Neutral Citation Number: [2020] EWHC 822 (Admin)

Case Nos: CO/1540/2019, CO/1541/2019, CO/1542/2019
CO/1543/2019, CO/1544/2019, CO/1545/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 April 2020

Before :

MRS JUSTICE LANG DBE

- -

Between :

NATIONAL CRIME AGENCY	**Applicant**
- and -	
(1) ANDREW J BAKER	
(2) VILLA MAGNA FOUNDATION	
(3) MANRICK PRIVATE FOUNDATION	
(4) ALDERTON INVESTMENTS LIMITED	
(5) TROPICANA ASSETS FOUNDATION	**Respondents**

- -
- -

Jonathan Hall QC and Tom Rainsbury (instructed by **National Crime Agency Legal Department**) for the **Applicant**
Clare Montgomery QC and Ben Watson (instructed by **Mishcon de Reya LLP**) for the **First Second and Fifth Respondents**
Alison Pople QC and Aaron Watkins (instructed by **Mishcon de Reya LLP**) for the **Third and Fourth Respondents**

Hearing dates: 10 & 11 March 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30 am on 8 April 2020.

Mrs Justice Lang :

1. This is an application by the Respondents, dated 4 September 2019, to discharge three unexplained wealth orders ("UWOs") and related interim freezing orders ("IFOs") (together "the Orders") made by Supperstone J. on 22 May 2019, pursuant to sections 362A to 362R of the Proceeds of Crime Act 2002 ("POCA 2002").

2. Supperstone J. made the orders at an *ex parte* hearing of applications by the National Crime Agency ("NCA"), which were filed without notice to the Respondents. In accordance with usual practice, the Orders provide that the Respondents to the UWOs, and anyone affected by the IFOs, may apply to the Court for their discharge or variation, which the Respondents subsequently did. Paragraph 12.1A of the CPR Practice Direction for Civil Recovery Proceedings sets out the procedure for "Variation or discharge of order or warrant".

3. The Orders obtained by the NCA, and the Respondents' relationship to them, are as follows:

   i) **UWO1** (CO/1540/2019) concerns 32 Denewood Road, London N6 4AH (Property 1). It is directed against the First Respondent ("Mr Baker"), who is President of the Second Respondent ("Villa Magna"), which is the registered owner of the property. It is accompanied by IFO1 (CO/1541/2019) directed against Mr Baker and Villa Magna.

   ii) **UWO2** (CO/1542/2019) concerns 33 The Bishops Avenue, London N2 0BN (Property 2). It is directed against the Third Respondent ("Manrick"), and is accompanied by IFO2 (CO/1543/2019) directed against Manrick and the Fourth Respondent ("Alderton"). Manrick and Alderton are the registered owners of the property.

   iii) **UWO3** (CO/1544/2019) concerns Apartments 9 and 14, 21 Manresa Road, London SW3 6LZ (Property 3). It is directed against Mr Baker, who is President of the Fifth Respondent ("Tropicana"), which is the registered owner of the property. It is accompanied by IFO3 (CO/1545/2019) directed against Mr Baker and Tropicana.

4. The NCA adduced extensive evidence in support of the applications from its investigator, Ms A. Kelly, to the effect that the properties were acquired as a means of laundering the proceeds of unlawful conduct by Mr Rakhat Aliyev ("RA"), a national of Kazakhstan, who died in prison in Austria on 24 February 2015.

5. Each UWO required the named Respondent to provide the information specified in the schedule to the UWO, by way of a video statement and production of documents. In summary, the UWOs sought information about the purchases and transfers of the three properties (in particular, how they were funded), and details about the registered owners and ultimate beneficial owners ("UBOs") of the properties. The response period in relation to all three UWOs was originally set at 22 July 2019, it was subsequently extended by consent, first to 9 August 2019, and then to 6 September 2019.

6. In a letter dated 9 August 2019 ("the 9 August letter"), the Respondents, together with the UBOs of the three properties, voluntarily provided extensive information about the

purchase and transfer of the properties, their registered owners, and the UBOs. The letter disclosed that the UBO of Property 1 and Property 3 is Mrs Dariga Nazarbayeva ("DN"), the ex-wife of RA. The UBO of Property 2 is their son, Nurali Aliyev ("NA"). However, the 9 August letter explained that the basis of the NCA's application was factually incorrect, as the purchases of the properties were unconnected to RA and his supposed criminal activities, and he was never the UBO of the properties.

7. The NCA refused to withdraw the UWOs, insisting that the named Respondents must comply with the terms of the UWOs. The Respondents and UBOs issued judicial review proceedings challenging that decision, and seeking interim relief from the UWOs' response deadline. The application for interim relief was granted by Supperstone J. on 5 September 2019, with the response time extended until seven days after the final resolution of the claim. Thereafter, on 7 October 2019, Supperstone J. refused permission on the papers on the basis that the discharge proceedings "will give the Claimants the opportunity that they seek to put their full case before the court for the discharge of the Orders…". Their renewed application for permission has since been stayed by consent pending determination of this application.

Facts

8. The facts relied upon by the NCA were set out in the core statement and three supplementary statements made by Ms Kelly, and the exhibits thereto. Ms Kelly also made a statement in response to the new matters in the 9 August letter. Counsel for the NCA provided a factual chronology to Supperstone J. which is attached as an Appendix to the judgment. It is not agreed.

9. The Respondents relied upon the facts as set out in the 9 August letter, and supporting documents, which were exhibited to the witness statement of Johanna Walsh, their solicitor. Ms Walsh also exhibited a copy of legal advice obtained from a Panamanian law firm regarding the legal position of the President of a Private Foundation in Panama which I considered on a *de bene esse* basis only, since Mr Hall QC objected to its admissibility, and it was not in the form of an expert report. After I expressed surprise at the absence of a witness statement from Mr Baker, he filed a short witness statement during the course of the hearing, which he attended.

Statutory framework

Introduction

10. UWOs were introduced by the Criminal Finances Act 2017 and inserted into Part 8 of POCA 2002, at sections 362A to 362R. They came into force with effect from 31 January 2018, and have retrospective effect.

11. Part 8 comprises a "toolkit" of investigative powers. UWOs are one of a number of investigation tools available to the NCA.

12. According to the Explanatory Notes to the Criminal Finances Act 2017:

> "**Overview of the Act**

> 1. The Criminal Finances Act 2017 makes the legislative changes necessary to give law enforcement agencies and partners new capabilities and powers to recover the proceeds of crime, and to tackle money laundering, corruption and terrorist financing.
>
> 2. The measures in the Act aim to: improve cooperation between public and private sectors; enhance the UK law enforcement response; improve our capability to recover the proceeds of crime, including international corruption; and combat the financing of terrorism.
>
> …...
>
> **Unexplained wealth orders**
>
> 12. The Act creates unexplained wealth orders (UWOs) that require a person who is suspected of involvement in or association with serious criminality to explain the origin of assets that appear to be disproportionate to their known income. A failure to provide a full response would give rise to a presumption that the property was recoverable, in order to assist any subsequent civil recovery action. A person could also be convicted of a criminal offence, if they make false or misleading statements in response to a UWO. Law enforcement agencies often have reasonable grounds to suspect that identified assets of such persons are the proceeds of serious crime. However, they are often unable to freeze or recover the assets under the previous provisions in POCA due to an inability to obtain evidence (often due to the inability to rely on full cooperation from other jurisdictions to obtain evidence).
>
> 13. The Act also allows for this power to be applied to politicians or officials from outside the European Economic Area (EEA), or those associated with them i.e. Politically Exposed Persons (PEPs). A UWO made in relation to a non-EEA PEP would not require suspicion of serious criminality. This measure reflects the concern about those involved in corruption overseas, laundering the proceeds of crime in the UK; and the fact that it may be difficult for law enforcement agencies to satisfy the evidential standard at the outset of an investigation given that all relevant information may be outside of the jurisdiction."

13. A revised Code of Practice was introduced with effect from 31 January 2018 to take account of the amendments made by the Criminal Finances Act 2017. Its purpose is to guide law enforcement officers in the exercise of their functions (paragraph 1).

The statutory provisions

14. The UWO provisions were considered by the Court of Appeal in *Hajiyeva v National Crime Agency* [2020] EWCA Civ 108.

15. Section 362A POCA 2002 provides, under the heading, "Unexplained wealth orders":

> "(1) The High Court may, on an application made by an enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled."

16. Section 362B POCA 2002 sets out the "Requirements for making of unexplained wealth order":

> "(1) These are the requirements for the making of an unexplained wealth order in respect of any property.
>
> (2) The High Court must be satisfied that there is reasonable cause to believe that -
>
> (a) the respondent holds the property, and
>
> (b) the value of the property is greater than £50,000.
>
> (3) The High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.
>
> (4) The High Court must be satisfied that -
>
> (a) the respondent is a politically exposed person, or
>
> (b) there are reasonable grounds for suspecting that—
>
> (i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or
>
> (ii) a person connected with the respondent is, or has been, so involved.
>
> …
>
> (7) In subsection (4)(a), 'politically exposed person' means a person who is -
>
> (a) an individual who is, or has been, entrusted with prominent public functions by an international organisation

> or by a State other than the United Kingdom or another EEA State,
>
> …
>
> (8) Article 3 of Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 applies for the purposes of determining -
>
> (a) whether a person has been entrusted with prominent public functions (see point (9) of that Article),
>
> (b) whether a person is a family member (see point (10) of that Article), and
>
> (c) whether a person is known to be a close associate of another (see point (11) of that Article)."

EU Directive 2015/849

17. EU Directive 2015/849 ("the Directive") requires Member States to take measures to combat the use of the financial system for money laundering or terrorist financing. The UWO provisions have not been transposed from the Directive, but subsection 362B(8) POCA 2002 applies Article 3 of the Directive to define provisions relating to "politically exposed persons". The Directive forms part of the background to the legislation, as explained by the Court of Appeal in Hajiyeva.

Summary of the UWO scheme

18. The effect of a UWO may be summarised as follows (all references are to POCA 2002):

    i) The order requires the respondent to provide a "statement": (1) setting out the nature and extent of their interest in the property in respect of which the order is made (subsection 362A(3)(a)); (2) explaining how they obtained the property (subsection 362A(3)(b)); (3) where the property is held by trustees of a settlement, setting out such details as may be specified (subsection 362A(3)(c)), and; (4) setting out "such other information in connection with the property" as may be so specified (subsection 362A(3)(d)).

    ii) The order may also require the respondent to produce 'documents' of a kind specified or described in the order (subsection 362A(5)).

    iii) If the respondent fails 'without reasonable excuse' to comply with the requirements imposed by the order within the period specified by the Court, the property is 'presumed' to be recoverable property (i.e. property obtained through unlawful conduct) for the purpose of any future civil recovery proceedings under Part 5 of POCA 2002, unless the contrary is shown (subsection 362C(2)). The presumption will apply only to the respondent's *interest* in the property (section 362C(3)(a)). However, where *inter alia* the respondent is a politically exposed person by virtue of being a 'family member'

of, 'close associate' of, or 'connected with' an individual entrusted with prominent public functions, the respondent's interest is "taken" to include any interest of that individual (subsections 362C(6)(b) and (8)).

iv) If the respondent complies (or purports to comply) with all of the requirements imposed by the order, the presumption will not apply (section 362D). The enforcement authority will then need to determine what (if any) enforcement or investigative proceedings are to be taken in relation to the property under Parts 2, 4, 5 or 8 of POCA 2002. If an IFO is in place, a determination must take place within 60 days of the date of compliance (subsection 362D(3)).

19. Under section 362A(2)(b) POCA 2002, it is expressly confirmed that the respondent "may include a person outside the United Kingdom".

20. The application requirements under POCA 2002 may be summarised as follows. Under subsection 362A(2)(a), the application must specify or describe the property in respect of which the order is sought (subsection 362A(2)(a)) and specify the person whom the enforcement authority "thinks" holds the property (subsection 362A(2)(b)).

21. The requirements for making an order under POCA 2002 are as follows:

i) under subsection 362B(2)(a), the Court must be satisfied that there is reasonable cause to believe that the respondent "holds" the property ("the holding requirement");

ii) under subsection 362B(2)(b), the Court must be satisfied that there is reasonable cause to believe that the value of the property is greater than £50,000 ("the value requirement");

iii) under subsection 362B(3), the Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purpose of enabling the respondent to obtain the property ("the income requirement");

iv) under subsection 362B(4), the Court must be satisfied that (a) the respondent is a politically exposed person ("a PEP") or (b) that there are reasonable grounds for suspecting that (i) the respondent is or has been involved in serious crime (whether in the UK or elsewhere) or (ii) a person connected with the respondent is or has been so involved ("the PEP/serious crime requirement").

22. If the requirements are fulfilled, subsection 362A(1) POCA 2002 provides that the Court "may" make an UWO. Thus, the Court retains a residual discretion whether to make an order.

The holding requirement

23. Under subsection 362B(2)(a) POCA 2002, the Court "must be satisfied that there is reasonable cause to believe that… the respondent holds the property".

24. Mr Hall QC referred me to judicial dicta on the meaning of "belief" and "suspicion":

i) "Belief and suspicion are not the same, though both are less than knowledge. Belief is a state of mind by which the person thinks that X *is* the case. Suspicion is a state of mind by which the person in question thinks that X *may be* the case." (per Laws LJ in *A and Others v Secretary of State for the Home Department* [2004] EWCA Civ 1123 at [229]).

ii) Belief is "a more positive frame of mind than suspicion." (*R (Errington) v Metropolitan Police Authority* [2006] EWHC 1155 Admin, per Collins J. at [27]).

25. A test of "reasonable cause to believe" is not the same as discharging a burden of proof, whether to the civil or criminal standard. But it does require objectively reasonable grounds for the stated belief. As Lord Hughes explained in *Re Assets Recovery Agency (Jamaica)* (2015) 85 WIR 440, at [19]:

> "Reasonable grounds for believing a primary fact, such as that the person under investigation has benefited from his criminal conduct, or has committed a money laundering offence, do not involve proving that he has done such a thing, whether to the criminal or civil standard of proof. The test is concerned not with proof but the existence of grounds (reasons) for believing (thinking) something, and with the reasonableness of those grounds. Debate about the standard of proof required, such as was to some extend conducted in the courts below, is inappropriate because the test does not ask for the primary fact to be proved. It only asks for the Applicant to show that it is believed to exist, and that there are objectively reasonable grounds for that belief."

26. It is ultimately for the Court, not the NCA, to determine whether there is "reasonable cause to believe". In *R (Bright) v Central Criminal Court* [2001] 1 WLR 662, which concerned production orders under the Police and Criminal Evidence Act 1984, Judge LJ said at 676:

> "In my judgment… it is clear that the judge personally must be satisfied that the statutory requirements have been established. He is not simply asking himself whether the decision of the constable making the application was reasonable, nor whether it would be susceptible to judicial review on *Wednesbury* grounds (see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223). This follows from the express wording of the statute, "If … a circuit judge is satisfied that one … of the sets of access conditions is fulfilled". The purpose of this provision is to interpose between the opinion of the police officer seeking the order and the consequences to the individual or organisation to whom the order is addressed the safeguard of a judgment and decision of a circuit judge."

27. The onus is on the NCA to satisfy the Court that the statutory conditions are met. In *Bright*, Judge LJ said at 677:

> "In my judgment it is…clear that the constable making the application must satisfy the judge that the relevant set of conditions is established. This appears to follow as an elementary result of the fact that an order will force or oblige the individual against whom it is made to act under compulsion when, without the order, he would be free to do otherwise. Again, if authority is required, I refer to the reasoning of Lord Diplock in *R v Inland Revenue Comrs, Ex p Rossminster Ltd* [1980] AC 952 where he said "the onus would be upon the officer to satisfy the court that there did in fact exist reasonable grounds."

28. It does not matter whether more than one person holds the property, nor whether the property was obtained by the respondent before 31 January 2018 when the legislation came into force (subsection 362B(5)(a) POCA 2002).

29. References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of the UK or another country (subsection 362H(5) POCA 2002).

30. Subsection 362H(6) POCA 2002 cross-refers to the provisions of section 414 POCA 2002 on the meaning of "property". Subsection 414(3)(za) POCA 2002 provides that a property is "held" by a person if he holds "an interest" in it. Subsection 414(3)(b) POCA 2002 provides that references to "an interest" are to "any legal estate or equitable interest or power".

31. Section 362H POCA 2002 addresses the holding of property by trusts and company arrangements. Paragraph 71 of the Explanatory Notes states:

> "Section 362H provides a broad definition of how an individual may 'hold' property, for the purposes of sections 362A and 362B. The definition is specifically broad enough to address circumstances where property is held in trust or owned in a complex corporate structure arrangement."

32. Subsection 362H(2) POCA 2002 sets out the cases in which a person (P) may be taken to "hold" property, namely:

    a) P has effective control over the property;

    b) P is the trustee of a settlement in which the property is comprised;

    c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

33. The term "effective control" is further defined in subsection 362H(3) POCA 2002 which provides:

> "A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person –

> (a) exercises,
>
> (b) is able to exercise, or
>
> (c) is entitled to acquire,
>
> direct or indirect control over the property."

34. The term "settlement" is defined in section 416 POCA 2002 as having the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005 ("ITTOIA 2005") which provides that: "settlement" includes "any disposition, trust, covenant, agreement or transfer of assets" (other than a charitable loan arrangement).

35. The term "trustee" is not defined in POCA 2002. However, the NCA relied upon the provisions concerning "connected persons" under sections 1122 and 1123 of the Corporation Tax Act 2010 ("CTA 2010"), which apply to the PEP/serious crime requirement (see subsection 362B(9)(b) POCA 2002). Subsection 1123(2) adopts the definition of "settlement" in section 620 ITTOIA, and subsection (3) provides:

> "For the purposes of section 1122 "trustee", in the case of a settlement in relation to which there would be no trustees apart from this subsection, means any person –
>
> (a)in whom the property comprised in the settlement is for the time being vested, or
>
> (b)in whom the management of that property is for the time being vested."

The income requirement

36. Under subsection 362B(3) POCA 2002, the Court "must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property".

37. In *Hussien v Chong Fook Kam* [1970] AC 942, which concerned the power of arrest under the Malaysian Criminal Procedure Code, Lord Devlin said at 948B-C:

> "Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: "I suspect but I cannot prove". Suspicion arises at or near the starting-point of an investigation of which the obtaining the prima facie proof is the end."

38. Property is "obtained" by a person if that person obtains an "interest" in it, meaning a legal estate or equitable interest or power (subsection 414(3)(a) POCA 2002).

39. Subsection 362H(4) POCA 2002 provides that, where a person is taken to hold property by virtue of subsection 362H(2) POCA 2002 (i.e. effective control, trustee of a settlement, or beneficiary), "references to the person obtaining the property are to be read accordingly".

40. Subsection 362B(6)(e) POCA 2002 provides that "where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest".

41. It is to be "assumed" that the respondent obtained the property 'for a price equivalent to its market value' (subsection 362B(6)(b) POCA 2002).

42. The "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application (subsection 362B(6)(d) POCA 2002).

43. Income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises (subsection 362B(6)(c) POCA 2002).

The PEP/serious crime requirement

44. Under subsection 362B(4) POCA 2002, the Court "must be satisfied that (a) the respondent is a politically exposed person, or (b) there are reasonable grounds for suspecting that (i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere) or (ii) a person connected with the respondent is, or has been, so involved".

45. A PEP means a person who is (a) an individual who is, or has been, entrusted with prominent public functions ("IEPPF") by an international organisation or by a State other than the United Kingdom or another EEA State; (b) a 'family member' of such a person; (c) known to be a 'close associate' of such a person, or; (d) otherwise 'connected with' such a person (subsection 362B(7) POCA 2002). An IEPPF is defined in Article 3(9) of the Directive.

46. By subsection 362B(9)(b) POCA 2002, section 1122 CTA 2010 applies in determining whether a person is "connected" for the purposes of section 362B.

47. Subsection 1122(6) CTA 2010 provides in respect of trustees of settlements:

> "(6) A person, in the capacity as trustee of a settlement, is connected with—
>
> (a) any individual who is a settlor in relation to the settlement,
>
> (b) any person connected with such an individual,
>
> ….."

48. In determining whether a person "is or has been involved in serious crime", subsection 362B(9)(a) POCA 2002 provides that a person is involved in serious crime in a part of the United Kingdom or elsewhere "if the person would be so involved for the purposes

of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act)".

49. Part 1 of the Serious Crime Act 2007 ("SCA 2007") contains provisions relating to Serious Crime Prevention Orders. Subsections 2(1) and (2) SCA 2007 provide:

> "(1) For the purposes of this Part, a person has been involved in serious crime in England and Wales if he–
>
> (a) has committed a serious offence in England and Wales;
>
> (b) has facilitated the commission by another person of a serious offence in England and Wales; or
>
> (c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in England and Wales (whether or not such an offence was committed).
>
> (2) In this Part *"a serious offence in England and Wales"* means an offence under the law of England and Wales which, at the time when the court is considering the application or matter in question–
>
> (a) is specified, or falls within a description specified, in Part 1 of Schedule 1; or
>
> (b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified."

50. Section 4 SCA 2007 contains supplementary provisions which confine the scope of subsection 2(1):

> "(1) In considering for the purposes of this Part whether a person has committed a serious offence–
>
> (a) the court must decide that the person has committed the offence if–
>
> (i) he has been convicted of the offence; and
>
> (ii) the conviction has not been quashed on appeal nor has the person been pardoned of the offence; but
>
> (b) the court must not otherwise decide that the person has committed the offence.
>
> (2) In deciding for the purposes of this Part whether a person ("the respondent") facilitates the commission by another person of a serious offence, the court must ignore–

> (a) any act that the respondent can show to be reasonable in the circumstances; and
>
> (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
>
> (3) In deciding for the purposes of this Part whether a person ("the respondent") conducts himself in a way that is likely to facilitate the commission by himself or another person of a serious offence (whether or not such an offence is committed), the court must ignore–
>
> (a) any act that the respondent can show to be reasonable in the circumstances; and
>
> (b) subject to this, his intentions, or any other aspect of his mental state, at the time.
>
> …"

51. Part 1 of Schedule 1 lists *inter alia*: money laundering offences under sections 327, 328 and 329 POCA 2002; fraud offences under section 17 of the Theft Act 1968 and sections 1, 6, 7, 9 and 11 of the Fraud Act 2006, common law conspiracy to defraud, tax evasion, bribery offences under sections 1, 2 and 6 of the Bribery Act 2010, blackmail under section 21 of the Theft Act 1968, and the offence of participating in activities of an organised crime group. Paragraph 14 identifies that inchoate offences are also included.

52. The NCA referred to *R v K* [2018] EWCA Crim 1432, in which the Court of Appeal considered the meaning of "facilitating" in section 4(1A) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, which creates an offence of intentionally arranging or facilitating the trafficking of persons for exploitation. Hallett LJ said:

> "46. Actus reus : In the context of the varying types of criminal trafficking at which these provisions are aimed, the two words 'arranging' and 'facilitating' travel are necessarily broad and should be construed accordingly. 'Arranging' is a common word which in our view needs no further explanation to the jury. 'Arranging' would include such matters as transporting B, procuring a third person to transport B, or buying a ticket for B. 'Facilitating' is intended to be different from "arranging" and would include "making easier". It is not sensible to lay down precise definitions of these terms.
>
> 47. In the course of argument, the Crown suggested that facilitating might mean 'making more likely to happen'. Conduct which makes travel more likely to occur may fall within, and be an example of, either "arranging" or "facilitating" but it will depend on the facts. There was also argument before the Court as to whether a simple instruction: 'go to [city]' or "go

> by train to [city] and then go to x address" was capable in principle of amounting to "arranging or facilitating" B's travel. The defendants argued that it was not; the Crown argued that it was. There is no issue of principle here. It is possible that in some circumstances a mere direction might suffice but the question is again one of fact. There is no fixed list of the conduct which can amount to either arranging or facilitating."

53. A person may also be involved in serious crime elsewhere than in England and Wales if inter alia that person has "conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside England and Wales (whether or not such an offence was committed)" (subsection 2(4)(c) SCA 2007).

Interim Freezing Orders

54. An IFO is an order which prohibits the respondent to a UWO, and any other person with an interest in the property, from dealing with the property (subsection 362J(3) POCA 2002).

55. The main conditions for making an IFO are that:

    i) The Court has made a UWO in respect of the property (subsections 362J(1)-(2) POCA 2002).

    ii) The order is being considered in 'the same proceedings' as those in which the UWO was made (subsection 362J(4)(b) POCA 2002).

    iii) It is "necessary" to make an IFO 'for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated' (subsection 362J(2) POCA 2002). See the guidance in the Code of Practice at [200].

56. The Court must discharge an IFO if it is notified by the enforcement authority that it does not intend to pursue further proceedings (subsection 362K(5) POCA 2002) or after 62 days of compliance with the UWO (unless an application is made for a Property Freezing Order, Interim Receiving Order or Restraint Order which has not been determined) (subsections 362K(3)-(4) POCA 2002).

57. The Court may vary or discharge an IFO at any time (subsection 362K(1) POCA 2002).

Grounds for discharge

58. The Respondents' grounds for discharge of the UWOs may be summarised as follows:

    i) Errors of law and approach by the NCA in the application of the requirements for the making of a UWO, as set out in section 362B POCA 2002.

    ii) Material non-disclosure by the NCA to the Judge at the *ex parte* hearing and inadequate inquiry by the NCA.

iii) The information now available demonstrates that the Orders were sought and made on a flawed basis.

59. There was no freestanding challenge to the IFOs. It was accepted that they would stand or fall according to the Court's decision in respect of the UWOs.

Conclusions

60. The Court's task is to decide whether or not the NCA's grounds for the making of the UWOs are lawful and justified, as at the date of this hearing, taking into account the new evidence which was not available to Supperstone J. at the *ex parte* hearing, and having had the benefit of legal submissions by the Respondents on the requirements for the making of a UWO under POCA 2002. Whilst I accord respect to Supperstone J.'s findings and conclusions, I recognise that I have had the benefit of a much longer and fuller consideration of the issues.

61. In this relatively new jurisdiction, I consider it is important not to lose sight of the relatively limited purpose of UWOs. A UWO is one of a number of investigative tools contained in Part 8 of POCA 2002 i.e. production orders, search and seizure warrants, disclosure orders, customer information orders, and account monitoring orders whose purpose is simply to obtain information. As the Code of Practice advises:

> "176. A UWO provides law enforcement with a tool to obtain information and documentation in relation to property that appears to be disproportionate to the known income of an individual or company. A fundamental aim of the power, therefore, is to access evidence that would otherwise not be available. Although not an absolute requirement, the applicant should consider whether alternative tools of investigation could be used in obtaining any relevant documents and information."

62. The investigative tools in Part 8 of POCA 2002 are intended to assist the NCA in conducting an investigation into whether property is 'recoverable property', i.e. whether it "is, or represents, property obtained through unlawful conduct": sections 240, 304-310, and 316, POCA 2002. If, upon investigation, the property is assessed to be "recoverable", then the statutory scheme anticipates an application being made for a civil recovery order of the property, i.e. forfeiture. That is the forum within which any disputes over the beneficial ownership of property and tainted gifts will be decided.

63. A UWO is potentially intrusive as it requires the respondent to make a statement, answer questions and disclose confidential records in respect of sensitive personal financial matters. The power is supported by the threat of forfeiture of the property itself in the event of non-compliance, and by criminal liability if a respondent (even recklessly) makes a statement that is false or misleading (section 362E POCA 2002).

64. The obtaining of confidential material using compulsory powers attracts the protection of Article 8 ECHR: *R (Hafner) v City of Westminster Magistrates Court* [2009] 1 WLR 1005, at [21]-[22]. It follows that the NCA's exercise of its UWO powers must be proportionate: see the test set out by Lord Sumption in *Bank Mellat v HM Treasury (No. 2)* [2013] UKSC 38, 39, [2014] AC 700, at [20].

65. The Code of Practice gives guidance to officers in the following terms:

> "21. The right to respect for private and family life and the protection of property under the European Convention on Human Rights (ECHR) is safeguarded by the Human Rights Act 1998. The powers of investigation may involve significant interference with the privacy and property of those whose premises are searched, on whom personal information is obtained, or whose personal information, material or documents are seen and/or seized. The powers therefore need to be fully and clearly justified before they are used. The use of the powers which impact upon individuals' rights should be proportionate to the outcome being sought. In particular, those exercising the powers should consider at every stage whether the necessary objectives can be achieved by less intrusive means …."

UWO1 and Property 1

The evidence relating to the funding of Property 1

66. It was a central premise in NCA's application for UWO1 that RA was the founder of Villa Magna and provided its funds, which derived from unlawful conduct. In Ms Kelly's core statement, she said:

> "120. I suspect that, whilst alive, Rakhat Aliyev was involved in serious crime during public office and subsequently.
>
> 121. I also suspect that, whilst Rakhat Aliyev was alive and/or after his death, members of the Aliyev family have been involved in laundering the proceeds of his unlawful conduct through the acquisition and handling of assets."

67. In Ms Kelly's first supplementary witness statement she said:

> "11. As identified in paragraphs 24-25 and 56-57 of the core statement, Property 1 was:
>
> (1) purchased on 2 April 2008 for £9.3 million and registered in the name of Twingold Holding (a BVI company);
>
> (2) subsequently transferred to the Panamanian registered Villa Magna Foundation on 25 March 2013.
>
> 12. At the time of writing this statement, Villa Magna Foundation remains the registered proprietor of Property 1.
>
> …..
>
> 26. The NCA's primary position is that there are no 'known' sources of Mr Baker's income as President of the Foundation

Council and there are no known sources of the Villa Magna's income …Given the extremely secretive nature of Panamanian Private Interest Foundations, there is no publicly available information about the funds which have been applied to Villa Magna Foundation since it was established (other than the minimum starting capital of US$10,000)….

27. In any event, whilst the sources of Mr Baker's income as President of the Council and the sources of Villa Magna Foundation's income are not 'known', I strongly suspect that any sources of income are likely to have arisen from Rakhat Aliyev and/or members of his family (whether directly or indirectly), and are unlikely to have been lawfully obtained:

27.1 I believe that Rakhat Aliyev was the ultimate Founder of Villa Magna Foundation (whether acting personally or through another):

(1) …there are strong links between Property 1 and the Aliyev family both before and after Villa Magna Foundation was established including:

(a) The property has been given as an address to Harrods for accounts held by Rakhat Aliyev's ex-wife and daughter.

(b) Individuals associated to Rakhat Aliyev are linked to Property 1. For example, Mr Kurmanbayev was an attorney and 'officer' of Twingold Holding (the company which initially purchased Property 1 in April 2008). Mr Enry was the liquidator and attorney of Twingold Holding when transferring the property to Villa Magna Foundation, and was also appointed as President of the Foundation. Mr Dall'Osso has been the sole director of Parkview Estates (the 'care of' address for Villa Magna Foundation) and was the sole director of Equipe Real Estate (the company named on the utility accounts for Property 1).

(c) Property 1 has also been obtained and handled in a similar manner to Properties 2 and 3 (both of which have further links to the Aliyev family). For example, the properties were all transferred by BVI companies to offshore foundations in March 2013, within 4 days of each other.

(2) As identified in paragraph 139 of the core statement, I believe that Rakhat Aliyev had a propensity to place assets in the names of others.

(3) I have not identified any other person who is more likely to have been the Founder at this stage. Whilst I acknowledge the possibility that the Founder may have been Nurali Aliyev (e.g. given his known associations with Mr Kurmanbayev), I note that

> the property was initially purchased in April 2008, at a time when Nurali Aliyev was 23 years old and had only recently completed his studies. I believe that it is more likely at this stage that his father, Rakhat Aliyev, was the Founder.
>
> 27.2 As Founder of Villa Magna Foundation, I believe that Rakhat Aliyev would have been responsible for providing funds to the Foundation prior to his death.
>
> 27.3 For the reasons identified at paragraphs 120 – 136 of the core statement, I suspect that any income originating from Rakhat Aliyev is likely to have been unlawfully obtained. I also suspect that members of his family have been involved in laundering the proceeds of his unlawful conduct.
>
> 27.4 Finally, and significantly, my suspicions above are strengthened by the complex and secretive manner in which Property 1 has been obtained and handled. It was initially purchased outright for a significant sum of money, by a BVI company incorporated shortly before the purchase. Ownership of the property was transferred in March 2013, in circumstances which were extremely similar to two other UK properties of significant value, namely Properties 2 and 3. Ownership was transferred to a Panamanian Private Interest Foundation, an entity which is subject to strict secrecy laws. The 'care of' address in the UK was identified (to HM Land Registry) as a corporate entity (namely Parkview Estates). It appears that the day-to-day management of the property has been handled by property management companies. The President of Villa Magna Foundation, Mr Enry, refused to identify the beneficial owner when asked by Global Witness and resigned as President two months after the Global Witness report was published."

68. Curiously Ms Kelly did not even mention the possibility that DN was the founder of Villa Magna, although she is a successful businesswoman who was named in Forbes list of richest people in Kazakhstan in 2013, and so her wealth could have been identified by Ms Kelly from material in the public domain.

69. Moreover, although Ms Kelly noted that DN and RA were divorced, she did not appear to take into account the breakdown of the relationship between DN and RA, in assessing the likelihood of DN's involvement in laundering RA's suspected proceeds of unlawful conduct.

70. Ms Kelly also did not consider it appropriate to take into account the investigation and confiscation proceedings against RA in Kazakhstan which confiscated his assets, but not those of DN. The prosecutor's account into the investigation into RA, provided under cover of the 9 August letter, confirmed that the investigation into RA found that RA had not transferred illegally acquired funds or assets to DN, and DN did not hold any illegally acquired funds or assets.

71. These matters were addressed in the 9 August letter, on behalf of DN (the UBO), as follows:

> "3. RELEVANT BACKGROUND
>
> 3.1 We have addressed in this section certain material facts which provide essential context for the proper consideration of our representations and which inform the basis upon which we submit that the NCA's application for the Orders was flawed.
>
> 3.2 We note that some of the following material was referenced in your application for the Orders and we accept that some of the information in this section may not have been available to you at the time of your application. Regrettably, however, many of the most material facts appear to have been simply overlooked by the NCA and certainly were not drawn to the attention of the learned Judge in the course of your application.
>
> *DN's marriage to RA*
>
> 3.3 DN and RA were married between 7 October 1983 and 6 June 2007. DN was and has been independently economically active. Each of the three properties which are the subject of the Orders were purchased after DN and RA divorced.
>
> 3.4 Before DN and RA were divorced, they had lived separately for many years (she in Kazakhstan and he in Austria). Prior to their divorce, and a precipitating factor of it, DN became aware that RA had been in a relationship with Elnara Shorazova since around 2002. As stated at paragraph 110 of the witness statement of Anita Kelly dated 15 May 2019 ("the core witness statement"), RA married Ms Shorazova "*in or around 2008*". They had a child in autumn 2008.
>
> 3.5 We enclose at tab 1, a translation of the Court Order under which their divorce was granted (the original Russian version having been obtained from RA's book "The Godfather-in-Law"). This demonstrates that DN supported the petition for divorce, citing an irrevocable breakdown in their family life with the preservation of future family life being impossible.
>
> 3.6 DN had no contact with RA after their divorce in June 2007 (and as you are aware RA died in 2015).
>
> 3.7 On their divorce, DN received significantly less than 50% of any family assets. As is set out at paragraph 0, those of RA's assets which were held in Kazakhstan and were deemed to derive from the proceeds of crime were confiscated. DN did not receive any of RA's assets which were held outside of Kazakhstan.

3.8 Following his parents' divorce, NA had no further contact with his father.

Criminal proceedings in Kazakhstan against RA

3.9 At paragraph 155(10) of the core witness statement, Ms Kelly noted RA's conviction *in absentia* in Kazakhstan (although stated that those convictions were not relied upon by the NCA for the purposes of its application).

3.10 We enclose at tabs 2 and 3, two letters from the Prosecutor General's Office of the Republic of Kazakhstan, both of which are dated 10 July 2019. The letters summarise two criminal investigations in Kazakhstan in respect of RA and those who were suspected to be his accomplices in an organised criminal group. The first investigation (Investigation No. 1) took place in 2007 and was into suspected kidnapping, theft, embezzlement, extortion, the illegal possession of weapons and use of a knowingly forged document. Following Investigation No. 1, it was found that, at RA's direction, members of the organised criminal group had seized property illegal including land, real estate, shares in real estate, a car, shares in Kazakhstan companies, jewellery, watches and money. We understand that in January 2008, at the conclusion of Investigation No. 1, all of the property belonging to RA which had been investigated and was found to be criminal property was confiscated by the Government of Kazakhstan.

3.11 The letters at tabs 2 and 3 also refer to a second criminal investigation of RA and his accomplices between 2008 and 2017 (Investigation No. 2) following which it was established that between 1999 and 2007 RA's organised crime group had committed the further criminal acts set out in that letter.

3.12 In relation to DN and NA, it was concluded following Investigations No 1 and 2 that:

3.12.1 RA did not transfer illegally acquired funds or assets to DN or NA.

3.12.2 DN and NA did not own or hold any illegally acquired funds or assets.

3.12.3 Specific enquiries were made into the possibility that RA had transferred illegally acquired assets to DN and/or NA and it was confirmed that neither DN nor NA held any illegally acquired funds or assets. It was therefore deemed unnecessary to seize any of DN or NA's assets.

DN's political role and early commercial interests

3.13 DN is a successful and accomplished businesswoman. Since 1992, she has developed a portfolio of business interests predominantly in the areas of food (including sugar), cars, media, banking and real estate development such that in 2013 her net worth was estimated by Forbes Kazakhstan to be US $595m (see tab 4).

3.14 On 20 March 2019, DN became Chair of the Senate of Kazakhstan. Prior to that she held roles in public office in Kazakhstan between 2004 and 2007 and again from January 2012 to the present day. We understand that DN's business interests have been under trust management during the periods that she has been in public office in Kazakhstan, as required by domestic legislation.

3.15 DN established her first business in 1992 following the collapse of the Soviet Union in 1990 and the privatisation reforms which began in Kazakhstan in 1991. Through this first business, DN traded sugar, confectionary, beverages and cigarettes. DN began operating this business at a time when there was very little availability of such goods and demand was substantial. She was one of many entrepreneurial individuals who capitalised on the economic reforms in Kazakhstan at this time. The goods were acquired under the terms of a consignment agreement and accordingly no initial capital was required. DN operated this business between 1992 and 1995 and it became of such a size that she estimates that she had approximately 25 employees at its peak. Significant efforts have been made in Kazakhstan to locate documents relating to this business but given the passage of time these are no longer available. However, DN estimates that she made many millions of dollars (possibly as much as US$ 40 – 45m) during this three year period. At the same time, DN was Vice President of Bobek, an International Children's Charity Fund, assisting her mother who was President. This was an ambassadorial role and was not full time, allowing DN to focus on building her business with the support of her team.

3.16 In 1995, DN commenced a multi brand car trading business, again under a consignment agreement. This ceased trading in 1998. Again, documents are unfortunately no longer available but DN estimates that she made approximately US $5m. The same team of employees assisted her with the running of this business which allowed her to focus on her developing career in the Kazakhstan media.

3.17 Between 1994 and 2004, DN worked predominantly in Kazakhstan media. In 1995, DN founded the Khabar Agency CJSC, which grew to become Kazakhstan's largest broadcasting agency, and became its President in 1998. In addition, she owned a number of other local and international media, broadcasting

> and advertising agencies (including those named in the Forbes article at tab 4), building a significant market share. A substantial portion of DN's wealth comes from this sector. During this period, DN also began to acquire significant shareholdings in a number of other non-media related Kazakhstan companies, most notably, for the purposes of this letter, in Nurbank (which is addressed in more detail below). DN left her professional roles in 2004 when she entered politics although she continued to own shares in various companies, as she was entitled to."

72. Following receipt of the information about DN's estrangement from RA and the breakdown of her marriage which was confirmed in the findings of the divorce court, Ms Kelly responded in her second witness statement, at paragraph 25.2, by referring to RA's book 'The Godfather in Law' in which he claimed that the real reason for the divorce was that DN's father, President Nazarbayeva, pressured her into it after RA was removed from public office and fled Kazakhstan. I was surprised by Ms Kelly's readiness to rely upon RA's somewhat self-justifying and untested account, in preference to that of DN and the divorce court, given that in the preceding paragraph of her witness statement Ms Kelly described RA as "involved in significant criminality including theft, embezzlement and extortion" which are all offences of dishonesty. Moreover, even on RA's account, due to the actions of DN's father, from the date of the divorce in 2007 all contact between RA and DN and their children was broken off. This makes it improbable that DN and their son NA were subsequently involved in property transactions and money laundering on RA's behalf from 2008 onwards.

73. The 9 August letter went on to give a detailed account of how DN acquired the beneficial interest in Property 1 in January 2009, and subsequently founded Villa Magna and arranged for Property 1 to be transferred to its ownership in 2013, to mitigate tax. On 1 April 2013, the UK introduced an Annual Tax on Enveloped Dwellings ("ATED"), a new property residential tax under which properties owned indirectly, for example through offshore corporate structures, were liable to the tax, but those owned by foundations were not. Therefore, the legal title of Property 1 was transferred to a foundation - Villa Magna. The letter stated as follows:

> "ACQUISITION OF PROPERTY 1
>
> 4.1. DN was the beneficial owner of Property 1 both at the time of purchase (albeit with a brief period where NA held it on trust for her) and at the time that it was transferred to Villa Magna. She remains the beneficial owner of this property. There is no connection between Property 1 and RA, whom DN had divorced almost a year prior to her acquisition of that property and with whom she had had no contact since. The document at Appendix 1 summarises the beneficial ownership of Property 1 at the material times.
>
> 4.2 The income used by DN to acquire Property 1 came from the proceeds of sale of her shares in JSC Kant, that sale having taken place on the KASE. These were assets transferred to DN on her divorce from RA.

Beneficial ownership at the time of purchase of Property 1

4.3 Twingold Holding Ltd ("Twingold") acquired the legal title to Property 1 on 2 April 2008 for consideration of £9,300,000. We enclose the Register of Members for Twingold at tab 5. As can be seen from that register, at the time of the acquisition of Property 1, Twingold was owned as follows:

4.3.1 Sagitta Business Corp ("Sagitta") - 882 shares (88%)

4.3.2 DN– 90 shares (9%)

4.3.3 NA – 30 shares (3%)

4.4 NA was the beneficial owner of Sagitta at the time of purchase. Although we have been unable to obtain a full Register of Shareholders for Sagitta, the extract at tab 6 confirms that NA was the beneficial owner of Sagitta from 23 November 2007 and continued to be as at 19 February 2008. NA effectively held this property on trust for his mother until January 2009 when the ownership of Twingold was transferred to Napel Investment Ltd ("Napel"), a company beneficially owned by DN (as to which see 4.7).

4.5 DN in fact lived in Property 1 with her daughter, Venera, for approximately one year from 2008, during which time she studied English in Hampstead and her daughter attended school.

On 5 January 2009, the Register of Members (tab 5) reflects that the ownership of Twingold was transferred to:

4.6.1 Napel – 882 shares (88%)

4.6.2 Delicio Holding Inc ("Delicio") – 120 shares (12%)

4.7 The share register for Napel at tab 7 shows that at this time it was wholly owned by Dragonflower Company SA. As confirmed by the share register at tab 8, Dragonflower Company SA was wholly owned by Dragonflower Foundation, a Panama private interest foundation founded on 6 October 2008. Under the Regulations of this foundation (tab 9), the primary beneficiary is DN. The secondary beneficiaries are identified as NA and his siblings Aisultan Nazarbayev and Venera Aliyeva.

4.8 We understand that Delicio was also beneficially owned by DN. Our clients have not, as yet, been able to obtain a copy of the Share Register but we will provide you with a copy if one is located. In the meantime, we enclose at tab 10 a translated extract from a series of structure charts which were created contemporaneously and which confirm that Delicio was owned by DN. We can confirm that we have reviewed the metadata of

the original Russian document (also at tab 10) which reflects that the document was created, and last modified, on 28 May 2008.

4.9 On 15 December 2010 Napel became the sole shareholder of Twingold (as confirmed at tab 5).

Beneficial ownership at the time of transfer of Property 1 to Villa Magna Foundation

4.10 Villa Magna was established in Panama on 28 January 2013. DN was the effective Founder, and is the primary beneficiary, of Villa Magna. This is confirmed by the Mandate Agreement dated 28 January 2013 (tab 11) and Villa Magna's By-laws, dated 18 July 2013 (tab 12).

4.11 On 6 March 2013, as confirmed by the Register of Members at tab 5, ownership of Twingold passed from Napel (the ultimate beneficial owner of which was DN as explained in paragraph 4.7) to Villa Magna.

4.12 On 25 March 2013, legal title to Property 1 was transferred from Twingold to Villa Magna.

4.13 On 25 September 2015, the President of Villa Magna confirmed by way of a nominee declaration that Villa Magna had previously held and still continued to hold Property 1 on trust for DN (tab 13).

4.14 The transfer of Property 1 from Twingold to Villa Magna was in anticipation of the introduction of the Annual Tax on Enveloped Dwellings ("ATED") on 1 April 2013, a new property residential tax under which properties owned indirectly, for example through offshore corporate structures, were liable to the tax, but those owned by Foundations were not.

Source of funds for the purchase of Property 1

4.15 DN purchased Property 1 using part of the proceeds of sale of her shares in JSC Kant on the KASE. The schedule appended to this letter at Appendix 2 summarises the relevant transactions (which we address in detail below) and demonstrates the movement of these funds from a Nurbank account in Kazakhstan in DN's name through bank accounts with Hellenic Bank in Cyprus to Herbert Smith (as it then was), the law firm which acted for Twingold and DN in connection with the purchase of Property 1.

4.16 DN acquired her formal interest in JSC Kant on her divorce from RA as part of the financial settlement. The transfer of these shares from RA to DN took place on 29 June 2007 as can be seen from the translation of DN's transaction history at tab 14 which

records that RA's shareholding (5,214,270 shares) was donated to DN for no consideration. These shares were available to be transferred as part of the divorce process since, unlike other assets then held by RA in Kazakhstan, they were not identified by the Government of Kazakhstan as being any part of his suspected proceeds of crime.

4.17 DN's transaction history reflects that on 23 November 2007 she sold 2,177,903 shares to Beatrice Alliance Ltd (a company incorporated in the UK and wholly owned by DN at that time). Following this sale, DN's shareholding was reduced to 3,036,367 shares.

4.18 A further transaction history at tab 15 confirms that DN sold her remaining shares in Kant in the following two tranches:

4.18.1 On 4 January 2008, 3,017,817 shares were sold to Gas Development LLP for 8,967,352,680.99 tenge (£37,638,270.36 or US $74,352,659.19)

[Footnote 7: All conversion rates applied in this letter are as at the date of the transaction using historic rates obtained from fxtop.com].

[Footnote 8: Please note that there is a typographical error in the English translation of the document at tab 15 in respect of the date of purchase of the shares by Gas Development LLP. The original Russian document reflects that this was a simultaneous sale and purchase on 4 January 2008.]

4.18.2 On 8 January 2008, 18,550 shares were sold to JSC Money Experts SB for 55,120,768.50 tenge (£231,564.74 or US $456,927.27).

4.19 A letter from Nurbank at tab 16 confirms receipt of these amounts into a bank account in DN's name on 8 January 2008.

4.20 On 4 February 2008, DN transferred US $46,000,000 from a Nurbankbank account in her name to a Hellenic Bank account in the name of Greatex Trade and Invest Corp ("Greatex") (account number 240-07-810433-02) [Footnote 9: the ownership of which is addressed at paragraph 5.5. below]. A letter from Nurbank at tab 17 confirms that this payment was made. Sums were paid into the Greatex Hellenic bank account under the terms of a Payment Agency Agreement (a copy of which we have been unable to locate although we have seen similar agreements entered into by companies owned by our clients at this time).

4.21 We are in the process of obtaining copy statements from Hellenic Bank confirming the receipt of this sum into the

> Greatex account and we will provide these to you on receipt. In the interim, contemporaneous extracts from an accounts system confirm that as at 8 February 2008, the sum of $45,999,980 (£23,606,973.06) was owed to DN by Greatex (see tab 18). This is consistent with DN transferring that amount (less a $20 bank transfer fee) to Greatex under the terms of a Payment Agency Agreement.
>
> 4.22 The account extract at tab 18 further reflects two payments to Herbert Smith by Greatex in settlement of part of the balance due to DN by Greatex as follows:
>
> 4.22.1 US $150,087.18 (£76,100.54) on 14 February 2008 to Herbert Smith's office account; and
>
> 4.22.2 US $21,014,268 (£10,447,011.25) on 11 March 2008 to Herbert Smith's client account.
>
> 4.23 The email at tab 19 from Ben Ward of Herbert Smith Freehills to Johanna Walsh of Mishcon de Reya confirms the receipt of £10,399,988 by Herbert Smith of this sum for the purchase of Property 1. The difference in amounts is likely to arise from the historic conversion rate used for the purposes of this letter."

74. Mr Hall QC was concerned about the reliability of this information given that it was contained in a letter from Ms Walsh, a solicitor, who had no direct knowledge of the facts therein, and it was exhibited to her witness statement, not set out in the body of her witness statement. Whilst I appreciate these concerns, the key facts set out in the letter are supported by the documentary evidence exhibited to Ms Walsh's witness statement. The documentary evidence appears to be genuine, and much of it is capable of verification by the NCA.

75. I consider that the information provided by DN demonstrates that the NCA's assumption that RA was the founder of Villa Magna and the source of its funds was probably mistaken. There is cogent evidence that DN was the founder of Villa Magna and the source of its funds.

76. DN has made frank disclosure of an historical link to the assets of RA which the NCA was not previously aware of. DN first purchased Property 1 using part of the proceeds of sale of her shares in JSC Kant. DN acquired her formal interest in JSC Kant on her divorce from RA as part of the financial settlement. The transfer of these shares from RA to DN took place on 29 June 2007, following her divorce on or about 6 June 2007. The property was purchased in the following year, on 2 April 2008.

77. I accept Ms Montgomery QC's submissions that if the NCA wish to allege that DN's shares in JSC Kant were a tainted gift, that would be a matter for civil recovery proceedings under POCA 2002. In any such proceedings, DN will be able to present three powerful arguments. First, notwithstanding his criminality, RA had been a successful businessman and JSC Kant is and was a legitimate business (it is a major sugar company). Second, that the divorce settlement was genuine and legitimate. Third,

that the Prosecutor General's Department investigated all RA's Kazakhstan assets at the relevant time, confiscating those which were the proceeds of crime. As a result of the investigations, it was confirmed that RA did not transfer any illegally acquired funds or assets to DN.

78. In any event, as Ms Montgomery QC submitted, any concerns the NCA may have concerning the transfer of the JSC Kant shares in 2007 cannot legitimately be pursued under the auspices of a UWO seeking information from Mr Baker about the holding of unexplained wealth. The beneficial ownership and funding of Property 1 is no longer "unexplained". The transfer of the Kant shares in 2007 has no connection with Mr Baker or Villa Magna. Property 1, which was purchased in 2008, was only transferred to the Villa Magna Foundation in 2013, and Mr Baker did not take office until 2015. There was no evidence of any link between Mr Baker and RA before his death in 2015. It was only after RA's death that Mr Baker had any contact with Villa Magna and DN.

79. It appears that the "links to the Aliyev family" which Ms Kelly referred to in paragraphs 27.1(1)(a) and (c) of her first supplementary witness statement, were assumed to be links to RA, as opposed to other members of the Aliyev family, without any evidence to support that conclusion.

80. Paragraph 27.1(1)(a) referred to DN and her daughter using Property 1 as her address, for the purposes of an account at Harrods. As she was the owner of the property, and resided in London for some time with her daughter, this was unsurprising. More importantly, it is not evidence of a financial link with RA.

81. Any similarities in the handling of the three properties, referred to in paragraph 27.1(1)(c), would be unsurprising since two of them were beneficially owned by DN and the other by her son, NA. They are not evidence of a financial link with RA.

82. In paragraph 27.1(1)(b) of Ms Kelly's first supplementary witness statement she identified individuals associated with RA who were linked to Property 1.

83. At paragraphs 140 and 141 of her core witness statement, Ms Kelly set out the evidence she obtained about Mr Kurmanbayev. He was identified as an attorney and officer of Twingold Holding which purchased Property 1, and an attorney of Riviera Alliance which purchased Property 2.

84. Mr Kurmanbayev was also a director of Greatex, and his address for service (219 Baker Street) was also the address as Parkview Estates, which was the c/o address for Property 1 and 2, and linked to property matters such as gas/electricity accounts, Land Registry returns and a planning application. He was also a director of Farmont Baker Street and Dynamic Estates, until replaced by Mr Dall'Osso. The ultimate parent company of these three companies was Greatex Trade & Investment Corp BVI, whose beneficial owner is NA.

85. Whilst this evidence does show links between Mr Kurmanbayev and DN and NA, it does not demonstrate a link with RA. The only matter relied upon by Ms Kelly was Mr Kurmanbayev's employment at the Ministry of Justice in Kazakhstan from March 2006 to March 2007. She states that RA was working as Deputy Foreign Affairs Minister during this period. I agree with Ms Montgomery QC that there is no reason to assume that an employee in the Ministry of Justice would have dealings with a Deputy Foreign

Affairs Minister, who was in a different department and at a much higher tier of government.

86. Furthermore, Mr Kurmanbayev had denied any involvement with RA. Ms Kelly included in her section on "full and frank disclosure" which undermined the NCA's application, at paragraph 155(18) of her core witness statement, the following summary:

> "Mr Kurmanbayev, Mr Enry and Mr Dall'Osso (represented by lawyers) wrote to Global Witness prior to the publication of its report. I have not seen the contents of those letters. However, it appears that these individuals denied that Rakhat Aliyev was the ultimate beneficial owner of Greatex, Farmont Baker Street, Dynamic Estates, Parkview Estates, Villa Magna Foundation, or indeed the properties identified in the report (although they did not identify who was the beneficial owner, citing confidentiality).
>
> Mr Dall'Osso also denied knowing that Rakhat Aliyev was the ultimate beneficial owner of Metallwerke or Armoreal Trading GmbH.
>
> Further, Mr Kurmanbayev specifically denied that he has had any relationship (whether professional or personal) with Rakhat Aliyev or Elnara Shorazova, either directly or through intermediaries. Instead: 'his principal condition for accepting the position [at Greatex] was that Rakhat Aliyev was not involved in the business and he would not be required to deal with him, whether directly or indirectly'.
>
> All of the individuals also denied any criminal acts, including any knowing involvement in money laundering, highlighting inter alia that the property transactions were conducted by reputable international law firms (who would have conducted due diligence as to the source of funds)."

87. The report on RA by Global Witness (which is a campaigning organisation whose goal is to expose corruption) was heavily relied upon by Ms Kelly in her investigation.

88. In her core witness statement at paragraphs 144 and 145, Mr Kelly stated that Mr Dall'Osso has been a director of Parkview Estates (the "care of" address for Property 1 and 2), since March 2010. The ultimate parent company of Parkview Estates is Greatex Trade & Investment Corp BVI, whose beneficial owner is NA. He was also the sole director of Equipe Real Estate, named on utility accounts for Property 1, from 2013 to 2014.

89. Ms Kelly stated that Mr Dall'Osso was an associate of RA and DN. When giving evidence to a Maltese magistrate in February 2012, RA stated that when he and DN were visiting business friends in Italy in the late 1990s, they met Mr Dall'Osso. DN liked him and they later appointed him director general of the Metallweke Bender GmbH which was owned by RA. He resigned on 5 February 2007.

90. Mr Dall'Osso was also on the Board of Directors at Armoreal Trading GmbH from 5 July 2005 to 21 January 2008, overlapping with the directorship of Elnara Shorazova (RA's second wife). Armoreal appears to have been owned by RA.

91. Whilst this is evidence that Mr Dall'Osso was working in companies owned by RA, the work ended as long ago as January 2008. Thereafter Mr Dall'Osso appears to have had a role in managing Properties 1 and 2. But there is no evidence that he was involved in any money laundering of RA's funds in the purchase of any of the properties or the founding of Villa Magna.

92. In her core witness statement, at paragraphs 142 to 143, Ms Kelly set out the information she obtained about Mr Enry. He was appointed liquidator of the two companies which initially purchased Properties 1 and 3. He was also given power of attorney to transfer Property 1 to Villa Magna and Property 3 to Tropicana. He then acted as President of these two foundations from January 2013 to September 2015. These appointments link Mr Enry to DN, but not RA.

93. Ms Kelly also produced evidence that Mr Enry was a director of a Swiss company called A.V. Maximus SA, from June 2003 to June 2014. RA said in his evidence to the Maltese magistrate that he and his second wife owned A.V. Maximus. Ms Kelly also believed that Mr Enry had a role in a BVI company called Ramsdell Overseas Limited, which was a designated member of a UK limited liability partnership named Imperial Sugar Company LLP, as his signature was found on a financial statement. She pointed to evidence that RA owned Ramsdell Overseas Limited, and Imperial Sugar Company LLP.

94. Therefore, there was a link between Mr Enry and RA, but there was no evidence that he was involved in any money laundering of RA's funds in the purchase of any of the properties or the founding of Villa Magna.

95. Ms Kelly placed significant weight on the "complex and secretive" manner in which Property 1 was obtained and subsequently handled, eventually being transferred to a Panamanian foundation which is subject to strict secrecy laws, whilst being managed by property management companies in the UK (paragraph 27.4 of her first supplementary witness statement).

96. This raises an important point of principle. The need for caution in treating complexity of property holding through corporate structures as grounds for suspicion has been recognised in the context of the risk of dissipation of assets in civil proceedings. In *Candy v Holyoake* [2018] Ch 297, Gloster LJ said, at [59]:

> "Several cases have emphasised that there is nothing implicit in complex, offshore corporate structures which evidences an unjustifiable risk of dissipation. As Arnold J put in *VTB v Nutrietek* [2012] 2 BCLC 437, 517, para 233 (approved by the Court of Appeal ….):
>
> > "It is not uncommon for international businessmen, and indeed quoted UK companies, to use offshore vehicles for their operations, particularly for tax reasons. This may make it difficult to enforce a judgment. But in that

> respect claimants such as VTB have to take defendants such as Mr Malofeev as they find them. More is required before the court will conclude that there is a risk of dissipation".
>
> Similarly, in *Mobil Cerro Negro Ltd Petroleos de Venezuela* [2008] 2 All ER (Comm) 1034, para 62 Walker J rejected that there was anything unusual about the ready transferability of assets within a corporate structure…..".
>
> In the present case, there was no or only minimal evidence to suggest a risk of the defendants dissipating their assets. There was also nothing about either the corporate structure or the ongoing corporate reorganisation that was suggestive of a risk of dissipation……there was no evidence in this case that the companies were set up or being used for wrongful purposes; and there was no allegation in the claim that any fraud was facilitated by the use of offshore companies (or similar)…"

97. In my judgment, these principles apply equally in the context of UWOs. The use of complex offshore corporate structures or trusts is not, without more, a ground for believing that they have been set up, or are being used, for wrongful purposes, such as money laundering. There are lawful reasons – privacy, security, tax mitigation - why very wealthy people invest their capital in complex offshore corporate structures or trusts. Of course, such structures may also be used to disguise money laundering, but there must be some additional evidential basis for such a belief, going beyond the complex structures used.

98. The Respondents relied upon the principle established in *R v Anwoir* [2008] EWCA Crim 1354, [2008] All ER 582 where the Court of Appeal held, per Latham LJ at [21], that where the Crown seeks to prove that property derives from crime by evidence of the circumstances in which the property is handled, it must be "such as to give rise to the irresistible inference that it can only be derived from crime" (emphasis added). See also: *R v MK and AS* [2009] EWCA Crim 952 per Hallet LJ, at [12]; *National Crime Agency v Khan & Ors* [2017] EWHC 27 (Admin), per O'Farrell J at [27].

99. I agree with the Respondents' submission that the evidence as to the manner in which Property 1 has been handled in this case does not give rise to an "irresistible inference" that it is the product of unlawful conduct.

100. In conclusion, I consider that the NCA's assumption that RA was the founder of Villa Magna and provided its funds, was unreliable. It was rebutted by the cogent evidence that DN was the founder of Villa Magna and the source of its funds, and the ultimate beneficial owner of Property 1.

The holding requirement

101. The NCA submitted that there was "reasonable cause to believe" that Mr Baker met the holding requirement because, applying section 362H POCA 2002:

i) he has "effective control over the property" (subsection (2)(a)); and

ii) from all the circumstances, it is reasonable to conclude that he either (a) exercises, or (b) is able to exercise, or (c) is entitled to acquire, direct or indirect control over the property (subsection (3)).

102. In the alternative, the NCA submitted that Mr Baker is the trustee of a settlement in which the property is comprised (subsection (2)(b)).

103. At the *ex parte* hearing, Supperstone J. accepted the NCA's submissions, on the basis of the evidence before him. I have come to a different view, with the benefit of submissions on behalf of the Respondents, and considerably more evidence.

104. Ms Kelly, in her first supplementary witness statement, explained at paragraph 17 the grounds for her belief that Mr Baker has effective control over Property 1. As President of Villa Magna, he is the President of its Foundation Council, which under Panamanian law has wide powers to manage the Foundation and its assets.

105. Under the Private Interest Foundation Law of Panama (Law No. 25 of June 12 1995), Articles 17 and 18 provide as follows:

> "**Article 17** The foundation should have a Foundation Council, whose powers or responsibilities shall be established in the foundation charter or in its regulations. Unless it be a juridical person, the number of members of the Foundation Council shall not be less than three (3)."
>
> "**Article 18** The Foundation Council shall be responsible for carrying out the purposes or objectives of the foundation. Unless otherwise stated in the foundation charter or its regulations, the Foundation Council shall have the following general obligations and duties:
>
> To administer the assets of the foundation in accordance with the foundation charter or its regulations.
>
> To carry out acts, contracts of lawful business that may be suitable or necessary to fulfil the purposes of the foundation, and to include in such contracts, agreements and other instruments or obligations, such clauses and conditions as are necessary and convenient, which conform to the purposes of the foundation and are not contrary to the law, to morals, to bonus mores or to public order.
>
> To inform the beneficiaries of the foundation of the economic situation of the latter, as established in the foundation charter or its regulations.
>
> To deliver to the beneficiaries of the foundation the assets or resources set up in their favour by the foundation charter or its regulations.

> To carry out all such acts or contracts which are permitted to the foundation by the present Law and other applicable legal or regulatory provisions."

106. Ms Kelly referred to the Foundation Charter, correctly stating that it did not disapply the duties and obligations in Article 18. Moreover, Article 6 of the Charter states that, in order to achieve its objectives, "the foundation is authorized to preserve, administer and invest in an appropriate manner the foundation's assets, being these assets of any kind, including real estate and participations in other entities and to conclude all business and legal transactions serving the pursuit and the realization of such objects".

107. Ms Kelly also noted that, under Article 18 of the Charter, "[t]he individual signature of the President or the joint signature of the Secretary and the Treasurer with the President in respect of any act, transaction or business of the foundation, shall be binding on the same."

108. Ms Kelly went on, at paragraph 18, to set out the reasons why she considered Mr Baker is the trustee of a settlement in which Property 1 is comprised. Property 1 is an asset held on trust and/or pursuant to an arrangement which is capable of being distributed to beneficiaries, and so falls within the wide definition of "settlement" in section 620 ITTOIA 2005. Mr Baker can be considered to be a trustee, in addition to the Foundation itself, because he appears to be a person in whom the management of Property 1 is vested, within the meaning of section 1123(3) CTA 2010.

109. In response, the Respondent's solicitors obtained a legal opinion from Fabrega Molino, Attorneys at law, in Panama City. They advised that there was no trust relationship between the President of a Private Foundation and the property held in the Foundation, under Panamanian law. Article 17 of the Private Interest Foundation Law of Panama (Law No. 25 of June 12 1995) makes provision for a Foundation Council. The Foundation Council is the management body of the Foundation and its assets, as described in Article 18, not the President nor any individual officer. Under Articles 17 and 18, the President did not have any management powers over the property or assets of the Foundation.

110. I considered the evidence of the Panama lawyers *de bene esse* because of Mr Hall QC's objections to its admissibility as expert evidence. However, even putting that evidence to one side, it seems to me clear from both Articles 17 and 18 of Law No. 25 of June 12 1995 and the Foundation Charter of Villa Magna, dated 28 January 2013, that effective control over the Foundation and its assets is vested in the founder and the Foundation Council, not the President. In my view, Ms Kelly has erroneously conflated the position of President with that of the Foundation Council, which is a separate body. In support of that, I refer to the following provisions in the Charter:

    i) The Foundation Council (also referred to as "the Board") is the "supreme body of the Foundation" (Article 3(a)).

    ii) Its members are appointed by the founder who has the right to remove members at any time, as well as to appoint or add new members (Article 3(c)).

iii) The Foundation Council is responsible for the management and representation of the Foundation without restriction vis-à-vis third parties, and in relation to all national or foreign judicial or governmental authorities (Article 3(e)).

iv) The members of the Foundation Council are authorised to exercise signatory powers on behalf of the Foundation; however, they always have to act within the authority of a valid resolution of the Foundation Council (Article 3(g)).

v) If the Foundation Council is comprised of more than one member, it shall constitute itself, elect its President, a Vice-President, a Secretary and any other officer. The Foundation Council's resolutions are valid when all members have been duly summoned and when the majority of them are present. The resolutions of the Foundation Council are passed with a simple majority of the members present. In the case of parity of votes, the President has the deciding vote (Article 3(h)).

vi) The purpose of the Foundation is to contribute to the cost of upbringing, education, aid as well as general maintenance of one or more members of one or several families as established in the regulations. To achieve its objects the Foundation is authorised to preserve administer and invest in an appropriate manner the Foundation's assets, being these assets of any kind, including real estate and participations in other entities and to conclude all business and legal transactions serving the pursuit and realisation of such objects (Article 6).

vii) The founder, at the time of creating the Foundation, or in his absence subsequently the Foundation Council, may create a private document known as the regulations, whereby they can designate the beneficiaries. The Foundation Council shall distribute the patrimony and revenue of the foundation to beneficiaries according to the provisions of the regulations (Article 7(a)).

viii) Distributions to the designated beneficiaries, as well as the timing and extent of such distributions, are subject to the dispositions established in the regulations (Article 7(b)).

ix) Beneficiaries are neither owners nor creditors of the Foundation (Article 7(c)).

x) The Foundation Council, by unanimous consent, is entitled to amend these statutes (Article 8).

xi) The Foundation may only be dissolved by resolution of the Foundation Council (Article 9).

xii) Any resolution as to the liquidation of the Foundation shall be taken by the Foundation Council subject to the terms of these statutes or of the regulations. The Foundation is authorised to appoint liquidators. In the event of dissolution, the Foundation Council shall resolve the final destination of the assets of the foundation (Article 10).

xiii) The bodies of the Foundation are (a) the Foundation Council and (b) the possible supervisory body (Article 11).

xiv) The founder, at the time of creating the Foundation, or subsequently the Foundation Council, is authorised to issue the regulations as stipulated in Article 7 (Article 14).

xv) The Foundation Council may appoint "natural or juridical persons, which can be called protector, professional advisors, supervisory body, auditors or any other similar names" which could have any of the powers set out in Article 21, which include supervision of the management of the foundation's assets (Article 21). (There was evidence that DN wished to appoint Mr Jean De Saugy as protector of the Foundation; it is not clear whether there is currently a protector in place).

xvi) The Foundation Council or the protector if there is one, may transfer the foundation to the jurisdiction of another country (Article 22).

111. Article 17 provides that the "legal representative will be the President, in his absence, the Vice-President, or Secretary or Treasurer or the Foundation Council".

112. Article 18 provides that the "individual signature of the President or the joint signature of the Secretary and the Treasurer with the President in respect of any act, transaction or business of the foundation, shall be binding on the same". This provision merely gives the President the authority to sign legally-binding documents on behalf of the Foundation and the Foundation Council. It does not give the President power to act in any way other than in accordance with the regulations and resolutions of the Founder and/or Foundation Council.

113. DN made "By-Laws" for the Foundation on 18 July 2013. They provided as follows:

"BY-LAWS
of Villa Magna, Panama

ARTICLE 1

The first beneficiary of the Foundation is Mrs Dariga Nazarbayeva. During her lifetime, the first beneficiary will exercise all the rights pertaining to the founder, including but not limited to the right to amend these by-laws, to order the liquidation of the Foundation, and to dispose of all assets of the Foundation without any limit. The Board of Directors of the Foundation will implement without delay the decisions of the First Beneficiary.

ARTICLE 2

During her lifetime, the First beneficiary will be entitled to dispose without any restriction of all the assets of the Foundation, through the Board of the Foundation who will have to execute and perform all the orders given by her, unless these instructions appear to be unlawful or contrary to law or the ethics.

The Board of Directors of the Foundation may not amend these By-laws, without the consent of the First Beneficiary.

In case of death of the First Beneficiary, the Second Beneficiaries will benefit of the rights granted to them by these by-laws. They may however not amend the By-laws.

ARTICLE 3

The Second Beneficiaries of the Foundation will be the legitimate children of the First Beneficiary, in equal parts.

As of the date of the these By-laws, the Second Beneficiaries are

…..

The Second Beneficiaries may not amend these By-laws, The Second Beneficiaries (after they are 25), may however give their opinion to the Board of the Foundation as to the management of the assets of the Foundation. The opinion of the Second beneficiaries will not be binding on the Board of the Foundation.

ARTICLE 4

Each of the Second Beneficiary will be entitled to receive, […]

ARTICLE 6

If no beneficiary may be determined under the previous provisions, the Board will remit all the assets of the Foundation to a charitable institution of its choice

ARTICLE 7

The Foundation will inform in a discrete way the Beneficiaries of their rights in the Foundation, at the time when they are entitled to such rights.

The First Beneficiary may appoint any person of his choice to (i) give instructions to the Foundation in his name and (ii) give directions and instructions to the Foundation after the decease of the First Beneficiary.

ARTICLE 8

The Board of the Foundation and the Protector of the Foundation will be appointed by the First Beneficiary, who may at any time replace the Board of the Foundation and the Protector.

ARTICLE 9

The liquidation of the Foundation will be made:

- if the First Beneficiary so requests
- if there is no asset remaining in the Foundation
- in accordance with the article of incorporation of the Foundation of for *(sic)* reasons provided by the Laws at the seat of the Foundation.

So done on July 18th 2013

The Founder"

114. On my reading, the purpose and effect of the By-Laws was to declare that DN would exercise the rights of the founder (as provided for in the Charter). The founders actually named in the Charter were a firm of Panamanian Attorneys, presumably instructed on behalf of DN, who continued to act for the Foundation once it was established. The By-Laws also declared her to be in effective control of the assets of the Foundation. The Foundation Council (referred to in the By-Law and in the Charter as "the Board") was obliged to comply with her instructions as to the disposal of the assets, unless her instructions appeared to be unlawful or unethical. She also had power to liquidate the Foundation. DN made provision for her four children as second beneficiaries of the Foundation. There was no mention of RA.

115. The Foundation was established on 28 January 2013, and on the same date, DN entered into a "Mandate Agreement" with Mr Enry, describing herself as "the principal" and Mr Enry as "the trustee". It appears to be a *pro forma* document, which was not correctly edited for use in this context, as it sometimes refers to the foundation as "the company", and it refers to DN as "principal" rather than "founder" or as "he" not "her". It was made under Swiss law.

116. By Clause I, DN requested Mr Enry "to manage for her account a Foundation" and by Clause II "act by way of trustee for the principal's account". However, despite the use of the term "trustee" and the breadth of the responsibilities conferred by Clauses I and II, Mr Enry was not a trustee as the term is understood in UK law. The legal ownership of the assets was not vested in him. Effective control was not vested in him either. His management duties, as set out in Clause V, were administrative in nature, e.g. dealing with correspondence, preparation for meetings and drafting minutes, completing tax returns. Importantly, Clause VI required him to follow the instructions of DN:

> "1. The trustee undertakes to carry out their mandate in conformity exclusively with the instructions which will be given to them by the principal or by the persons appointed by him to this effect, subject however to the limits imposed upon them by the law, morality and the professional situation.
>
> ….
>
> 3. Apart from instructions so received, the trustee is not authorized to take any decision or measure other than those involved in the formal management of the company. They are, however, entitled to act on their own initiative in the event of danger in delay or when the interests of the company require immediate action and a prior agreement with the principal turns out to be impossible. The trustee, in such an event, will act in accordance with the presumed intentions of the principal, whom they will inform of the decisions made as soon as it may be possible to do so."

117. The Mandate Agreement did not accurately reflect the terms of the Charter as, amongst other matters, it did not acknowledge the role of the Foundation Council in the management of the Foundation and its assets. As the Charter is the formal document which established the Foundation and set out its constitution, in accordance with Panamanian law, I consider that it takes priority over the Mandate Agreement in both Panamanian law and English law.

118. Following Mr Enry's resignation in 2015, Mr Baker was appointed as President. He did not enter into a "Mandate Agreement" comparable to that signed by Mr Enry. Mr Baker signed a "Nominee Declaration", in the following terms:

> "**Villa Magna Foundation**
>
> **Nominee Declaration**
>
> WHEREAS in accordance with the By-Laws of the Foundation Dariga Nazarbayeva is currently the first and intended beneficiary of the Foundation.
>
> AND WHEREAS the principal asset of the Foundation is a property situate at and known as 32 Denewood Road, London N2 (the "Property")
>
> AND WHEREAS it is desired for the avoidance of doubt to confirm that the Foundation has previously held and still continues to hold the Property as nominee for Dariga Nazarbayeva
>
> Now, the Foundation Council, acting through its President, HEREBY CONFIRMS, that the Foundation has previously held and still continues to hold the Property as nominee for Dariga Nazarbayeva

> In witness whereof this document has been executed by the Foundation Council on the 29th September 2015.
>
> Duly signed on behalf of the Foundation Council by its President Andrew J. Baker"

119. In accordance with the terms of the Charter, the Nominee Declaration was executed by the Foundation Council, and signed by the President on behalf of the Foundation Council. It confirmed that the Foundation was holding Property 1 on behalf of the first beneficiary, DN. The members of the Foundation Council, from 25 September 2015, were Mr Baker (President), Mr Diaz (Secretary) and Ms Martinez (Treasurer).

120. In conclusion, for the reasons set out above, I do not consider that there is reasonable cause to believe that Mr Baker has "effective control over the property", as defined in subsections 362H(2) and (3). Effective control lies with the Foundation and its governing body, the Foundation Council, and DN. Although Mr Baker, in his capacity as President, has a leading role on the Foundation Council, and can transact business on its behalf, he does not personally exercise control over Property 1 or the Foundation. Any decision in relation to Property 1 has to be taken by the Foundation Council which has three members. Decisions of importance (e.g. disposal of Property 1 and any distribution to beneficiaries, or a change in the beneficiaries) can only be made with the agreement of DN.

121. I do consider that there is reasonable cause to believe that the arrangement by which Villa Magna has acquired the legal interest in Property 1, and holds it on behalf of the named beneficiaries, is capable of falling within the broad definition of a "settlement" in section 620 ITTOIA 2005 ("any disposition, trust, covenant, agreement or transfer of assets").

122. However, I do not consider that there is reasonable cause to believe that Mr Baker is a trustee of the settlement, whether under the definition in subsection 1123(3) CTA 2010 or at all. Property 1 is not "vested" in him – it is vested in the Foundation, which hold the legal interest in Property 1. Management of the property is not "vested" in Mr Baker. It is vested in the Foundation and its governing body, the Foundation Council. The Foundation Council and the holder of the position of President ought not to be conflated; the Foundation Council is a separate legal body in Panamanian law and under the Foundation's Charter.

123. For these reasons, I am not satisfied that there is reasonable cause to believe that Mr Baker "holds" Property 1.

124. Although that is a sufficient basis upon which to discharge the orders, I will also proceed to consider the other requirements on the alternative basis that the NCA has met the holding requirement.

The value requirement

125. The value requirement is clearly met. Property 1 was purchased for £9.3 million in April 2008. The desktop valuation in March 2019 was £6 million.

The income requirement

126. The NCA submitted that Mr Baker holds Property 1, either because he has effective control over it or because he is the trustee of the settlement in which Property 1 is held, under subsection 326H(2) POCA 2002. Applying the assumption in subsection 362B(6)(b) POCA 2002, it is to be assumed he obtained it at market value when he took office in 2015. Ms Kelly estimated the value was in the region of £6 million to £9.3 million.

127. The NCA submitted that there were reasonable grounds for suspecting that the known sources of Mr Baker's lawfully obtained income, as President of Villa Magna Foundation, would have been insufficient for him to obtain the property because there was no publicly available information about the income of the President or the Villa Magna Foundation.

128. Alternatively, there were grounds to suspect that any source of income was likely to have arisen from RA and therefore obtained unlawfully because of his criminal offending.

129. At the *ex parte* hearing, Supperstone J. accepted that the income requirement was met.

130. In my judgment, the NCA's reasoning was artificial and flawed. It did not contend that Mr Baker was the legal or beneficial owner of Property 1, nor that he was involved in the funding of its purchase, which occurred 7 years before he became involved with Villa Magna or DN. Mr Hall QC submitted that where the respondent was a trustee or had "effective control" over the property, the income requirement was notional, because it could never be satisfied. In my judgment, it cannot have been the intention of Parliament to dispense with the need for a meaningful application of the income requirement. If the income requirement is not met, there is no proper basis upon which to make an order.

131. It is clear that section 362H POCA 2002 is targeted at trusts and corporate structures which hold unexplained wealth. It is less clear how the income requirement is to be applied in such cases.

132. Subsection 414(3)(a) POCA 2002 provides that property is "obtained" by a person if that person obtains an "interest" in it, meaning a legal estate or equitable interest or power. However, the definition of "effective control" does not expressly include a requirement that a person has obtained a legal or equitable interest.

133. Some assistance is gained from subsection 362H(4) POCA 2002 which provides that where a person holds property as trustee, beneficiary or has effective control over it, "references to the person obtaining the property are to be read accordingly". I interpret this provision as meaning that a person is to be taken as "obtaining" the property to the extent to which he has been found to "hold" it.

134. I am reinforced in that view by subsection 362(B)(6)(e) POCA 2002 which provides that "where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest".

135. I accept Ms Montgomery QC's submission that the proper application of these provisions required the NCA to consider the actual extent of Mr Baker's interest in the property and then ask whether the known sources of the respondent's lawfully obtained income would have been insufficient for the purpose of enabling the respondent to obtain that extent of the respondent's interest in the property.

136. The assumption that the respondent obtained the property for a price equivalent to its market value can only be the starting point for the assessment of value in those cases where it is accepted that the respondent does not hold the legal and beneficial interest, in order to give effect to subsections 362H(4) and 362(B)(6)(e) POCA 2002.

137. I acknowledge that it will be difficult for the NCA to identify and value the extent of Mr Baker's interest in Property 1. In my view, this is because Mr Baker was not the appropriate respondent in this case, as he does not hold the property.

138. Finally, Ms Kelly assumed that RA was the founder of Villa Magna and provided its funds, which were the proceeds of unlawful conduct, (paragraph 128 above). I found at paragraph 100 above that this assumption was unreliable. It was rebutted by the cogent evidence that DN was the founder of Villa Magna and the source of its funds, and the ultimate beneficial owner of Property 1.

139. For these reasons, I am not satisfied that there were reasonable grounds for suspecting that the income requirement was met.

The PEP/serious crime requirement

140. The NCA submitted that there were reasonable grounds for suspecting that Mr Baker is or was involved in serious crime. Ms Kelly's evidence was that there were grounds to suspect that RA was the founder of Villa Magna (whether directly or indirectly) and provided its funds, which were derived from RA's unlawful conduct. Mr Baker should have become aware of these grounds for suspicion when carrying out due diligence before he accepted the position of President, for example, by reading the Global Witness report which was published in July 2015.

141. Ms Kelly suspected that Mr Baker has conducted himself in a way which was likely to facilitate the commission of a serious offence in England and Wales, including money laundering offences under sections 327 to 329 POCA 2002. By acting as President, he enabled Villa Magna to continue to operate and retain control of Property 1. Although the Court must ignore any act which can be shown to be reasonable in the circumstances, under section 4(3)(a) SCA 2007, it was not reasonable for him to act as President and manage Property 1.

142. Further, Ms Kelly suspected that there were reasonable grounds for suspecting that people connected with Mr Baker are or have been involved in serious crime.

    i) RA is connected with Mr Baker as he is likely to be the settlor of Villa Magna and Mr Baker is likely to be its trustee. There are grounds for suspecting that RA has been involved in serious crime.

ii) Villa Magna is connected with Mr Baker, as it is also a trustee of the settlement in which Property 1 is comprised. It is also connected with RA for the same reasons as Mr Baker. By acquiring and holding the property, Villa Magna has conducted itself in a way that was likely to facilitate the commission of a serious offence, namely, money laundering.

143. The NCA also submitted that the PEP requirement was met in Mr Baker's case under subsection 362B(7) POCA 2002 because he was "connected with" RA who was an IEPPF within the meaning of subsection 362B(7)(a) POCA 2002. RA was appointed to various high-level public positions in Kazakhstan, including Director of the Tax Police, First Deputy Head of the National Security Committee, Ambassador to Austria and Deputy Foreign Affairs Minister.

144. At the *ex parte* hearing, Supperstone J. was satisfied that these requirements were met.

145. On the much more detailed evidence before me, I am not satisfied that the NCA has proved that Mr Baker is a PEP. Nor am I satisfied that there are reasonable grounds for believing that Mr Baker is or has been involved in serious crime, or that he is connected to persons who have been so involved.

146. Mr Baker is a solicitor of the Senior Courts of England and Wales and was admitted on 15 October 1985. He is a professional trustee. Mr Baker is a leading expert on trusts law, a member of the Law Society of England & Wales, the International Tax Planning Association, the Offshore Institute, and an honorary member of the Association of Fellows & Legal Scholars of the Center for International Legal Studies.

147. In paragraph 3 of his witness statement, he stated that, prior to August 2015, he had no involvement with the Villa Magna or Tropicana Foundations, nor with DN or any member of her family. He added:

> "To be clear, I did not know, never met and never had any contact whatsoever with the late Rakhat Aliyev."

148. Ms Kelly has not produced any evidence to suggest that Mr Baker has ever had contact with RA, who was dead by the time Mr Baker was approached regarding the role of President. Ms Kelly has also not produced any evidence which casts doubt on his statement that, prior to August 2015, he did not have any involvement with DN and her family, or the Foundations.

149. In my view, there are no reasonable grounds for the suspicion that Mr Baker was connected with RA and that he was a PEP.

150. Having explained that his knowledge was limited because he was only appointed President of Villa Magna in September 2015, Mr Baker stated, at paragraphs 5 and 6 of his witness statement:

> "5. I have read the 9 August letter …. and I am happy to confirm the truth of it on the basis that what is said in the letter and the documents that are produced in support of it is consistent with my knowledge and the due diligence I conducted at the relevant times.

> 6. For the avoidance of doubt, I have never been involved in the facilitation of serious crime or, for that matter, any crime at all."

151. The NCA does not dispute that Mr Baker has no criminal record. On considering Ms Kelly's evidence, it appears that her suspicions about Mr Baker's conduct flow entirely from her assumptions that RA was the founder of Villa Magna (whether directly or indirectly), and that the funds for the purchase of Property 1 derived from RA's unlawful conduct.

152. As I have found at paragraph 106 above, Ms Kelly's assumption that RA was the founder of Villa Magna and provided its funds was unreliable and rebutted by the cogent evidence that DN was the founder of Villa Magna and the source of its funds, and the ultimate beneficial owner of Property 1.

153. It follows that there are no reasonable grounds for suspecting that Mr Baker has facilitated the commission of serious offences by acting as President, nor that Villa Magna has done so by acquiring and holding the property. On the evidence there was no connection between Mr Baker and RA, nor between Villa Magna and RA.

154. For these reasons, I am not satisfied that there are reasonable grounds for suspecting that the PEP or serious crime requirement has been met.

UWO3 and Property 3

The evidence relating to the funding of Property 3

155. It is convenient to consider Property 3 next, as the issues are very similar to the issues in respect of Property 1. It was a central premise in NCA's application for UWO3 that RA was the founder of Tropicana and provided its funds, which derived from unlawful conduct. In Ms Kelly's core statement, she said:

> "120. I suspect that, whilst alive, Rakhat Aliyev was involved in serious crime during public office and subsequently.
>
> 121. I also suspect that, whilst Rakhat Aliyev was alive and/or after his death, members of the Aliyev family have been involved in laundering the proceeds of his unlawful conduct through the acquisition and handling of assets."

156. In Ms Kelly's third supplementary witness statement she said:

> "11. As identified at paragraphs 48 – 49 and 62 – 63 of the core statement, Property 3 was:
>
> (1) purchased on 20 September 2010 for £32,000,000 and registered in the name of Dedomin International (a BVI company).
>
> (2) subsequently transferred to the Panamanian registered Tropicana Assets Foundation on 27 March 2013.

12. At the time of writing this statement, Tropicana Assets Foundation remains the registered proprietor of Property 3.

…..

26. The NCA's primary position is that there are no 'known' sources of Mr Baker's income as President of the Foundation Council and there are no known sources of Tropicana Assets Foundation's income i.e. reasonably ascertainable from available information at the time of making this application (within the meaning of s.362B(6)(d) of POCA). Given the extremely secretive nature of Panamanian Private Interest Foundations, there is no publicly available information about the funds which have been applied to Tropicana Assets Foundation since it was established (other than the minimum starting capital of US$10,000). Article 35 of the Foundation Law requires members of the Foundation Council, any supervisory bodies and any public or private employees who might have any knowledge of the activities, transactions or operations of a foundation 'shall at all times maintain secrecy and confidentiality' in this respect.

27. In any event, whilst the sources of Mr Baker's income as President of the Council and the sources of Tropicana Assets Foundation's income are not 'known', I strongly suspect that any sources of income are likely to have arisen from Rakhat Aliyev and/or members of his family (whether directly or indirectly), and are unlikely to have been lawfully obtained:

27.1 I believe that Rakhat Aliyev was the ultimate Founder of Tropicana Assets Foundation (whether acting personally or through another):

(1) As identified in paragraphs 137 - 153 of the core statement, there are strong links between Property 3 and the Aliyev family, both before and after Tropicana Assets Foundation was established, including:

(a) Individuals associated to Rakhat Aliyev are linked to Property 3. For example, Mr Enry was the liquidator and attorney of Dedomin International (the company which initially purchased Property 3 in September 2010) when transferring the property to Tropicana Assets Foundation, and was also appointed as President of the Foundation.

(b) Property 3 has also been obtained and handled in a similar manner to Properties 1 and 2 (both of which have further links to the Aliyev family). For example, Property 3 is legally owned by a Panamanian Private Interest Foundation which is almost identical in its nature and composition to the foundation which owns Property 1. Legal ownership of the two properties was transferred to the foundations within days of each other.

> (2) As identified in paragraph 139 of the core statement, I believe that Rakhat Aliyev had a propensity to place assets in the names of others.
>
> (3) I have not identified any other person who is more likely to have been the Founder at this stage. Whilst I acknowledge the possibility that the Founder may have been Nurali Aliyev, I note that the property was initially purchased in September 2010, at a time when he was 25 years old. I believe that it is more likely at this stage that his father, Rakhat Aliyev, was the Founder.
>
> 27.2 As Founder of Tropicana Assets Foundation, I believe that Rakhat Aliyev would have been responsible for providing income to the Foundation prior to his death.
>
> 27.3 For the reasons identified at paragraphs 120 – 136 of the core statement, I suspect that any income originating from Rakhat Aliyev is likely to have been unlawfully obtained. I also suspect that members of his family have been involved in laundering the proceeds of his unlawful conduct.
>
> 27.4 Finally, and significantly, my suspicions above are strengthened by the complex and secretive manner in which Property 3 has been obtained and handled. It was initially purchased outright by a BVI company for a significant sum of money. Ownership of the property was transferred in March 2013, in circumstances which were extremely similar to two other UK properties of significant value, namely Properties 1 and 2. Ownership was transferred to a Panamanian Private Interest Foundation, an entity which is subject to strict secrecy laws. The President of Tropicana Assets Foundation resigned two months after the Global Witness report was published."

157. I repeat paragraphs 68 to 70 of my judgment, concerning Ms Kelly's failure to consider (1) that DN might be the founder of Tropicana; (2) the breakdown of the relationship between DN and RA when assessing the likelihood of DN's involvement in laundering RA's proceeds of unlawful conduct; and (3) the investigation and confiscation proceedings against RA which found that he had not transferred illegally acquired funds to DN and DN did not hold any illegally acquired funds or assets.

158. These matters were addressed in the 9 August letter. I repeat paragraphs 71 and 72 of my judgment.

159. The 9 August letter went on to give a detailed account of how DN acquired the beneficial interest in Property 3 in January 2010, and subsequently founded Tropicana and arranged for Property 3 to be transferred to its ownership in 2013, to mitigate tax. On 1 April 2013, the UK introduced ATED, a new property residential tax under which properties owned indirectly, for example through offshore corporate structures, were liable to the tax, but those owned by foundations were not. Therefore, the legal title of Property 3 was transferred to a foundation. The letter stated as follows:

"6. ACQUISITION OF PROPERTY 3

6.1 DN was the beneficial owner of Property 3 both at the time of purchase and at the time that it was transferred to Tropicana Assets. She remains the beneficial owner of this property. There is no connection between Property 3 and RA, whom DN had divorced more than two years prior to her acquisition of that property and with whom she had had no contact since. The document at Appendix 5 summarises the beneficial ownership of Property 3 at the material times.

6.2 The income used by DN to acquire Property 3 came from the proceeds of sale of her shares in Nurbank, that sale having taken place on the KASE. DN built up her shareholding in Nurbank through a series of share purchases between 2002 and 2009.

Beneficial ownership at the time of purchase of Property 3

6.3 Dedomin International Ltd ("Dedomin") acquired the legal title to Property 3 on 20 September 2010 for consideration of £31,000,000 plus an additional £1,000,000 for chattels. The Certificate of Incorporation for Dedomin at tab 48 reflects that it was incorporated on 7 December 2009. The Board Resolution and cancelled share certificate at tab 49 reflects that at the time that it acquired Property 3, Napel was the shareholder of Dedomin. As can be seen from the Register of Members at tab 7 and the summary of the ownership of Napel at paragraph 4.7, the ultimate beneficial owner of Napel was DN.

Beneficial ownership at the time of transfer of Property 3 to Tropicana Assets Foundation

6.4 Tropicana Assets was established in Panama on 9 January 2013. DN was the effective Founder, and is the primary beneficiary, of Tropicana Assets. This is confirmed by the Mandate Agreement dated 9 January 2013 (tab 50) and the By-laws, dated 18 July 2013 (tab 51).

6.5 On 6 March 2013, as confirmed by the Board Resolution and share certificate at tab 49, ownership of Dedomin passed from Napel (the ultimate beneficial owner of which was DN) to Tropicana Assets.

6.6 On 27 March 2013, legal title to Property 3 was transferred from Dedomin to Tropicana Assets.

6.7 On 25 September 2015, the President of Tropicana Assets confirmed by way of a nominee declaration that Tropicana Assets had previously held and still continued to hold Property 3 on trust for DN (tab 52).

6.8 The transfer of Property 3 from Dedomin to Tropicana Assets was also in anticipation of the introduction of ATED on 1 April 2013.

Source of funds for the purchase of Property 3

6.9 Between February 2002 and January 2009, DN acquired a substantial shareholding in Nurbank, a private commercial bank in Kazakhstan. The acquisition of DN's shareholdings in Nurbank can be seen in the enclosed extracts from the "Integrated Securities Registrar" JSC at tab 53 and a letter from Nurbank JSC dated 3 June 2019 at tab 54. The document at tab 53 identifies all Nurbank share transactions involving DN on her personal account while the letter from Nurbank confirms payment dates and amounts.

6.10 As can be seen from the documents at tab 53, DN subsequently increased her shareholding in Nurbank in June 2007 and again in June 2008. These were primarily purchases from Nurbank following share issues by the bank.

6.11 On 13 May 2010, DN sold her entire shareholding in Nurbank (9,792 privileged shares and 1,715,309 simple shares) to an individual named Sofia Sarsenova. The transfer of these shares to Ms Sarsenova can also be seen at tab 53.

6.12 The evidence of payment for these shares is contained in the letter from Nurbank at 55 and confirms that on 13 May 2010 DN received two transfers into her Nurbank account of 145,395,239.04 tenge (£672,661.92) and 25,469,542,696.33 tenge (£117,833,236.35) for the sale of the shares in Nurbank (together approximately US $175m).

6.13 DN used part of the proceeds of sale of her shareholding in Nurbank to acquire Property 3. The schedule appended to this letter at Appendix 6 summarises the relevant transactions (which we address in detail below) and demonstrates the movement of these funds from a Nurbank account in DN's name through bank accounts with JBB (held either in DN's name or in the name of companies of which she was the ultimate beneficial owner) to Reed Smith, the law firm which acted for

Dedomin and DN in connection with the purchase of Property 3.

6.14 On 26 May 2010, DN transferred US $120m from an account in her name at Nurbank to a JBB account in her name (confirmation of which is at tab 56). The bank statement[18] at tab 57 reflects that on 27 May 2010, this sum was received in to a USD account in DN's name at JBB (account number 0306.7302.2120.333.01) ("the JBB USD account")

6.15 On 28 June 2010, $2,620,741.35 was transferred out of the JBB USD account (the bank statement at tab 57 also identifies that the amount was converted to £1,741,125.00). On the same day (28 June 2010), a GBP account held by DN at JBB (account number 0306.7302.2120.402.01) ("the JBB GBP account") received £1,741,125.00 (we assume from the JBB USD account) and transferred the same amount to another account (see tab 58). Further, on the same day (28 June 2010), the following activity took place in an account held by Glamex Holding SA at JBB (account number 0306.6993.2120.402.01) ("the Glamex account"):

6.15.1 £1,741,125.00 was received into the account (we assume from the JBB GBP account);

6.15.2 £1,741,125.00 was sent to the Reed Smith GBP client account.

The relevant Glamex account bank statement is at tab 59.

6.16 As indicated by the JBB account opening document at tab 60, the beneficial owner of Glamex Holding SA was DN.

6.17 It is understood that the payment to the Reed Smith GBP client account from the Glamex account was the deposit for Property 3 plus other costs associated with the purchase. The completion statement from Reed Smith at tab 61 reflects that the deposit was £1,600,000.

6.18 On 30 June 2010, following those transfers, the statement for the JBB USD account at tab 57 reflects that that the balance of the $120m deposit, $117,360,000 was transferred to a Fiduciary Call Deposit investment account. Fiduciary deposits are a financial product which have been primarily developed in Switzerland. A fiduciary deposit is a deposit placed by a customer with a third bank (recipient bank) through

an agent bank. The recipient bank pays the agent bank the interest on the deposit which is then passed onto the depositor.

6.19 On 17 September 2010, the statements at tab 62 show that £31,438,470.56 was transferred from the JBB GBP account to an account (payee details are not reflected on the bank statement). The effect of this transfer was to reduce the balance of the GBP account to -£62,714,610.56 (the account already being overdrawn in the amount of -£31,276,140.

6.20 On the same day (17 September 2010), a GBP account held by Dedomin International Ltd at JBB, 0306.9517.2120.402.01, ("the Dedomin account") received £31,438,470.56 (tab 63). On 20 September 2010, the Dedomin account transferred the full sum (£31,438,410.56) to the Reed Smith client account, which was the balance for Property 3 (as confirmed by the receipt from Reed Smith's files at tab 64).

6.21 Following the transfer of monies from the GBP account to the Dedomin account, the statements at tab 62 show that the GBP account received the following three deposits, which restored the GBP account to credit:

6.21.1 £32,166,000.00 received from the Fiduciary Call Deposit investment account on 20 September 2010 (restoring the balance to -£34,743,353.25);

6.21.2 £31,440,000.00 received on 20 September 2010, the statement identifies this as 'Fixed Term Loan GBP 31,440,000, 1.97 20/09/2011 (restoring the balance to -£3,303,353.25);

6.21.3 £4,195,000.00 received from the Fiduciary Call Deposit investment account on 20 September 2010 (restoring balance to £2,496.47)."

160. Mr Hall QC was concerned about the reliability of this information given that it was contained in a letter from Ms Walsh, a solicitor, who had no direct knowledge of the facts therein, and it was exhibited to her witness statement, not set out in the body of her witness statement. Whilst I appreciate these concerns, the key facts set out in the letter are supported by the documentary evidence exhibited to Ms Walsh's witness statement. The documentary evidence appears to be genuine, and much of it is capable of verification by the NCA.

161. I consider that the information provided by DN demonstrates that the NCA's assumption that RA was the founder of Tropicana and the source of its funds was probably mistaken. There is cogent evidence that DN was the founder of Tropicana and the source of its funds.

162. Ms Kelly relied upon links between Property 3 and the Aliyev family in support of her assumption that RA was the ultimate founder of Tropicana (paragraph 27 of her third supplementary witness statement, set out above). However, she failed to distinguish between RA and other members of the Aliyev family. Any similarities in the handling of the three properties would be unsurprising since two of them were beneficially owned by DN and the other by her son, NA. They are not evidence of a financial link with RA.

163. Ms Kelly also relied upon links between RA and Mr Enry, who was the liquidator and attorney of Dedomin International and then became President of Tropicana. I refer to paragraphs 92 to 94 of my judgment addressing the same issue in respect of Property 1. Just as in Property 1, whilst there was a link between Mr Enry and RA, there was no evidence that Mr Enry was involved in any money laundering of RA's funds in the purchase of any of the properties or the founding of Tropicana.

164. Ms Kelly placed significant weight on the "complex and secretive" manner in which Property 3 was obtained and subsequently handled, eventually being transferred to a Panamanian foundation which is subject to strict secrecy laws, whilst being managed by property management companies in the UK.

165. I repeat paragraphs 96 to 98 of my judgment.

166. I accept the submission that the evidence as to the manner in which Property 3 has been handled in this case does not give rise to an "irresistible inference" that it is the product of unlawful conduct.

167. In conclusion, I consider that the NCA's assumption that RA was the founder of Tropicana and provided its funds, was unreliable. It was rebutted by the cogent evidence that DN was the founder of Tropicana and the source of its funds, and the ultimate beneficial owner of Property 3.

The holding requirement

168. The documentary evidence in respect of Tropicana is identical to the documentary evidence in respect of Villa Magna. Tropicana was established in Panama on 9 January 2013, which is also the date of the Charter. The Mandate Agreement was dated 9 January 2013 and the By-Laws were dated 18 July 2013. The Nominee Declaration was dated 29 September 2015.

169. I repeat paragraphs 101 to 122 of my judgment, substituting Tropicana for Villa Magna and Property 3 for Property 1. For the reasons set out therein, I am not satisfied that there is reasonable cause to believe that Mr Baker meets the holding requirement.

The value requirement

170. The value requirement is clearly met. Property 3 was purchased for £32 million in September 2010. The desktop valuation in March 2019 was £40 million.

The income requirement

171. I repeat paragraphs 126 to 138 of my judgment, substituting Tropicana for Villa Magna and Property 3 for Property 1. For the reasons set out therein, I am not satisfied that there are reasonable grounds for suspecting that the income requirement was met.

The PEP/serious crime requirement

172. I repeat paragraphs 140 to 153 of my judgment, substituting Tropicana for Villa Magna and Property 3 for Property 1. For the reasons set out therein, I am not satisfied that there are reasonable grounds for suspecting that the PEP or serious crime requirement has been met.

UWO2 and Property 2

The evidence relating to the funding of Property 2

173. It was a central premise in NCA's application for UWO2 that RA was the founder of Manrick and provided its funds, which derived from unlawful conduct. In Ms Kelly's core statement, she said:

> "120. I suspect that, whilst alive, Rakhat Aliyev was involved in serious crime during public office and subsequently.
>
> 121. I also suspect that, whilst Rakhat Aliyev was alive and/or after his death, members of the Aliyev family have been involved in laundering the proceeds of his unlawful conduct through the acquisition and handling of assets."

174. In Ms Kelly's second supplementary witness statement she said:

> "11. As identified at paragraphs 29 – 30, 71 – 72 and 81 of the core statement:
>
> (1) Property 2 was purchased on 29 August 2008 for £39,501,450 and registered in the name of Riviera Alliance (a BVI company).
>
> (2) It was subsequently transferred to the Curaçao registered Manrick Private Foundation on 29 March 2013.
>
> (3) On 3 January 2014, legal ownership was conveyed into the joint names of Manrick Private Foundation and Alderton Investments (an Anguillan company).

12. At the time of writing this statement, Manrick Private Foundation and Alderton Investments remain the registered proprietors of Property 2….

……

24. The NCA's primary position is that there are no 'known' sources of Manrick Private Foundation's income i.e. reasonably ascertainable from available information at the time of making this application (within the meaning of s.362B(6)(d) of POCA). Given the very limited requirements to publish information about Curaçaoan Private Foundations, there is no publicly available information about the funds which have been applied to Manrick Private Foundation since it was established (not even the starting capital).

25. In any event, whilst the sources of Manrick Private Foundation's income are not 'known', I strongly suspect that any sources of income are likely to have arisen from Rakhat Aliyev and/or members of his family (whether directly or indirectly), and are unlikely to have been lawfully obtained:

25.1 I believe that Rakhat Aliyev was the ultimate Founder of Manrick Private Foundation (whether acting personally or through another):

(1) As identified in paragraphs 139 – 153 of the core statement, there are strong links between Property 2 and the Aliyev family, including:

    (a) It appears that Nurali Aliyev and his wife currently occupy Property 2. They were identified as 'occupiers' in the legal charge dated 3 January 2014. The address was provided on Nurali Aliyev's visa application in August 2016. Barnet Council has confirmed that the council tax account for Property 2 is held in the name of Nurali Aliyev and his wife. The water account for the property is also held in their names. Credit checks reveal that Nurali Aliyev and his wife have both opened a NatWest current account which is registered at the property.

    (b) Individuals associated to Rakhat Aliyev are linked to the property. For example, it appears that Mr Kurmanbayev was an attorney of Riviera Alliance (the company which initially purchased Property 2 in August 2008). Mr Dall'Osso has been the sole director of Parkview Estates (the 'care of' address given to HM Land Registry for Manrick Private Foundation and Alderton Investments).

(c) Property 2 has been obtained and handled in a similar manner to Properties 1 and 3 (both of which have further links to the Aliyev family). For example, the properties were all transferred by BVI companies to offshore foundations in March 2013, within 4 days of each other.

(2) As identified in paragraph 139 of the core statement, I believe that Rakhat Aliyev had a propensity to place assets in the names of others.

(3) I note that Manrick Private Foundation was established in April 2001. At this time, Rakhat Aliyev was the First Deputy Head of the National Security Committee of Kazakhstan.

(4) I have not identified any other person who is more likely to have been the Founder at this stage. Rakhat Aliyev's son, Nurali Aliyev was 16 years old when Manrick Private Foundation was initially established.

25.2 As Founder of Manrick Private Foundation, I believe that Rakhat Aliyev would have been responsible for providing income to the Foundation prior to his death.

25.3 For the reasons identified at paragraphs 120 – 136 of the core statement, I suspect that any income originating from Rakhat Aliyey is likely to have been unlawfully obtained. I also suspect that members of his family have been involved in laundering the proceeds of his unlawful conduct.

25.4 Finally, and significantly, my suspicions above are strengthened by the complex and secretive manner in which Property 2 has been obtained and handled. It was initially purchased outright for a significant sum of money, by a BVI company incorporated shortly before the purchase. Ownership of the property was transferred in March 2013, in circumstances which were extremely similar to two other UK properties of significant value, namely Properties 1 and 3. Ownership was transferred to a Curaçaoan Private Foundation, an entity which is subject to very limited publicity requirements. The 'care of' address in the UK was identified (to HM Land Registry) as a corporate entity (namely Parkview Estates)."

175. The 9 August letter gave a detailed account of how NA (the UBO) acquired the beneficial interest in Property 2 in August 2008. Following refurbishment, NA took up residence in Property 2, and he continues to reside there with his family. The source of funds for the purchase was a loan from Nurbank to a company beneficially owned by NA. The funds were not provided either directly or indirectly by his father RA. NA confirmed that, since his parents' divorce in 2007, NA has not had any contact with his father. NA's date of birth is 1 January 1985.

176. The 9 August letter stated as follows:

> "5. ACQUISITION OF PROPERTY 2
>
> 5.1 NA was the beneficial owner of Property 2 at the time of purchase and at the time that it was transferred to Manrick. He remains the beneficial owner of this property. There is no connection between Property 2 and RA, NA not having had any contact with his father after his parents' divorce.
>
> 5.2 The source of funds for the purchase of Property 2 was a loan from Nurbank in the amount of US $65m to a company beneficially owned by NA (as confirmed by the letter from Nurbank at tab 20).
>
> *Beneficial ownership at the time of purchase of Property 2*
>
> 5.3 Riviera Alliance Inc ("Riviera") acquired the legal title to Property 2 on 29 August 2008 for consideration of £39,501,450. We enclose the Register of Members for Riviera at tab 21. As can be seen from that register, at the time of the acquisition of Property 2, Riviera was wholly owned at the time of purchase by Greatex. (We note the typographical error in the share register but are instructed that the shareholder was Greatex. The registered address given for Greatex on this share register is the same as that given for Greatex in the Invigorate share register (see the fifth page of tab 25). Greatex was, in turn, wholly owned by Aldener International Inc ("Aldener") (see tab 22). At that time, Aldener was wholly owned by Sarah and Edward Petre-Mears (see tab 23) who each held it subject to a declaration of trust. These declarations of trust are tab 24 and, regrettably, the beneficiary details are not included. We understand that NA was the beneficiary and this is consistent with the Petre-Mears being shareholders on the incorporation of other companies which are beneficially owned by our clients (see for example tabs 5, 21 and 23).
>
> 5.4 Following the purchase of Property 2, and after refurbishment and renovation, NA, his wife and their children began living in Property 2 and it continues to be their family home.
>
> 5.5 From 9 March 2009, the Register of Members of Greatex reflects that the ownership of Greatex (which continued to wholly own Riviera) was transferred in its entirety to Invigorate Group Ltd ("Invigorate"). The Register of Members for Invigorate reflects that NA has wholly owned Invigorate since 15 September 2008 (tab 25).
>
> *Beneficial ownership at the time of transfer of Property 2 to Manrick Private Foundation*

5.6 On 28 March 2013, Greatex transferred its shares in Riviera to Manrick (as confirmed by the Instrument of Transfer at tab 26).

5.7 The share register for Greatex at tab 22 confirms that it was wholly owned by Invigorate at the time of transfer, which in turn was wholly owned by NA (as confirmed by the share register at tab 25 and the written confirmation from the BVI Financial Investigation Authority at page 198 of AK/1, the bundle of documents accompanying the core witness statement).

5.8 On 29 March 2013 legal title to Property 2 was transferred from Rivera to Manrick.

5.9 The Founder's Declaration at tab 27 confirms that professional trustee company United International Trust NV became the effective Founders of Manrick on 29 December 2006 (Manrick having been founded on 24 April 2001). An invoice dated 8 April 2013 (tab 28) from United Trust Company NV (the shareholder of United International Trust) reflects a fee for the sale and activation of Manrick together with a director's and domiciliation fee. This supports that Manrick was acquired "off the shelf" from United International Trust prior to the date of the invoice. We have also been provided with a declaration of ownership (see tab 29) which reflects that NA became the sole beneficiary of Manrick on 6 March 2013.

5.10 The transfer of Property 2 from Riviera to Manrick was also in anticipation of the introduction of ATED on 1 April 2013.

Beneficial ownership at the time of transfer of Property 2 to the joint ownership of Manrick Private Foundation and Alderton Investments Ltd

5. 11 On 3 January 2014, legal title to Property 2 was transferred into the joint names of Manrick and Alderton Investments Ltd ("Alderton"). On the same date, a legal charge was signed on behalf of Manrick and Alderton in favour of Barclays Bank plc.

5.12 The documents at tab 30 reflect that Alderton Investments Ltd was incorporated in Anguilla on 9 December 2013 and that NA was, and continues to be, the sole shareholder.

5.13 For completeness, the Barclays Bank mortgage offer at tab 31 reflects that the valuation of Property 2 as at 12 December 2013 was £35,000,000 and that the sum of £17,500,000 was offered by the bank. We are instructed that this is the amount that was borrowed.

Source of funds for the purchase of Property 2

5.14 NA purchased Property 2 principally using funds loaned by Nurbank to Terra Holding LLP ("Terra") in the amount of US $65m (although he paid the deposit using the proceeds of sale from a television and radio company). The schedule appended to this letter at Appendix 4 summarises the relevant transactions (which we address in detail below) and demonstrates the movement of these funds from Terra's Nurbank account through a Hellenic Bank account in Cyprus in the name of Triumph Alliance Inc ("Triumph") (account number 240-07-810212-02 ("the Triumph account") to Herbert Smith, who acted for Riviera and NA in connection with the purchase of Property 2.

5.15 We enclose at tab 32 those copies of bank statements relating to the Triumph account which are presently available to our client. There is a credit of US $8,716,264.50 (£4,303,034.25), which was received into the Triumph account on 6 December 2007 and a further credit of US $249,672.54 (£123,158.58) which was received into the account on 14 December 2007. These were the funds from which payments were made in May 2008 in satisfaction of the £4m deposit for Property 2.

5.16 This money represents the proceeds of sale on 14 November 2007 of NA's 40% interest in Shahar LLP, a Kazakhstan television and radio company. NA held this interest through a company called Nurtransservice 1 LLP. Confirmation that he was the UBO of this company can be found at tab 33. The sale of these shares to a company called Logic Systems can be seen on the extract from the transaction log at tab 34. On 22 November 2007 Timur Segizbayev, acting as a trustee for NA, received funds from Logic Systems in the amount of 1,118,610,900 tenge (£4,505,192.31 or US $9,297,543.21). Mr Segizbayev then transferred these sums to the Triumph account in two tranches on 30 November 2007 and 4 December 2007. A copy of Mr Segizbayev's bank statement at tab 35 confirms these transactions.

5.17 The Triumph account bank statements at tab 32 also reflect the following two payments to the Herbert Smith client account which are consistent with the payment of a 10% deposit:

5.17.1 US $5,898,273 (£3,003,634.90) on 20 May 2008.

5.17.2 US $1,980,273 (£1,001,445.17) on 27 May 2008.

At the material time, in May 2008, Triumph was wholly owned by Nurali Aliyev (see share certificates at tab 36).

5.18 We enclose at tab 37 a certified translation of a Nurbank bank statement for Terra which indicates that US $65m was paid into that account on 20 August 2008 pursuant to a loan agreement.

The letter from Nurbank at tab 38 confirms the fact of the loan. The statement reflects that this sum was then transferred to Jupiter Intertrade Ltd ("Jupiter") on 21 August 2008 pursuant to a loan agreement dated 18 August 2008 (at tab 39). This money was paid into the Triumph Hellenic bank pursuant to the Payment Agency Agreement between Jupiter and Triumph at tab 40.

5.19 On 29 August 2008, a payment of US $64,999,980 (£35,510,677.91) was received from Terra bringing the total balance of the account to US $70,728,637.31 (£38,640,348.17), the most significant credit prior to that date being a payment from NA on 8 July 2008 of US $19,999,980 (£10,926,354.80) (see tab 32). On the same day (8 July 2008), as set out by a bank statement for an account in NA's name at Nurbank, NA transferred the sum of 2,411,000,000 Tenge or US $20,012,016) to the Triumph account (tab 41). The bank statement at tab 41 shows that the sum was originally received by NA from DN for "material assistance to" NA.

5.20 On 29 August 2008, a payment was made out of the Triumph account in the sum of US $68,898,287.39 (£37,640,394.54). A receipt at tab 42 shows that a payment was made from Triumph's account at the Hellenic Bank to the account of Herbert Smith at Barclays in London for £37,577,319 with the payment details "Property Purchase Agreement dated 20 May 2008".

5.21 At the material time, in August 2008, the companies involved in the transfer of the balance of the monies had the following ownership structures:

5.21.1 Terra was 100% owned by Capital Holding (see the Terra share register at tab 43), which was majority owned by Dolores Trade & Invest (see minutes dated 24 May 2009 of Capital Holding LLP shareholder meeting at tab 44 which confirms that Dolores Trade & Invest had a 90% interest), which was wholly owned by Triumph Alliance Inc (see Annual Return, tab 45). Dolores Trade & Invest was incorporated on 24 May 2007.

5.21.2 Jupiter appears to have been wholly owned by Sarah and Edward Petre- Mears (see Minutes of First Meeting of Board of Directors at tab 46) who each held it subject to a declaration of trust until 24 April 2008. These declarations of trust are at tab 47 and, regrettably, the beneficiary details are not included. We understand that NA was the beneficiary (and we refer you to our comments on this at paragraph 5.3).

5.21.3 Triumph Alliance Inc was majority owned by Greatex Trade & Invest Corp (see share certificates at tab 36), which in turn was wholly owned by Aldener International Inc (see the

> Greatex Register of Members at tab 22). At that time, we are instructed that Aldener was held on trust for NA as set out at paragraph 5.3.
>
> 5.22 In light of the desktop appraisal conducted by Savills [14] which concludes that a purchase price in August 2008 of £39m was well in excess of the property's true value at the time, we can confirm that we have seen a Valuation which was conducted for Julius Baer Bank ("JBB") in August 2008 which confirmed that the market value of the property was £37m. The report notes that the property was marketed at £45m."

177. Ms Kelly acknowledged in the "Full and frank disclosure" section of her core witness statement (paragraph 155(6)) that NA was likely to maintain that he was a successful businessman in his own right. She set out the following information about his education and employment, at paragraph 116:

> "116. The LinkedIn profile reveals the following information about Nurali Aliyev:
>
> 116.1 He has obtained a Bachelors and Masters Degree in Business Administration and Management at Pepperdine University (in USA) and IMADEC University (in Vienna, Austria).
>
> 116.2 From March 2006 – July 2010, he was a director at Nurbank, located in Almaty, Kazakhstan. He was initially appointed as Deputy Chairman from March 2006 – April 2007, before becoming Chairman of the Board in April 2007 (when 22 years old). This was a company which his father, Rakhat Aliyev, is said to have owned (referred to in more detail below).
>
> 116.3 In September 2006, whilst Deputy Chairman at Nurbank, he founded an entity named Capital Holding JSC.
>
> 116.4 From September 2010 – May 2013, he was Vice-President of the Development Bank of Kazakhstan, located in Astana, Kazakhstan (see paragraph 117 below for more details).
>
> 116.5 From October 2013 – December 2014, he was Chairman and CEO of Transtelecom, located in Astana, Kazakhstan.
>
> 116.6 From November 2014 (it would seem whilst still Chairman and CEO of Transtelecom) – March 2016, he was Deputy Mayor of Astana in Kazakhstan.
>
> 116.7 In November 2016, he founded the 'ZhanArtu foundation' based in Astana, Kazakhstan.
>
> 116.8 In 2018, he attended the Stanford University Graduate School of Business.

> 116.9 The LinkedIn profile currently includes the following description:
>
> 'Nurali Aliyev is an investor and entrepreneur. He is the founder and shareholder of Capital Holding JSC which manages a diversified portfolio of 25 companies that span a number of different industries.
>
> Nurali Aliyev is the founder and shareholder of Darmen Holding JSC, providing IT services to the corporate sector through its subsidiary firms. The services range from the improvement of enterprise business processes, enterprise software solutions, enterprise cloud solutions, data centers, big data, software production, hardware production, hardware distribution, optic fibre construction and installation.
>
> Nurali Aliyev is also a shareholder at Transtelecom JSC, one of the largest communications providers in Kazakhstan, specialising in the provision of a wide range of telecommunications services.
>
> Previously, Nurali Aliyev served as the deputy mayor of Astana, member of the managing board of the Development Bank of Kazakhstan Chairman of the Board of Directors of Nurbank JSC, and President of the Sugar Centre, JSC. Following his studies at Pepperdine University in California and at the International University in Austria, Nurali Aliyev graduated from the Abai Kazakh National University with a Bachelor of Economics and Finance. In 2006, Nurali attended the McCOMBS School of Business, University of Texas, and achieved an Executive Master of Business Administration from IMADEC University in Vienna, Austria.'"

178. In my view, this information demonstrates that NA was sufficiently independent of his parents by 2008 to purchase Property 2 for himself. As Ms Kelly had evidence that he and his family were living at Property 2, I find it surprising that she did not investigate this possibility further in her initial investigation. I am also surprised that, following receipt of the letter of 9 August, which gave full details of the purchase and also explained that NA had no contact with his father after the divorce in 2007, Ms Kelly did not re-consider her stance.

179. The 9 August letter explained that NA funded the purchase by means of a loan from Nurbank to a company owned by him. NA was a Director and subsequently Chairman of Nurbank. Current open source material shows that Nurbank was established in 1992 and together with its subsidiaries grew to provide retail and corporate banking, insurance, pension and asset management services. At the time of the loan, the bank was subject to scrutiny and rating. It was independently audited by Ernst & Young, who in that capacity, produced the bank's consolidated financial statements. Nurbank was evidently in a position to, and did, make a legitimate loan as it has independently confirmed in 2019, and as the relevant bank statements demonstrate.

180. In paragraph 19.1 of her second witness statement, made in response to the letter of 9 August, Ms Kelly relied on evidence of RA's association with Nurbank. By late 2006 RA either was, or was close to becoming, the major shareholder in Nurbank. At paragraph 124 of her core witness statement, Ms Kelly referred to evidence that he and DN combined were the major shareholder in Nurbank.

181. However, as Ms Kelly acknowledged in paragraph 19.1, the evidence shows that RA's connection with Nurbank ceased in 2007, when he was removed from public office, and charged with serious criminal offences, which included the illegal seizure of property belonging to the managers of Nurbank and their kidnapping. RA was already living in Austria at that time, and successfully resisted an extradition request by Kazakhstan. He became an exile.

182. As at 31 December 2007, members of the Board of Directors and Management Board controlled 1,179,563 shares or 43.64% of the Bank, (31 December 2006: 47,354 shares or 3.64%). At this point the bank was ultimately controlled by DN, with NA holding a 6.14% share.

183. Thus, there was no longer any connection between Nurbank and RA at the time of the loan in August 2008.

184. In paragraph 25.1(3) of her second supplementary witness statement, Ms Kelly identified that Manrick was established in April 2001. As NA was only 16 years old in 2001, she concluded that RA was the likely founder of Manrick.

185. I accept Ms Pople QC's submission that the evidence does not support that conclusion. Manrick was originally established in Curacao, a Dutch Antilles jurisdiction, by its founder Intertrust (Antilles) NV. Intertrust NV is an established (1952) Netherlands based publicly traded international trust and corporate management company seated in Amsterdam. It has a base in Curacao, an established aspect of which is the management of businesses, trusts and foundations in and across multiple jurisdictions including the Netherlands, and the Dutch Antilles in the Caribbean, including Curacao. Ms Kelly provided no reasoned basis for suspicion of any link between RA and (a) Manrick at the time of its foundation, (b) Intertrust and its role in the foundation of Manrick or (c) the named notary acting on behalf of Intertrust. A Founder's Declaration confirms that the United Trust Company NV, a professional trustee company, became the effective founder on 29 December 2006.

186. Seven years later, in April 2013 United Trust Company issued an invoice for "*Incorporation and/or activation services*" for the "*Sale and activation of Manrick Private Foundation*". This supports the assertion in the letter of 9 August that Manrick was purchased as an "off the shelf" entity and that it was only activated in 2013. The Managing Director-Chairman of United Trust, who is also a Board member of Manrick, further confirmed in a "Declaration of Ownership" dated 21 June 2019 that NA was the sole beneficiary of Manrick from 6 March 2013. Thus, it appears that Manrick was purchased and activated, on behalf of NA, for the purposes of the transfer of Property 2 to Manrick from Riviera, which took place on 29 March 2013.

187. The letter of 9 August stated that Property 2 was transferred from Riviera to Manrick because on 1 April 2013 the UK introduced ATED which taxed properties owned indirectly, for example, through offshore corporate structures, but properties owned by

foundations were not liable to the tax. This was also the reason why DN transferred Properties 1 and 3 to foundations. In my view, there is no reason to doubt this explanation for the transfer.

188. There is no direct or indirect evidence to link RA to Manrick at any time. Moreover, Manrick only became a relevant entity in the handling of Property 2 in 2013. Thereafter Manrick is connected to NA, but not to RA.

189. Further evidence of the funding of Manrick was provided. On the transfer of Property 2 to the joint ownership of Manrick and Alderton in January 2014, a mortgage in the sum of £17½ million was provided by Barclays Bank, and a charge registered against Property 2. Alderton is a property company registered in Anguilla; its Director is the Managing Director of United International Trust and the sole shareholder is NA. Ms Kelly did not suggest that there was any link to RA in this transaction.

190. Ms Kelly relied upon the link between RA and Mr Kurmanbayev, attorney of Riviera Alliance, and Mr Dall'Osso, director of Parkview Estates. I repeat paragraphs 83 to 91 of my judgment. As in the case of Properties 1 and 3, there was no evidence that either of them was involved in any money laundering of RA's funds in the purchase of Property 2 or the founding and funding of Manrick. Both these individuals were known to DN and were providing services for her. It is therefore unsurprising that NA also used their services.

191. Furthermore, any similarities in the handling of the three properties, referred to by Ms Kelly, in paragraph 25.1(1)(c) of her second supplementary witness statement, would be unsurprising since the other two were owned by NA's mother. They are not evidence of a financial link with RA.

192. The NCA also expressed concern about the foundation of Riviera in 2008 with Sarah and Edward Petre-Mears as the initial shareholders and directors with G Wealth Management Limited. I accept Ms Pople QC's submission that any notional link between Riviera and NA at the point of foundation in April 2008 is unsurprising, given it was Riviera in August 2008 which acquired legal title to Property 2 and Riviera was at that time (via Greatex) held by Aldener, which was in turn owned by Sarah and Edward Petre-Mears, subject to a declaration of trust in favour of NA.

193. Despite the sloppy paperwork produced by the Petre-Mears, I am not satisfied that the Petre-Mears trust was a sham arrangement. I note that, on 10 February 2020, the NCA was provided with the completed Trust Declaration documenting the position, as set out in the 9 August letter.

194. Ms Kelly placed significant weight on the "complex and secretive" manner in which Property 2 was purchased by a BVI company, and subsequently transferred to a Curacaoan private foundation which is subject to very limited publicity requirements.

195. I repeat paragraphs 96 to 98 of my judgment on the weight which can properly be given to these matters.

196. I accept the submission that the evidence as to the manner in which Property 2 has been handled in this case does not give rise to an "irresistible inference" that it is the product of unlawful conduct.

197. In conclusion, I consider that the NCA's assumption that RA was the founder of Manrick and provided its funds, was unreliable. It was rebutted by the cogent evidence that NA was the founder and beneficiary of Manrick, and that the original source of funding for the purchase of Property 2 was a legitimate bank loan. A mortgage was subsequently taken out on the property. It is not disputed that NA is the ultimate beneficial owner of Property 2, which is also his residence. There is no evidence of a link between RA and Manrick, or RA and Property 2.

The holding requirement

198. Manrick is one of the registered owners of Property 2, and so the holding requirement is met.

The value requirement

199. The value requirement is clearly met. Property 2 was purchased for £39 million in August 2008. The desktop valuation in March 2019 was £15 million.

The income requirement

200. The NCA submitted that the income requirement was met for the following reasons.

201. Applying the assumption in subsection 362B(6)(b) POCA 2002, Manrick obtained Property 2 at its market value of £15 million.

202. Whilst a charge was registered against the property in favour of Barclays Bank, it was not 'reasonable to assume' that a mortgage or loan was available to Manrick Private Foundation for the purpose of obtaining the property. The charge was made in January 2014, after the property was transferred to Manrick Private Foundation.

203. There were grounds to suspect that the known sources of Manrick Private Foundation's lawfully obtained income would have been insufficient to obtain the property. No public information was available about the source of Manrick's income.

204. There were grounds to suspect that any source of income was likely to have arisen from RA and/or members of his family, and is likely to have been obtained unlawfully.

205. At the *ex parte* hearing, Supperstone J. accepted that the income requirement was met.

206. On this application to discharge, there is considerably more information available to me, namely:

i) The UBO of Property 2 is NA.

ii) Property 2 was purchased by Riviera on 29 August 2009 for £39,501,450. Riviera was beneficially owned by NA.

iii) The source of funds for the purchase of Property 2 was a loan from Nurbank in the sum of US $65 million.

iv) In order to mitigate property tax liability in the UK, on 29 March 2013 the ownership of Property 2 was transferred to Manrick for nil consideration. Manrick is a private foundation which was purchased and activated for this purpose. Manrick holds Property 2 on trust for NA as beneficiary.

v) NA is the founder and beneficiary of Manrick.

vi) On 3 January 2014, the legal title to Property 2 was transferred into the joint names of Manrick and Alderton. On the same date, a legal charge was registered against the property by Barclays Bank in respect of a mortgage granted to Manrick and Alderton in the sum of £17½ million.

207. I refer to paragraphs 130 to 136 of my judgment, concerning the application of the income requirement to trustees etc. On that basis, the NCA was required to consider the actual extent of Manrick's legal interest in the property as the trustee, and then ask whether the known sources of lawfully obtained income would have been insufficient for the purpose of enabling it to obtain the legal interest in the property. This was not the approach adopted by the NCA, which instead valued Manrick's interest on the basis that it was purchasing both the legal and beneficial interests.

208. But even on the NCA's own analysis, it ought to have had regard to the fact that the property was most recently transferred to Manrick and Alderton on 3 January 2014. The mortgage which they obtained from Barclays in the sum of £17½ million was sufficient to obtain Property 2 at the market value of £15 million.

209. Finally, I do not consider that there were reasonable grounds for suspecting that Manrick's source of income was likely to have arisen from RA, directly or indirectly, and therefore was likely to have been unlawful. I consider that the NCA's assumption that RA was the founder of Manrick and provided its funds, was unreliable. It was rebutted by the cogent evidence that NA is the founder and beneficiary of Manrick, and that the original funding for the purchase of Property 2 in 2008 was a legitimate bank loan from Nurbank. A mortgage was subsequently taken out on the property when it was transferred to Manrick and Alderton in 2014. NA is the ultimate beneficial owner of Property 2. There is no evidence of a link between RA and Manrick, or RA and Property 2.

210. For these reasons, I am not satisfied that there are reasonable grounds for suspecting that the income requirement was met.

The PEP/serious crime requirement

211. The NCA submitted that there were reasonable grounds for suspecting that Manrick is or has been 'involved' in serious crime because:

i) the property was obtained through unlawful conduct;

ii) Manrick has held and retained control over the property;

iii) in all the circumstances, Manrick has conducted itself in a way that was likely to facilitate the commission of a serious offence, namely, money laundering.

212. Further or alternatively, the NCA submitted that there were reasonable grounds for suspecting that a person connected with Manrick, namely, RA, has been involved in serious crime. In particular, Manrick was likely to be the trustee of a settlement in which Property 2 was comprised and RA was likely to be the "settlor" of that settlement.

213. Further or alternatively, Manrick was a PEP because it was connected with RA who was an IEPPF.

214. At the *ex parte* hearing, Supperstone J. accepted that the serious crime/PEP requirement was met.

215. However, on the more substantial evidence available to me, I have reached the conclusion that the NCA's assumption that RA was the founder of Manrick and provided its funds, was unreliable. It was rebutted by the cogent evidence that NA was the founder and beneficiary of Manrick, and that the original funding for the purchase of Property 2 was a legitimate bank loan from Nurbank. NA is the ultimate beneficial owner of Property 2, which is also his residence. There is no evidence of a link between RA and Manrick or RA and Property 2. Therefore, there are no reasonable grounds for suspecting that Property 2 was obtained through unlawful conduct, nor that Manrick is or was connected with RA for the purposes of the serious crime or PEP requirements.

216. For these reasons, I am not satisfied that there are reasonable grounds for suspecting that the PEP or serious crime requirement is met.

Material non-disclosure and inadequate investigation

217. After carefully considering the Respondents' submissions, I am not persuaded that there was material non-disclosure at the *ex parte* hearing. In particular, the information that DN was divorced and that RA had re-married was included in Ms Kelly's witness statement. However, I do accept that the NCA case which was presented at the *ex parte* hearing was flawed by inadequate investigation into some obvious lines of enquiry: see the matters set out at paragraphs 68 to 70 and 178 above. Furthermore, I consider that the NCA failed to carry out a fair-minded evaluation of the new information provided by the UBOs and Respondents under cover of the letter of 9 August, in particular, in relation to the evidence of purchase on behalf of the UBOs, the absence of any link between RA and the three foundations, and the matters at paragraphs 68 to 70 and 178 above. I have taken this into account in reaching my conclusions on the three UWOs.

Conclusion

218. For the reasons set out above, I grant the applications to discharge the orders.

Appendix

NCA's Factual Chronology:

07.10.83	Rakhat Aliyev married Dariga Nazabayeva
01.01.85	Nurali Aliyev was born
1986	Rakhat Aliyev graduated from the Alma-Ata State Medical Institute
1992	Rakhat Aliyev defended his postgraduate thesis at the 2nd Moscow Medical Institute
1996	Rakhat Aliyev graduated from the Faculty of Law at the Almaty High School of Law Rakhat Aliyev was appointed as Director of the Tax Police
Late 90s	Dariga Nazabayeva met Mr Dall'Osso in Pesra, Italy [Footnote 15: According to Rakhat Aliyev's testimony to the Maltese magistrate in February 2012]
1999	Rakhat Aliyev was appointed as First Deputy Head of the National Security Committee
24.04.01	Manrick Private Foundation was established in Curaçao
2002	Rakhat Aliyev was appointed as Ambassador of Kazakhstan to Austria
14.06.03	Bernard Enry was appointed as director of A.V. Maximus SA
2005	Rakhat Aliyev was appointed as First Deputy Foreign Affairs Minister in Kazakhstan
16.05.05	Farmont Baker Street Ltd was incorporated in the UK
05.07.05	Mr Dall'Osso was appointed as director of Armoreal Trading GmbH (until 21.01.08)
August 2005	Mr Dall'Osso was appointed as executive director of Metallwerke Bender Rheinland GmbH (until Feb 2007)
March 2006 - March 2007	Mr Kurmanbayev worked at the Ministry of Justice in Kazakhstan
February 2007	Rakhat Aliyev was appointed as Ambassador of Kazakhstan to Austria
May 2007	Rakhat Aliyev announced his intention to run in the Presidential elections in Kazakhstan. He was removed from public office. Criminal proceedings were

	commenced against him in Kazakhstan. An extradition request was made to Austria
06.06.07	Rakhat Aliyev's marriage to Dariga Nazarbayeva was dissolved
07.08.07	Austria refused Kazakhstan's request to extradite Rakhat Aliyev
November 2007	Mr Kurmanbayev was appointed as a director of Greatex (Suisse) SA
16.11.07	Twingold Holding Ltd was incorporated in the BVI
04.12.07	Greatex Ltd was incorporated in the UK
05.03.08	Mr Kurmanbayev was appointed as director of Greatex Ltd. Twingold Holding Ltd was appointed as secretary
02.04.08	Property 1 was purchased by Twingold Holding Ltd for £9,300,000 (from Huckabay Holdings Ltd). An unsigned TR1 form identified Mr Kumanbayev as the 'attorney'
28.04.08	Mr Kurmanbayev was identified as an officer of Twingold Holding Ltd
08.04.08	Riviera Alliance Inc was incorporated in the BVI
31.07.08	Parkview Estates Management Ltd was incorporated in the UK
29.08.08	Property 2 was purchased by Riviera Alliance Inc for £39,501,450 (from Hossein Ghandehari). An unsigned TR1 form identified Mr Kumanbayev as the 'attorney'
03.11.08	Dynamic Estates Ltd was incorporated in the UK
13.03.09	Twingold Holding Ltd resigned as secretary of Greatex Ltd
01.04.09	Nicholas Dryden was appointed as director of Farmont Baker Street Ltd [Footnate 16: The NCA does not hold information about the exact date of appointment. However, this was the date on which Mr Panayiotou resigned as director. It is understood that Mr Dryden replaced him on or shortly after this date.] Nicholas Dryden was appointed as director of Dynamic Estates Ltd
08.05.09	Nicholas Dryden was appointed as director of Parkview Estates Management Ltd
May 2009	Rakhat Aliyev published *The Godfather-in-Law*
13.05.09	Mr Kurmanbayev was appointed as director of Farmont Baker Street Ltd (replacing Nicholas Dryden)

27.05.09	Farmont Baker Street Ltd changed its registered address to 219 Baker Street
05.06.09	Parkview Estates Management Ltd changed its registered address to 219 Baker Street
11.12.09	Dynamic Estates Ltd changed its registered address to 219 Baker Street
31.01.10	Nicholas Dryden resigned as director of Parkview Estates Management Ltd
17.03.10	Mr Dall'Osso was appointed as director of Parkview Estates Management Ltd Mr Kurmanbayev was appointed as director of Dynamic Estates Ltd
04.06.10	Greatex Ltd changed Mr Kurmanbayev's service address to 219 Baker Street
20.09.10	Property 3 was purchased for £32,000,000 (from Flavio Briatore). The 'Buyer' was identified as the Manresa Trust [Footnote 17: With a service address at MMG Towers, East 53rd Street, Marbella, Panama] although, at the buyer's direction, the transfer was made to Dedomin International Ltd [Footnote 18: The date of incorporation of Dedomin International Ltd in the BVI is not known] by way of a sub-sale
16.03.11	Bernard Enry was made President of the Board of Directors of A.V. Maximus SA
February 2012	Rakhat Aliyev gave evidence under oath to a magistrate in Malta
09.01.13	Tropicana Assets Foundation was established in Panama by Alcogal Corporate Services S.A. The domicile was MMG Building, 53rd East Street, Panama. The registered agent was Aleman, Cordero, Galindo & Lee. The Foundation Council comprised Bernard Enry, Edgardo E. Diaz and Gina A. Martinez
28.01.13	Villa Magna Foundation was established in Panama by Alcogal Corporate Services S.A. The domicile was MMG Building, 53rd East Street, Panama. The registered agent was Aleman, Cordero, Galindo & Lee. The Foundation Council comprised Bernard Enry, Edgardo E. Diaz and Gina A. Martinez
07.03.13	Twingold Holding Ltd executed a power of attorney authorising Bernard Enry (the liquidator) to transfer Property 1 to Villa Magna Foundation (the shareholder) Dedomin International Ltd executed a power of attorney authorising Bernard Enry (the liquidator) to transfer Property 3 to Tropicana Assets Foundation (the shareholder)
25.03.13	Property 1 was transferred from Twingold Holding Ltd to Villa Magna Foundation. The transfer deed was signed by Bernard Enry. Parkview Estates Management Ltd was given as the 'care of' address for Villa Magna Foundation

27.03.13	Property 3 was transferred from Dedomin International Ltd to Tropicana Assets Foundation. The transfer deed was signed by Bernard Enry
28.03.13	Riviera Alliance Ltd executed a power of attorney authorising John Willekes MacDonald to transfer Property 2 to Manrick Private Foundation
29.03.13	Property 2 was transferred from Riviera Alliance Ltd to Manrick Private Foundation. Parkview Estates Management Ltd was identified as the 'care of' address for Manrick Private Foundation
13.06.13	Greatex Ltd changed its name to Diamond Hangar Ltd
22.09.13	The Financial Statement for Imperial Sugar Company LLP was signed by 'B Enry' (on behalf of Ramsdell Overseas Ltd)
25.09.13	Equipe Real Estate Management Ltd was incorporated in the UK. Mr Dall'Osso was the sole director and shareholder.
December 2013	Questions posed by MEPs to the European Commission identified that Rakhat Aliyev was subject to ongoing investigations by authorities in Austria, Germany and Malta in connection with allegations of serious white collar crimes, abduction and murder
03.01.14	Legal ownership of Property 2 was conveyed into the joint names of Manrick Private Foundation and Alderton Investments Legal charge between Barclays Bank and Manrick Private Foundation/Alderton Investments (identifying Nurali and Aida Aliyev as occupiers of Property 2)
June 2014	Rakhat Aliyev was arrested by Austrian authorities
30.06.14	Bernard Enry resigned as President of A.V. Maximus SA
31.07.14	Shareholding in Diamond Hangar Ltd was transferred from Greatex Trade & Invest. Corp to Executive and Business Aviation and Services Ltd ("EBAS")
August 2014	Mr Kurmanbayev resigned as director of Greatex (Suisse) SA
01.08.14	Mr Kurmanbayev resigned as director of Diamond Hangar Ltd
04.08.14	Mr Kurmanbayev resigned as director of Farmont Baker Street Ltd, and was replaced by Mr Dall'Osso
18.09.14	Manrick Private Foundation and Alderton Investments changed their 'care of' address from Parkview Estates Management Ltd to RMS Private Office Ltd Mr Dall'Osso resigned as director of Equipe Real Estate Management Ltd (and was replaced by Sabrina Figini). His shareholding was transferred to Conan Consulting Ltd
24.02.15	Rakhat Aliyev died in an Austrian prison

31.03.15	Conan Consulting Ltd transferred its shareholding in Equipe Real Estate Management Ltd to Sabrina Figini
July 2015	Publication of the Global Witness report *Mystery on Baker Street*
15.09.15	St Gregory Management Ltd was incorporated in the UK. The sole director and shareholder was Jorge Rodriquez
25.09.15	Bernard Enry resigned as President of Villa Magna Foundation. The Foundation Council appointed Andrew J Baker as the new President at 10.30 a.m. Bernard Enry resigned as President of Tropicana Assets Foundation. The Foundation Council appointed Andrew J Baker as the new President at 11.30 a.m.
30.06.16	The date on which UK companies were required to identify PSCs. Jorge Rodriquez transferred his shareholding in St Gregory Management Ltd to Sabrina Figini
18.08.16	Nurali Aliyev applied for a Tier 1 (Investor) Visa, giving his address as Property 2
15.10.16	Council tax for Property 2 was registered in the name of Nurali and Aida Aliyev
17.01.17	Equipe Real Estate Management Ltd was dissolved