis J in Fletcher, we regard that as the inescapable result of the statutory provisions and consistent with the intention of Parliament. In particular, we agree with Lewis J at paragraph 30 of his judgment that the interpretation for which Mr Schofield contends would make it necessary to read into the statute words which are not there. Further, we accept Mr Fortt's submission that it is difficult to see why, in a provision which in appropriate circumstances

would permit the seizure of money of undoubtedly innocent origin, Parliament should have intended to exclude the seizing of property which was clearly criminal …"

62. There is Court of Appeal (Criminal Division) authority on the circumstances in which property that has been lawfully obtained can become criminal property

63. In addition to Ahmed, in R v K (I) [2007] EWCA Crim 491 [2007] 1 W.L.R. 2262 (Dyson LJ) ("R v K"), a defendant (MR) was charged with Cheating the Revenue by failing to declare over a number of years the takings of his legitimate grocery business and with laundering the undeclared takings by transferring the money out of the jurisdiction via a money transfer business run by the other two defendants, SK and IK, who were both charged with money laundering. The Crown's case was put on the basis that the money of which the revenue was cheated by MR was criminal property, in that he had systematically cheated the revenue of tax and VAT between 1 January 1999 and 6 December 2003 (count 11). The banknotes which were the subject of count 12 were undeclared takings from MR's business and represented, at least in part, tax and/or VAT of which the revenue had been cheated [8]. Count 12 was restricted to the sum of £200,000 which, the prosecution alleged, SK and MR intended to transfer [19]. The trial judge acceded to a submission of no case to answer and withdrew the counts of money laundering from the jury. The prosecution appealed that terminating ruling.

64. The issue was whether the proceeds of Cheating the Revenue can amount to "criminal property" within the meaning of s.340(5) POCA, where the trade whose profits are liable to income tax or whose turnover is subject to VAT is a legitimate trade ([1]).

65. At [20]-[23], Dyson LJ held (emphasis added):

20. Was it open to the jury to find that the £200,000 was "criminal property"? In our judgment, a person who cheats the revenue obtains a pecuniary advantage as a result of criminal conduct within the meaning of section 340(6) of POCA. We did not understand Mr French to contend otherwise. Accordingly, MR was taken to have obtained a sum equal to the value of the amount of which the revenue was cheated: again, section 340(6). That sum is a benefit by reason of section 340(5). The question is whether the undeclared takings "constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly)": section 340(3)(a).

21. To take a simplified paradigm case, let us suppose that over a two year period D fraudulently underdeclares the takings of his business by £250,000 per annum with the result that he deprives the revenue of £100,000 in income tax and £25,000 in VAT in each of the two years. In each year, D has obtained a pecuniary advantage of £125,000 as a result of his Cheating the Revenue. That is a "benefit" within the meaning of section 340(3)(a) of POCA. The undeclared takings of £500,000 "represent" that benefit "in part" within the meaning of section 340(3)(a) in the sense that the undeclared takings of £500,000 should have borne tax and a sum representing or equivalent to part of that figure should have been paid in tax.

22. We did not understand Mr French to contest any of this. He submitted that, if a trader receives or retains money received legitimately in the course of business, but whilst doing so harbours a secret intention not to disclose the true trading levels to the revenue, the mere fact of harbouring such a secret intention cannot convert the legitimately received or retained funds into criminal property within the meaning of POCA. He said that such funds would only become criminal property once a false declaration was made.

23. We are prepared to assume that these submissions of Mr French are correct. In the present case, the prosecution submitted that it was open to the jury to infer that part of the £200,000 found in the circumstances in which the cash was found in this case, represented the fruits of cheating which had already taken place.

66. At [24]-[31], Dyson J distinguished a previous CACD decision (R v Gabriel [2006] EWCA Crim 229; [2007] 1 W.L.R. 2272) and held (emphasis added):

24. The basis on which the judge ruled as he did in relation to count 12 was that he was bound by R v Gabriel to do so. He ruled that the fact that the cash was the takings of MR's business was of itself fatal to the submission that it (or part of it) represented the fruits of criminal conduct and was therefore criminal property. MR's business was lawful and that was determinative of the issue. If that were correct, it would mean that the money laundering provisions of POCA can never be invoked in relation to tax evasion where the business concerned is engaged in a lawful trade or other activity. That would be a surprising conclusion to reach. It is clear from the pre- POCA jurisprudence that unpaid tax which was the product of cheating was a pecuniary advantage and, therefore, a "benefit" for the purpose of confiscation order proceedings under the Criminal Justice Act 1988: see, for example, R v Moran [2002] 1 WLR 253. It cannot have been intended that the money laundering provisions of POCA, particularly those relating to the obtaining of benefit in the form of a pecuniary advantage, should not extend to the fruits of Cheating the Revenue.

25. Was the judge bound by R v Gabriel so to hold? In our view, he was not. We agree that profits made from trading in legitimate goods without declaring the profits to the revenue or the Department for Work

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and Pensions do not become criminal property simply by reason of the failure to declare profits. The profits are not of themselves illegal or criminal property: they are the product of a business carrying on a lawful trade. We do not consider that the court in R v Gabriel went as far as the judge in the present case thought.

26. In para 20, Gage LJ started by saying that the jury's question assumed that a failure to declare income "per se gave rise to criminal property". It was the failure of the recorder to dispel that assumption which led to the court allowing the appeal. With respect to the court,

it is obviously right that a failure to declare income does not of itself give rise to criminal property. The point was made again in the penultimate sentence of para 20 and in the second sentence of para 21: "profits from legitimate trading could not constitute criminal property."

27. The nearest that Gage LJ came to saying anything that could support the judge's ruling in the present case was towards the end of para 20 where he said:

"However, we do not agree… that profits made from trading in legitimate goods, without declaring the profits to the Inland Revenue or the Department for Work and Pensions, could in any circumstances convert the profits into criminal property" [emphasis in original]. Judge Elwen may have been misled by this sentence. In our judgment, however, these words do not mean more than that profits from legitimate trading can never without more give rise to criminal property. Understood in this way, they are consistent with the other passages to which we have referred. They are also consistent with the recognition (at the end of para 21) that failure to declare profits may give rise to an offence and with the whole of para 23. At para 23, Gage LJ said that benefits obtained on the basis of a false declaration may amount to obtaining a pecuniary advantage (section 340(6)), but that was not how the prosecution had put its case."

28. If (contrary to our view) the judge was right in holding that R v Gabriel decided that the mere fact that a business is engaged in a lawful trade is of itself fatal to a successful money laundering prosecution based on takings not declared to the revenue, then that conclusion was not necessary for its decision, and, for the reasons that we have given, we would respectfully disagree with it. In R v Gabriel it was not necessary to analyse section 340 closely.

29. The view that we have expressed as to the scope of the decision in R v Gabriel appears to accord with that expressed by Professor Ormerod in his commentary [2006] Crim LR 854 on the decision. He argues that there are three potential ways of proving that the property which forms the basis of the charge of money laundering constituted "criminal property" within the meaning of section 340. The second of these is that the property was acquired as a result of legitimate dealing, but not subsequently declared as trading income for tax purposes. He says property so acquired is not criminal property, since there is no prior offence. D committed none in acquiring the property and at the time that D came into possession of the property, the fact that she had not declared it as trading income did not render it criminal property. There is no offence unless the Crown can prove cheat.

30. The difference between R v Gabriel and the present case is that in the present case, as was not disputed, the prosecution had made out a prima facie case of cheat.

31. We conclude, therefore, that the judge was wrong to withdraw count 12 from the jury.

67. In R v William (Venus Rose) [2013] EWCA Crim 1262 ("R v William"), the Court of Appeal Criminal Division (CACD) dealt with another case which concerned money laundering offences derived from the turnover of a legitimate business that was siphoned off by the business owner (Isaac) so as to cheat the Revenue. That turnover was paid into accounts of various businesses owned by Isaac and then into various accounts either in his own name or controlled solely or jointly by other family members (his co-defendants) and transferred on by them, including sending it abroad and purchasing property. The prosecution case against the co-defendants was that they assisted Isaac in laundering the money. The Court held (emphasis added):

25. In order to put this argument in context, it is necessary to set out the relevant law. An offence under section 327 of POCA is committed if, inter alia, a person converts or transfers criminal property.

Criminal property is defined by section 340(3) as follows:

"(3) Property is criminal property if –

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit." The reference to "in whole or in part" is important because it shows that the whole property is treated as criminal property, even where only part of it represents benefit from criminal conduct.

26. Section 340(6) is also important in the context of this case: "(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage." This means that someone like Isaac William, who cheats the Revenue by failing to pay the tax he should pay, has obtained a pecuniary advantage and therefore is taken to have obtained a benefit within the meaning of sub-section (3) which is equal to the pecuniary advantage.

27 The value of that benefit is the amount of the tax unpaid. In cases where the turnover is falsely represented, the benefit is the tax due on the undeclared turnover. However, the criminal property as defined by section 340 is the entirety of the undeclared turnover and not merely the tax due because the benefit is represented in part by that sum.

28. This analysis is, in our view, supported by the judgment of Dyson LJ as he was, in R v K (I) [***Supra***] …

29. Dyson LJ noted that if the monies were not criminal property as defined, the result would mean that the money laundering provisions could never be engaged with respect to offences of cheating the Revenue. So the whole amount is criminal property. There is a distinction between the sum constituting the pecuniary advantage and the monies falling within the definition of criminal property, which is no doubt designed to make the money laundering offences potentially broad in scope.

68. Applying the above analysis, the CACD held at [33], that since Isaac pleaded guilty to 10 charges of income tax fraud and VAT evasion for the years identified in the particulars in respect of each of these appellants, the monies transferred into their accounts must have been criminal property, subject to the requisite knowledge or suspicion.

Inferences from a failure to provide explanations

69. In SOCA v Namli [2013] EWHC 1200 (QB), Males J stated:

"48. Whether an adverse inference is appropriate will inevitably depend on the detailed circumstances of each individual case. But, in an appropriate case, it is clear that such an inference can properly be drawn from a failure to provide an explanation of apparently suspicious dealings and that doing so does not involve an inadvertent reversal of the burden of proof, which remains on SOCA throughout: see also Olupitan v. Director of the Assets Recovery Agency in the Court of Appeal [2008] EWCA Civ 104 at [30] and [31].

49. Putting this in crude terms, and not forgetting SOCA's burden of proof, if a transaction looks like money laundering and has not been satisfactorily explained by a defendant who ought to be in a position to explain it if there is an innocent explanation, that is probably what it is." 5

Evidence

70. The evidence of DC Hughes is set out in her witness statements and how she puts the context and evidence together to demonstrate the money in the 6 accounts amounts to recoverable property, the cross examination , aside from account 2 , for the reasons set out above, was not subject to factual challenge but rather how the accounts were in the real names of the brothers and from legitimate businesses rather than sham companied or enterprises, that was accepted by the applicant but they focus on the underlying criminality in laundering what amounts to money gained by cheating the revenue , meaning the monies are subject to forfeiture.

71. For convenience the evidence of how each account came into existence and the relevant movements to and from the accounts the following summary suffices.

Account 1 (J) Stripe ZAhk

The entire $12 million that was received into this account between the date that it opened on 2 February 2019 and 23 June 2022 (the date that Stripe put a stop on the account), derives from their business revenue (products purchased online from their Cobra tate shop via Gumroad and Shopify apps).

Of this $12m in business revenue (turnover), approximately $1,591,233.71 came from British bank cards with payments made in GBP. These British payments commenced on 2 February

2019 (the date the account was opened) and ended on 23 June 2022 and were spread throughout the period (see KH§129, A/65 and KH/3g).

The $12m was transferred to EAT or TT personal bank accounts (§27-36 above summarises what then happened to the funds transferred to EAT and TT and the I2 charts (KH/2, KH/39) show this in stark summary).

Revolut 0972 was the ultimate recipient of some £5,145,897 of the funds from Account 1 (£5,640,000 in total was received into Account 5 from all Stripe accounts). Account 5 (EAT) Revolut 0972 made a number of large purchases of expensive motor vehicles (see also KH/23 (amended version)) and also funded rent on two properties in Romania, connected to the modern slavery allegations that the Respondent brothers are facing there.

Account A (EAT) Natwest 6498 received £413,440.25 and Account O (TT) Wise 3662 held under the name 'Scorpius' received £728,806.73.

Account 3 (EAT) Metro 0099

This is an EAT personal account which was opened on 1 January 2019. It was frozen on 12 January 2022. The balance was £35,035.

Between 26 October 2020 and 19 May 2022, the account received a total of £5,892,288.84 in credits from EAT's various Stripe accounts. Gary Craig (Section 6, T/61-66) asserts that the source of funds into the Stripe accounts was customer purchases of the Respondent brothers' online products and therefore revenue from their business activities. This is supported by DC Hughes' analysis of the Stripe accounts (KH/3g).

During the same period, some £4.7m was transferred out to Account 5 EAT Revolut (0972) in multiple faster payment debits with the reference "Rev Only Fans".

Other payments to EAT accounts are made including a transfer to Account 3 – "EA Tate" £73k, £20k on 22 February 2022, Account 7 £55k, "Tate Rev" £43k and "American Express" £811,902.98, "Cannon Run Tate" £81k (a company account for a UK company, "The Cannon Run Ltd". EAT became a director of this company from March 2022 to 15 December 2022.

Account 4 (EAT) Metro 0741

This is an EAT personal account opened on 20 April 2022. It was frozen on 12 October 2022 with £22,659.13 in the account. This was a personal savings account, which would therefore not appear on EAT's credit file.

It received £73k in smaller payments from Account 3 with the reference "E A Tate".

Payments into this account are closely followed by corresponding payments out to EAT accounts including Account 5 (EAT) Revolut 0972 (£20,000 with payment reference "Rev Onlyfans" and £20k described as "Rev Onlyfans" (another EAT account).

Account 5 (EAT) Revolut 0972

This account is a personal EAT account. It was opened on 14 September 2018 and frozen on 12 January 2022 with £126,272.13 in the account. It is a multiple currency account.

The following transactions into the account are proven

a. £4.7m was transferred out from Account 3 to Account 5 in multiple faster payment debits with the reference "Rev Only Fans".

b. £5,145,897.48 from Account 1 between 3 April 2020 to 20 May 2022.

c. £495,949.22 from 22/6/22 – 29/6/22 from Account U, derived from the £805,016.78 from Account 1 on 22 June 2022.

d. £50k from Account A which derives from Stripe payments (KH/39 I2 chart).

e. £56k from Account L which derives from Account A which was funded by Stripe payments.

f. There are also £2,613 direct credits from Fenix International (OnlyFans) between 13 October 2019 and 30 September 2020.

On 28 October 2021 and 8 November 2023, Account N (TT) Revolut 5126 received $375 and $1,752 derived from webcam activities from Female D and E (both complainants in the Romanian criminal proceedings. These amounts are transferred to Account 5 (exhibit KH/29, transfers of funds received by TT and onwards movement).

Withdrawals from this account included:

a. $176k withdrawn in cash (163k in GBP).

b. EAT transferred £792,268.89 in debit payments of between £3,000 and £30,000 to Account S (TT) HSBC 4634 and £175,877 to a female in the UK.

c. Between 2021-2022, Account 5 (EAT) Revolut 0972 sent approximately £2,120,174.99 to Romanian accounts with the reference "Emory Tate and Sons" and £567,271.49 to "Talisman Enterprises Srl". These are the names of the companies and accounts registered in Romania and referenced in Prosecutor Rares-Petru Stan's report (KH/15, A287-293, AIH/3). According to the report, the Tate's have not registered any income in respect of the same in Romania. Emory Andrew Tate & Sons SRL had not declared an income or paid any tax. Talisman Enterprises SRL owned mainly by TT under-declared turnover and paid no tax.

a. KH/23 (A/381-382) demonstrates the use of the funds credited to Account 5 for debit payments referencing prestige vehicles such as a Bugatti £689,971.29, Lamborghini $644,464.62, Aston Martin £183,935, Maclaren £332,885.89 and unknown vehicle

£180,000. EAT has publicly boasted "So I have 36 cars right? Let's take one of them. Let's take the Bugatti that's 5.2 million …" and "So me and Tristan just spent 350 grand on Christmas presents right" (exhibit JH/01, a transcript of YouTube exhibit MWS/050324/2, A/577).

b. Account 5 funds appear also to have been used to purchase a property in Dubai (£1,369,262.30).

c. Other transfers are made to EAT and TT's various personal accounts.

d. As regards Romanian transactions:

i. £499,342 to the Respondent brothers' co-accused in the Romanian proceedings, Georgiana Naghel between March 2020 and August 2022 (see KH/25, A/386389). A debit payment in excess of £3,000 was also made in February 2022 referenced 'To Radu Naghel (another co-accused) (exhibit KH/24, A/384).

ii. EAT made a transfer of £100 from Account 5 (EAT) Revolut 0972 to Female A on 7 February 2022, one of the complainants in the Romanian criminal proceedings (exhibit KH/28, A/396).

iii. On 4 December 2020, Account 5 received two credits from the Stripe account. Eight minutes after the funds are credited, EAT transfers €4,000 (Euros) reference "Andrei Vlad Blaj. These appear to be the forenames of at least two of the persons indicted by DIICOT in Romania in connection with similar offences with which the Respondent brothers are accused.

iv. On 8 April 2022, EAT received a transfer of 20,000 RON (approx. £3,450 GBP) to Account 5 (EAT) Revolut 0972 from Vlad-Cristian Obusic (also associated with the Romanian criminal proceedings).

v. On 8 April 2022, a debit transfer was made from Account 1 (J) Stripe ZAhk to Account 5. On the same date, EAT transferred £20,000 from Account 5 to his Account 3 and just over £5,000 to his co-accused, Georgiana Naghel.

Account 6 (EAT) Global 6836

This account was opened by EAT on 10 August 2022 using his UK identification, UK address and note A/168: "Q4: What country does the client reside in? United Kingdom". It was frozen on 27 June 2023 with the balances £19.50 GBP, $180,521.09 and Euros 203,510.47. The account was opened with transfers of £100 & £20,000 from Account 5 (EAT) Revolut 0972.

Account 6 received:

a. $1,160,861(USD) and €175,884 (EUR) from I M Spolka Z Orgraniczona with the first credit of $133,906 being received on 6/9/2022.

b. 'Empire Legal' credited the account with $460,500 (USD) between 27/9/2022 – 29/112022.

c. A credit of $100,000 (USD) was received on 18/10/2022 from an account titled 'New Era Learning LLC'.

Account 6 also received credits from EAT's own accounts:

a. £39,845 GBP between 27 November 2022 to 2 December 2022 from Account E (EAT) Starling 9025.

b. £20,000 GBP on 28 October 2022 from Account D (EAT) Monese 7524.

c. £80,000 from Account 3 (EAT) Metro 0099 between 15 September 2022 and 5 October 2022.

d. £22,460 between 14 September 2022 and 5 October 2022 from Account 4 (EAT) Metro 0741.

e. £20,100 between 10 – 18 August 2022 from Account 5 (EAT) Revolut 0972.

f. 300,000 from a UAE account titled with EAT's name.

The account received approximately £1.1m in credits between 10 August 2022 to 30 December 2022 from the Respondent brothers' account with Shajah bank in Dubai held under New Era Learning LLC and the companies IM Following Spolka Z Ograniczona, Empire Legal PLCC, referenced as "'commission', influencer marketing and processing" A/70.

Account 6 received £182,405 credits from EAT's own accounts, including Account E (EAT) Starling 9025 and Account 5 (EAT) Revolut 0972 (£20k) which all received funds redirected through the accounts from Stripe payments.

Account 7 (TT) Revolut 5574

This TT personal account was opened on 13 December 2018, giving his UK address, and frozen on 12 October 2022. The frozen funds are £657,964.66 GBP, Euro 108.13, 336.02 (RON), 20 SEK, $0.71 USD.

Account 7 was funded by:

a. £379,349 credits transferred from the Account N (TT) Revolut 5126 which he opened under the name Goosefamoose Ltd, the company which Mr Craig implausibly, given this evidence, states never traded; and which was dissolved without making tax returns or registering for VAT, part of the pattern of TT companies which Mr McShane (HMRC, §4, 5, 78) notes is "commonly described as corporate phoenixism".

b. Account N (TT) Revolut 5126 was funded by £495,602 credits from adult creator website, Fenix International Only Fans and £483,177 from Stripe payments UK.

c. In July and August 2021 Account 7 received £12,294.47 directly from the adult creator website, Fenix International Only Fans.

Account 7 received £770,603 in credits from EAT's accounts including Account 3 (EAT) Metro 0099 (£55,000 funded by the accrual of Stripe credits within Account 3) & Account 4 (EAT) Metro 0741 (£2,500 funded by the transfers from Account 3), £713,103 from Account 5 (EAT) Revolut 0972 transferred between 14 September 2021 and 27 August 2022 (mainly funded by the accrual of Stripe funds; regular credits of £20,000 from Account 3 (EAT) Metro 0099 funded by Stripe funds; funds sent to this account from Account N (TT) Revolut 5126 funded by Stripe credits; and £45,000 in receipts from the New Era Learning LLC). These large credits into Account 7 (TT) from EAT's accounts underlines the very close association between the brothers in their personal accounts as in their public profile.

Account 7 (TT) Revolut 5574 was also credited with £549,726.02 between 27 August 2021 and 3 September 2021. Although Mr Craig states that these funds came from TT's own cryptocurrency account ending "FRCI with the company Payward Ltd", DC Hughes has

reviewed the U.K. accounts of TT and has not located corresponding debit payments from those accounts to the Payward account ending 'FCRI. This suggests the credits to the Payward account which are then withdrawn into Account 7 (TT) Revolut 5574 are from an unidentified source.

Account 7 also received £640,625.03 from Account O (TT) Wise 3662 (KH/2), which TT opened under the name Scorpius Ltd. Exhibit KH/13 (A/268) shows that TT had registered Scorpius Ltd with Companies House, but the company was dissolved without submitting any financial records or declared income.

Between 4 January 2022 and 4 April 2022, Account 7 received €17,277 (EUR) from the codefendant in the Romanian criminal proceedings, Georgiana Naghel.

In 10-13 October 2021, 3 credits relating to Females C, D and E's webcam activities (complainants in the Romanian criminal proceedings) were transferred on to Account 7.

Between 25 February 2019 and 25 August 2022, Account 7 transferred approximately £89,813.14 to the co-defendant in the Romanian criminal proceedings, Georgiana Naghel. The transfers were broken down into currencies £37,220.80 GBP; €16,650.30 Euros =£14,818.02 GBP, $18,167.11 USD =£15,147.92GBP, 124,514.00 RON =£22,627.20GBP.

On 30 August 2022, Account 7 sent €1,000 EUR to the co-defendant in the Romanian criminal proceedings, Alexandra-Luana Radu (relevant for the reasons explained at §36 above).

Findings

72. It is important to remember that the only evidence have received is that from the applicant, the respondents have served no evidence at all. I have carefully considered all the served material and make the following findings.

73. Since 2017, the Respondent brothers have been living and conducting their business activities between Romania and the UK.

74. In respect of account 1 the Respondent brothers were therefore liable to register with the tax authorities and declare and pay income tax/VAT on revenue in the UK and/or Romania. The evidence from Ms Richards of Sedulo (Romania) and Mr McShane of HMRC (UK) sets out what is required in each jurisdiction regarding registration with the tax authorities, filing returns and payment.

75. In terms of VAT, Mr McShane's evidence demonstrates that even if the Respondent brothers were resident in Romania during this period, they should still have registered for VAT, filed VAT returns and paid the VAT due each quarter in respect of cross border supplies of digital services to UK consumers (PM§ 67, 72-73, 78).

76. The Respondent brothers did none of the above over the entire 3 years 4 months that this account was opened and none of the $12m has been declared or paid to the tax authorities in either jurisdiction.

77. I am satisfied on the balance of probabilities that the revenue from the Respondent brothers' businesses, accrued in Account 1, was, paid into a UK personal account; in J's name; moved into another J account and into the Respondent brothers' UK personal accounts; not declared to the tax authorities in the UK or Romania and no tax or VAT has been paid in the UK or Romania

demonstrating that this was intentional conduct by the Respondent brothers to evade their tax / VAT liabilities in either jurisdiction.

78. This finding is supported by EAT's public statements regarding authorities and tax and TT's "corporate phoenixism" in respect of his UK companies

79. I have no doubt that over the 3 years 4 months that this account was open, the size of the revenues accrued would have resulted in a significant income tax liability in either (or both) jurisdiction/s.

80. I also have no doubt that VAT should have been paid on at least the UK sales of digital services and that Romanian VAT thresholds were triggered and therefore VAT should have been paid on any revenue from at least Romanian customers.

81. I am satisfied on the balance of probabilities that in respect of the revenues accrued in Account 1, the Respondent brothers obtained a benefit from criminal conduct; pecuniary advantage representing unpaid tax and VAT from:

a. Cheating the Revenue (in respect of tax/VAT) contrary to Common Law; and

b. Tax / VAT evasion by the Respondent brothers in Romania.

82. I am further satisfied that this pecuniary advantage would have crystallised, as a minimum by the 2 June 2019 (UK VAT filing/payment deadline – one month after the first quarter), 31 January 2021 (UK income tax filing and payment deadline for tax year 2019/2020), 25 May 2020 (Romanian income tax filing and payment deadline) or within a few months of the opening of the account, once the Romanian VAT threshold of Euro 88,500 was reached, and every month thereafter.

83. Therefore the earliest date that any pecuniary advantage from the brothers' unlawful conduct accrued, and when s.340(3)(a) POCA is triggered on the entirety of the funds in the account, such that the entirety of the funds become criminal property, meaning in turn that possession of the money in Account 1 amounts to the s.329 offence of money laundering (acquisition, use and possession of criminal property) and transfers out of the account also engage the other money laundering offences (s.327 and s.328 POCA).

84. I am further satisfied that over time, further pecuniary advantage from the tax/VAT offences accrued on the account, which continues to taint the entirety of the funds in the account as being "criminal property" up to 5 August 2022 when the account was frozen.

85. In relation to Account 3 Monzo 0099 I am satisfied that in a similar MO, the Respondent brothers' revenue is not declared and no tax / VAT is paid. Instead, the money is moved through a number of other accounts controlled by the brothers, I am satisfied that this is to to disguise its origin and is then used by them to fund their lifestyles.

86. In relation to Account 4 (EAT) Metro 0741which was funded with revenue from the Respondent brothers' online business which flowed firstly into Account 3, was then moved into Account 4, and then transferred onto other EAT personal accounts was managed in this way so to disguise its origin.

87. None of this money was declared to the tax authorities in the UK or Romania and no tax or VAT was paid. Again, I am satisfied It was instead used to fund the Respondent brothers' lifestyles.

88. In relation to Account 5 (EAT) Revolut 0972 The Respondent brothers have not provided any company accounts or other evidence to demonstrate that Goosefamoose never in fact traded, the assertion in letter from lawyers g=has no evidential value and is contrary to the obvious inference

from the movement and deposits into the account, I am satisfied that the company funds were moved into the personal accounts of the Respondent brothers , to avoid detection and should have been declared by them as income and consequently tax paid on it. Equally I am satisfied that as Goosefamoose was a UK company, business profits should have been declared for corporation tax purposes.

89. Therefore, I find that Account 5 is used to receive funds from other accounts which derive from Stripe payments from customers of the Respondent brothers' business which they described as income, but which is untaxed. These funds are then dispersed throughout the brothers' UK personal accounts and £2.7m is transferred to their accounts in Romania in the names of their companies Emory Andrew Tate and Talisman. The only revenue declared during this period was in respect of Talisman which declared gross revenue of less than £1m. The other funds sent to Romania have not been declared. No tax or VAT has been paid on these funds in Romania or the UK.

90. In addition, I am satisfied that this account is used for payments connected to female complainants in the Romanian allegations and also significant payments to co-defendants in the Romanian criminal proceedings.

91. As the applicant submits, whether or not the Respondent brothers' webcam business activities amounts to modern slavery (and other) offences will ultimately be determined by the Romanian criminal courts, but for these purposes I am satisfied that none of these funds were declared to the tax authorities in either the UK or Romania, and it appears from that the primary recipient – their co-defendant Georgiana Naghel – did not declare or pay tax on the substantial income she received either.

92. This supports my finding that the Respondent brothers' entire financial arrangements are consistent with concerted tax evasion and money laundering.

93. In respect of Account 6 (EAT) Global 6836 I find that shortly after it was opened, substantial debit payments amounting to £194,000 were made to the Revolut account of the Romanian co-defendant, Georgiana Naghel, between 9 September 2022 and 24 October 2022

94. It is a fair and reasonable inference to draw , which I do, that this account is funded by business activities carried out by the Respondent brothers. None of the revenue has been declared to tax authorities in the UK or Romania; no tax or VAT has been paid.

95. Account 7 is funded by transfers from Account 1 and Stripe payments. No company accounts or any other documents have been supplied by TT to support the assertion made on his behalf that this company never traded, I am satisfied that as it is a UK company, business profits should have been declared for corporation tax purposes.

96. Goosefamoose and Scorpius were both UK companies registered by TT with Companies House, but struck off for not filing any accounts. Neither company declared any income or paid any tax or VAT, this demonstrates a pattern of registration of businesses, the opening of business accounts to receive monies, followed by the closure of the businesses without declaring any income, all the hallmarks of an apparently open and transparent financial picture but one used to mask the true origin or purpose of the funds through multiple movements , all of which are designed to hide the money from the tax authorities , as averred by the brothers in public statements.They have not registered for, declared, or paid income tax, corporation tax or VAT in either jurisdiction, other than the very limited filings of Talisman.

97. I am satisfied on the balance of probabilities that they have engaged in long-standing, deliberate conduct in order to evade their tax/VAT liabilities in both jurisdictions.

98. Thus , the funds in the 6 frozen accounts fall within Limb A because they are recoverable property ("property obtained through unlawful conduct") (s.304(1) and s.241 POCA) for the following reasons:

a. At least part of the frozen funds derive from:

i. The offence of Cheating the Revenue contrary to Common Law (Archbold 30134):

1. Cheating includes any form of fraudulent conduct which results in diverting money from the Revenue and in depriving the revenue of money to which it is not entitled.

2. It requires deliberate conduct by the defendant to prejudice, or take the risk of prejudicing, the Revenue's right to the tax in question, knowing that he has no right to do so.

99. In NCA v Feyziyev [2024] EWHC 501 (Admin) per Poole J at [13].

3. It is a conduct offence and no actual loss need be proved.

4. It does not require any positive act of deceit and can be committed by omission.

ii. A person who cheats the Revenue obtains a pecuniary advantage as a result of the criminal conduct which is equal to the value of the amount of revenue cheated (s.340(6) POCA). This amounts to a benefit from criminal conduct (s.340(5) POCA) and therefore is also a benefit from unlawful conduct (s.241 POCA).

100. At least part of the frozen funds derive from the Romanian Criminal offence of tax and/or VAT evasion contrary to Article 9(a) or (b) of Law No 241 of 15 July 2005 on preventing and combating tax evasion (KH/15c & KH/15e A/338, 348; AIH/1) which states that certain offences "shall constitute tax evasion", punishable by 2-8 years imprisonment or a fine for the following acts committed with the aim of evasion from fulfilling tax obligations. These include:

(a) hiding the asset or the taxable source;

(b) omitting, in full or in part, to record, in the accounting or other legal documents, the commercial operations conducted or the revenues earned.

c. This conduct, if carried out in the UK would amount to Cheating the Revenue and therefore would be unlawful conduct under UK criminal law (thereby satisfying the requirement in s.241(2) POCA, "Conduct which occurs in a country or territory outside the United Kingdom and is unlawful under the criminal law applying in that country or territory, and if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part.")

101. In addition, or in the alternative, the frozen funds (in their entirety) are property obtained through money laundering offences contained in ss.327–329 POCA (see §78 above).

102. By the time the funds were frozen in each of the 7 accounts, the Respondent brothers had been engaged in Cheating the Revenue in the UK and/or tax evasion in Romania for many years. There was therefore – as in R v K (see §83-86 above) and R v William (see §87-88 above) – crystallised cheating / tax evasion in either or both jurisdictions. The benefit from this criminal conduct is in the form of a pecuniary advantage from the non-payment of the income tax / corporation tax / VAT due on the undeclared revenues earned by the Respondent brothers' various online trading activities (s.340(6)

POCA). By the time the 7 accounts were frozen, this pecuniary advantage had been accruing for approximately 10 years and was continuing to accrue.

103. I am further satisfied that the 6 frozen accounts were used to launder the undeclared revenues from the Respondent brothers' business activities, by moving money through these accounts and into other accounts, held by them or J; used also for the purchase of properties, high value items and to fund their extravagant lifestyle. The 6 frozen accounts were therefore used to commit money laundering offences.

104. It is plain to me on the evidence that the Respondent brothers transacted the frozen funds in a way which would enable them to avoid paying tax / VAT, moving the funds through different accounts, names (J's and their own), forms (cash, fiat, crypto) and jurisdictions etc. in order to obfuscate the money trail and disguise its source.

Conclusion.

105. Whilst I commend the advocates for their thorough, intelligent and cogent submissions the reality is that this is a relatively straightforward case on the evidence that became overcomplicated by references to whether the predicate offence is Fraud pursuant to the Fraud Act 2006 or not. That was unnecessary and a took the focus away from the essence of the case, in my view, one need only focus on the inescapable evidential picture to determine the case, the money generated by the various business were online transactions which attracted VAT in the UK and / or corporation tax to the companies and or income tax by the respondents, and they had not so much as registered to pay or account for tax, whether personal or otherwise, let alone paid any tax, that , I am satisfied , was precisely the intention of T and T and is unequivocally founded on the evidence before me.

106. This court only needs to focus on that predicate offence (Cheat the revenue) and whether therefore all or only that part which is the tax owed is to be the pecuniary advantage and projecting forward whether the applicant can prove limb B .The court needs only look at the money laundering, references to Fraud are unhelpful and require unnecessary evidential considerations.

107. In determining the facts as I have found them to be above I do not need to draw any inferences from the lack of any evidence from the respondent's , the lack of any tax returns speaks to the case against them and is not undermined.

108. I am satisfied that this court can focus on 2 issues to determine the case, firstly, is limb 1 made out on the basis of the evidential picture that no VAT was accounted for let alone reconciled through VAT returns , and /or personal tax returns made ,on the balance of probabilities, and secondly, if I am satisfied that the money represents the proceeds of tax evasion of either type, whether the intended use of the monies was criminal as concealing the proceeds of crime and therefore money laundering and whether the "take all as a pecuniary advantage" principle applies , that is , does the whole amount become recoverable or whether just the amount evaded , if the answer is the latter the question raised is then what proportion becomes forfeited and how is that calculated.

109. In relation to Limb A , the evidential picture is overwhelmingly in favour of finding that the predicate offence of Cheat on the Public purse (Tax fraud) is made out on the balance of probabilities.

110. As to limb b and money laundering and "take all" one need not look any further than R v Williams, in which the court held that where a taxpayer cheated the Revenue by falsely representing the turnover of a business, he obtained a pecuniary advantage and was taken to have obtained a benefit equal to tax due on the undeclared turnover. However, the "criminal property", as defined by

the Proceeds of Crime Act 2002 s.340, was the entirety of the undeclared turnover, not merely the tax due.

111. Thus, there is ample evidence to find, on the balance of probabilities, that both Limb A and Limb B of s.303Z14(4) POCA are satisfied.

112. I therefore grant AFoO's in respect of all 6 frozen accounts, namely accounts 1 3, 4,5 6 and 7.

Account 2 (J) Gemini 4105

113. I have left account 2 until last as the issues, although similar, are different to those that apply to the other 6 accounts , which have the same overlapping issues both legally and evidentially.

The legal Framework - Cryptocurrency

114. Amendments to Part 5 of the Proceeds of Crime Act 2002 (POCA) are contained in section 180 of and Schedule 9 to the Economic Crime and Corporate Transparency Act 2023, which inserts new Chapters 3C, 3D, 3E and 3F of Part 5 setting out the cryptoasset specific forfeiture powers.

115. These powers are modelled on the existing forfeiture schemes in Chapters 3, 3A and 3B of Part 5, which enable the seizure, detention or freezing, and forfeiture of cash, listed assets and funds in relevant accounts, where all or part of the assets are recoverable property or are intended for use in unlawful conduct. Thus, the legal analysis above applies equally to Cryptocurrency.

116. Thus, a judicial authority may order the forfeiture of some or all of the cryptoassets detained in pursuance of an order under Chapter 3C, or frozen in a wallet under an order made under Chapter 3D, if satisfied that the cryptoassets are recoverable property or intended for use in unlawful conduct. Provision is made for the payment of reasonable legal expenses that a person has (or may reasonably incur in).

117. An order for the forfeiture of cryptoassets held in a wallet administered by a cryptoasset service provider requires the provider to transfer those assets into a crypto wallet nominated by an enforcement officer. Once the transfer is executed, the freezing order will cease to apply and the prohibition on making withdrawals or payments, or using the crypto wallet in any other way, will no longer apply.

Account 2 - Summary

118. The account was opened on 15 June 2022 with J's identity document and address (KH/5a, MC/485) and was frozen on 12 October 2022. EAT has registered as an interested party on this account (KH/1, MC/440).

119. When Stripe exited its relationship with EAT on 22 June 2022, a withdrawal of £805,016.58 was transferred the same day from the Account 1 (J) Stripe ZAhk to one of J's other personal accounts, Account U (J) Revolut 2207 (exhibit KH/3c, MC/466). These funds were immediately divided into amounts varying between £1,000 - £100,000 and transferred out over the next few days to other accounts held by EAT which included his Account 5 (EAT) Revolut 0972.

120. On 22 June 2022, £75,000 was transferred from Account U (J) Revolut 2207 to Account 2 and another amount of £75,000 was transferred to Account V (J) Kraken ARAI cryptocurrency account, also opened in J's name. Further transfers were made from Account U to Account V (£75,555 and £74,520 such that the total transfers into Account V totalled £225,075).

121. The £75,000 transferred to Account 2 was converted into cryptocurrency (USDC Stablecoin). On 15 July 2022, small withdrawals were made (100 and 20 USDC) to an unknown destination. The remaining funds in this account were moved by Gemini into a fiat account (and thus converted into money) and frozen on 12 October 2022. The current value is approximately £70,000.

122. J confirmed that she is not the beneficial owner of the funds in both Account 1 (J) Stripe ZAhk and Account 2 (J) Gemini 4105, held in her name, and would not defend any forfeiture proceedings ,save as now submitted in relation to the fairness of doing so.

123. The respondent brothers submit the account is not forfeitable as the applicant has failed to prove either limb A or limb or B .

124. I disagree with T and T , I am satisfied that the swift movement of £75,000 from Account 1 to Account 2, and the subsequent conversion into cryptocurrency was done in order to ensure that these funds remained concealed from the Romanian and UK tax authorities, to continue to evade tax / VAT liabilities. The use of J was to hide the fact that the money was connected to the respondent brothers for precisely this reason. That inference is both inevitable and clear from the evidence, any other explanation put forward in correspondence or submissions by the respondents is not underpinned by evidence served to prove the assertion, the assertion itself is NOT evidence.

125. In addition, I am satisfied that the transfer of £75,000 to Account 2 constitutes money laundering (s.327 / 328 POCA) and have no doubt that had Account 2 not been frozen, the funds would have been moved on into the Respondent brothers' personal accounts or cryptocurrency, consistent with their modus operandi in respect of all the other accounts. So much is clear from the frequency with which exactly such movements were made in respect of all the other accounts.

126.As to unfairness from the applicant initially applying under the incorrect provisions , I do not agree with J's submissions.

127. Firstly, the statutory test is made out , I am satisfied for the reasons above that limb A and / or B are made out on the same basis as the other accounts, the focus of the court should be and is on prejudice and the interests of Justice. The applicant accepts that at the time of seizure and freezing they wrongly identified the asset as fiat currency, at that time the above provisions relating to crypto assets were not in force, but it would have been open to the applicant o have made a seizure application at any time after commencement, J declared no beneficial interest in the asset and therefore suffers no prejudice in the applicant switching the basis of the application for forfeiture.

128. As to the interests of justice one must remember the purpose of the proceeds of crime legislation, the act allows for the confiscation of assets that have been obtained through criminal activity. But, the act also provides for the confiscation of money and assets even if they have been acquired through legitimate means where it can be shown that they are indirectly derived or intended for use in criminal activity. Paragraph thus the main purpose of the act is to confiscate the proceeds of crime and to prevent money laundering. It is true that the source of the funds was probably legitimate in the first instance, but the legislation is designed to deal with legitimately earned monies being used or intended for use in a criminal enterprise, here cheat on the revenue.

129. As such, it contains provisions that allow for the freezing and forfeiture of assets as well as the recovery of money that has been laundered.

130. It is sometimes called a draconian law but it is a necessary tool to help the authorities disrupt organised crime groups ,recover stolen funds and deter financial crime, it is an essential tool for

safeguarding communities against financial exploitation and protecting the integrity of the economy and the banking systems.

131. In that context the interest of justice dictates that applications are determined on the merits and whether the statutory test is made out unless the applicants behaviour is so egregious so as to amount to an abuse of the courts process, that is precisely what that jurisdiction is there to prevent, this case comes nowhere that level of unfairness and neither was it submitted that it does.

132.I am satisfied the intended use of the asset in account 2 was exactly the same as the other 6 accounts, indeed it is part of the overall criminality of deliberate and dishonest cheat of the revenue. I therefore order forfeiture of account 2 Gemini Crypto asset, as contained in Annex A attached.

Paul Goldspring

Senior District Judge (Chief Magistrate) for England and Wales

18/12/2024