Neutral Citation Number: [2025] EWHC 130 (KB)

Case No: KB-2023-000103

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
IN THE MATTER OF A CLAIM FOR CIVIL RECOVERY UNDER PART 5 OF THE PROCEEDS OF CRIME ACT 2002

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/01/2025

Before :

MR JUSTICE FREEDMAN

- -

Between :

THE DIRECTOR OF PUBLIC PROSECUTIONS	**Claimant/ Respondent**
- and –	
(1) DEBORA KRASNIQI	**First Defendant/ Applicant**
(2) ZINA KRASNIQI	**Second Defendant**

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Andrew Bird KC and Gemma Rose (instructed by **Crown Prosecution Service**) for the **Claimant/Respondent**
Richard Hoyle (instructed by **Ackroyd Legal (London) LLP**) for the **First Defendant/Applicant**
The Second Defendant did not appear and was not represented

Hearing date: 21 November 2024
Judgment handed down in draft: 20 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 24 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE FREEDMAN :

I Introduction

1. This is a claim by the Claimant, the Director of Public Prosecutions ("the DPP") for civil recovery orders under ss.243 and 266 of POCA in respect of the following property which is held by Debora Krasniqi ("the First Defendant") and, her mother, Zina Krasniqi ("the Second Defendant, and together "the Defendants") in respect of two London properties. There is before the Court an application on behalf of the First Defendant for reverse summary judgment and/or strike out in respect of a part of the claim against the First Defendant relating to funds which are said to be or to represent the proceeds of crime.

II Summary of claim

2. By s.316 of the Proceeds of Crime Act 2002 ("POCA"), the DPP is entitled to bring proceedings under s.243 of POCA and does so as the Claimant in these proceedings. The First Defendant is the daughter of the Second Defendant. She is the widow of the late Flamur Beqiri who was murdered on 24 December 2019.

3. The claim is in respect of the following properties:

    (1) the legal and beneficial interest in the freehold property at 15 Battersea Church Road, London SW11 3LY ("15 BCR"), held by the First Defendant and purchased on 31 August 2017 for £1.7 million, which is subject to the terms of the Property Freezing Order ("PFO") originally made in the High Court on 18 March 2021;

    (2) the net rentals from 15 BCR held in an account at Barclays Bank plc in the name of the First Defendant and also held by her subject to the terms of Property Freezing Order ("PFO") originally made in the High Court on 18 March 2021;

    (3) the legal and beneficial interest in the leasehold property at 19 Spedan Close, London NW3 7XF ("19 SC"), purchased by the Second Defendant on 24 September 2018 for £646,100 (the price being discounted under Housing Act 1985 Right to Buy) and then transferred by the Second Defendant to the First Defendant and the Second Defendant jointly for no consideration on 6 March 2019.

4. It is the DPP's case that the above properties are, or represent, property obtained through unlawful conduct within the meaning of ss 304 – 308 of POCA and that he is therefore entitled to a recovery order in respect of each of the properties under s.266 of POCA. A recovery order would vest the properties in the trustee for civil recovery.

5. The application is for summary judgment in favour of the First Defendant on, or strike out of: paragraphs 5(a), 5(b), 6(a), 9, 11, 11A,11B, 28, 29, 30, 41, 42 and 43 of the

Claimant's Amended Points of Claim ("APoC") dated 15 September 2023 ("the Application").

6. The DPP's case in para. 5 of the APoC (of which para. 5(a) and para. 5(b) are the subject of the Application) in relation to 15 BCR is that the purchase price of £1.7 million was funded in part by:

   (a) £227,313.37 transferred to the First Defendant on 19 January 2017 and 24 January 2017 by Jeton Rexhepi ("Rexhepi") which was, or represented, the proceeds of fraud by Rexhepi and/or the money laundering by Rexhepi. This was of funds from an Organised Criminal Network ("OCN") headed by Daniel Johanssen Petrovski ("Petrovski"), and of which Flamur Beqiri was a member;

   (b) £250,000 transferred to the First Defendant on 4 July 2017, 8 August 2017 and 9 August 2017 which was, or represented, the proceeds of fraud by Emil Ingmanson ("Ingmanson");

   (c) a mortgage advance of £750,000 which was obtained by the First Defendant through Goldcrest Finance Limited in the application for which false representations were made dishonestly by or on behalf of the First Defendant.

7. The DPP's case in para. 6 of the APoC (of which para. 6(a) is the subject of the Application) in relation to 19 SC is that the purchase price of £646,100 was funded, in whole, by:

   (a) £177,320.26 which had been transferred to the First Defendant in April 2018 by Rexhepi which was, or represented, the proceeds of fraud by Rexhepi and/or the money laundering by Rexhepi of funds from the OCN headed by Petrovski, and of which Mr Beqiri was a member;

   (b) a mortgage advance of £495,500 which was obtained by the Second Defendant from MSP Capital Limited in the application for which false representations were made dishonestly by or on behalf of the First Defendant and the Second Defendant.

8. The DPP's case at para. 9 (which is the subject of the Application) is that at all material times prior to the murder of Mr Beqiri on 24 December 2019, there was an OCN of which Petrovski was the head, and of which Mr Beqiri and Naief Adawi were also members. The OCN operated, inter alia, in Sweden and Spain and was involved in drug trafficking. The DPP relies among other things upon the evidence and witness statements from Detective Inspector Kajsa Delmar-Wigstrom dated 8 June 2021 and 23 August 2021 and 8 September 2023.

9. Further paragraphs of the APoC in respect of which reverse summary judgment or strike out is sought by the First Defendant are paras. 11, 11A and 11B which read as follows:

> "11. Between at least 27 October 2016 and 11 December 2017 Jeton Rexhepi operated bank accounts at Akbank in Turkey, including a Euro account number 93766. This account received substantial cash deposits which the Claimant will invite the Court to infer must have been the proceeds of crime, and also received, on 17 January 2017, a transfer of €250,000 from Feridun Fahri Bolezek, which the Claimant will invite the Court to infer was the proceeds of crime committed by members of the OCN headed by Daniel Johansson Petrovski and destined for the First Defendant, to whom €251,900 was transferred from that account on 19 January 2017.
>
> 11A. In the premises Jeton Rexhepi was engaged in unlawful conduct, namely money- laundering by which he would receive funds from or on behalf of the OCN and make funds available to members of the OCN and the First Defendant. It is the Claimant's case that Jeton Rexhepi knew that he was dealing with funds that were the proceeds of crime.
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> 11B. The Claimant will also rely on the following facts:
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> (a) that Jeton Rexhepi, when interviewed by Swedish Police, feigned forgetfulness of Flamur Beqiri, and stated that the First Defendant was an acquaintance;
>
> (b) communications up to November 2019, in which Flamur Beqiri was chasing and threatening Jeton Rexhepi;
>
> (c) neither Flamur Beqiri nor the First Defendant ever made any complaint to the Swedish Police or other authorities about Jeton Rexhepi or his companies."

10. The remaining paragraphs of the APoC which are the subject of the Application are as follows:

> "28. Jeton Rexhepi obtained funds through his unlawful conduct of money-laundering_as set out in paragraph 11 above and transferred £227,313.37 of those funds to the First Defendant in January 2017. Those funds were recoverable property.

> 29. Emil Ingmanson obtained funds through his unlawful conduct of fraud as set out in paragraph 15 above and transferred £100,000 of those funds to FDB Consulting Limited in July 2017 and a further £150,000 to the First Defendant in August 2017. Those funds were recoverable property.
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> 30. The First Defendant received those funds (totalling £477,313.37) from Jeton Rexhepi and Emil Ingmanson.
>
> …….
>
> 41. Jeton Rexhepi obtained funds through his unlawful conduct as set out in paragraphs 11 (money-laundering) and/or 13 (fraud) above and transferred £194,606.67 of those funds to the First Defendant in April 2018. Those funds were recoverable property.
>
> 42. The First Defendant received those funds from Jeton Rexhepi. In the event that it is alleged that she obtained them, or any part of them in good faith, for value and without notice that they were recoverable property (thus invoking the exception provided for by s.308 POCA) then the Claimant will put her to proof of that exception and will deny that she gave value (or executed consideration), and will deny that she acted in good faith, and will deny that she had no notice that they were recoverable property.
>
> 43. The First Defendant then used £177,320.26 of those funds to acquire legal title to 19 Spedan Close for the Second Defendant, and the Second Defendant's legal title and/or any beneficial interest in the equity in 19 Spedan Close represents those funds, and so was recoverable property by reason of s.305 of POCA."

11. The First Defendant's case is that there is no real prospect of success in the DPP's case of seeking to trace the sums received by the First Defendant from the alleged unlawful acts. The First Defendant was not a person who was a party to the unlawful acts which are said to have generated these moneys. It is not up to the First Defendant to prove the tracing claim, and the DPP is unable to prove the connection between the unlawful acts and the moneys received by the First Defendant. The First Defendant submits as a matter of law that a proprietary tracing exercise is required starting with the unlawful conduct and ending with what is claimed as recoverable property (see further paras. 34 and 49 below), and it is not sufficient to rely on a combination of this exercise with inferences from the property held going backwards in time. For convenience these are referred to in this judgement as going forwards and backwards in time. Insofar as there may be cases where the connection can be proven by irresistible inferences, they do not apply in the instant case, not least because the First Defendant was not a party to the alleged unlawful acts and so there are no inferences to be drawn by the areas of her lack of knowledge. In any event, such an approach is

said wrongly to put the onus on a respondent to disprove a case whereas the onus is on an applicant to prove a case.

12. Other parts of the APoC where reverse summary judgment or strike out are not sought are as follows:

(i) The APoC (para. 13) refer to fraud in Sweden by Rexhepi between August 2016 and November 2019 in respect of which he was convicted on 31 July 2020 and sentenced to 5 ½ years' imprisonment. Rexhepi obtained funds by fraud from investors including €14,000 from Sten and Birgitta Nilsson and £90,000 from Lars Ackfelt and Harald Posse. It is alleged that these were or are representative of funds which were transferred to the First Defendant. There were false documents prepared by Rexhepi to give apparent legitimacy to these transfers.

(ii) The APoC (para. 15) refer to frauds by Ingmanson (aka Max Serwin) between 2012 and the end of 2017 committed frauds on a Swedish pension fund and money laundering. Ingmanson was convicted for the fraud in April 2020 (the Optimus phase) and was sentenced to six years and nine months imprisonment. He was further convicted in March 2021 (the Falcon phase). The DPP relies upon a summary judgment given by Foxton J in the High Court on 27 October 2022 in *Kingdom of Sweden v Serwin and others* [2022] EWHC 2706 (Comm) in which Ingmanson and others were found liable for fraud and ordered to pay damages in the sum of $28,529,981 in favour of the Kingdom of Sweden.

(iii) There are also parts of the claim which are about alleged mortgage frauds by the Defendants based on the description of the source of funds or intentions as to the use of the properties. The First Defendant refers to the same as being an add on to the complaints as to the origin of the funds. They are defended, but do not form a part of the reverse summary judgment/strike out application.

(iv) The APoC (paras. 17, 18, 19, 19A and 19B) allege a mortgage fraud resulting in the transfer of a sum of £728,896 to the First Defendant's solicitors to assist in the purchase of 15 BCR. The application for finance made on or about 23 - 25 July 2017 represented that the cash funding or deposit for the purchase was derived from savings of the first defendant from her income, inheritance, and income from a sale of property abroad plus £300,000 for a family gift. It is alleged that the representation was false and made dishonestly: the funding was largely from Rexhepi and Ingmanson and together with an unsecured loan of £374,155.51 from Mr Abdul. There was also a failure to disclose that the deposit was sourced as to £227,313.37 from Rexhepi and as to £250,000 from Ingmanson.

(v) The APoC (paras. 20, 21, 22, 22A and 22B) refer to an alleged mortgage fraud in the sum of £495,500 to assist in the purchase by the Second Defendant of 19 SC. It is alleged that the First and Second Defendants made false and dishonest representations to the lender that the Second Defendant would not be living in the property and the property would be rented out on completion and the Second Defendant was entering into the mortgage agreement wholly

or predominantly for the purposes of a business. In fact, the Second Defendant continued to occupy 19 SC with her husband.

(vi) The APoC (paras. 23-25) refer to payments made in cash or by third parties towards works of renovation and improvement at 15 BCR between August 2017 and April 2019 of which almost nothing was paid by the First Defendant. The Court is invited to infer that the funds were or represented funds obtained through drug trafficking of Mr Beqiri and/or the OCN.

(vii) The APoC (paras. 26-27) allege that the First and Second Defendants had insufficient funds from their legitimate earnings and resources to acquire title to or equity in 15 BCR and 19 SC. Further false documents were created by Rexhepi to explain or disguise the true origin of the funds including (a) a statement of account in which the First Defendant's name was inserted in place for a real investor, (b) statements of account purporting to be from Vantage Global Prime showing withdrawal of funds, and (c) a statement showing the First Defendant as a beneficiary of funds held at Vantage Global Prime trading as Atom 8.

13. Before examining the instant case both in outline and considering the transactions in more granular detail, it is appropriate to turn to the statutory scheme and relevant case law as to its application as well as the principles relating to summary judgment/strike out applications.

III The Statutory Scheme

14. This can be derived by quoting extensively from the judgment of Hamblen J (as he then was) in *Serious Organised Crime Agency v Pelekanos (No.1)* [2009] EWHC 2307 (QB) at paras. 6 -17 who stated the following:

> "Property obtained through unlawful conduct
>
> 6. Section 240(1)(a) provides that the general purpose of Part V of POCA is to enable the enforcement authority to recover in civil proceedings before the High Court property which is, or represents, property obtained through unlawful conduct. Unlawful conduct is defined by section 241 which provides that:
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> > "Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part".
>
> 7. Section 241(3)(a) provides that the court must decide on a balance of probabilities whether it is proved that any matters alleged to constitute unlawful conduct have occurred.

8. Section 242 defines what constitutes 'property obtained through unlawful conduct'. Section 242(1) provides that:

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

9. In determining what constitutes 'property obtained through unlawful conduct' section 242 provides that:

> (1) "In deciding whether any property was obtained through unlawful conduct—
>
> (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,
>
> (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct."

Recoverable property.

10. The general interpretation section (section 316) provides that what constitutes "recoverable property" is to be read in accordance with sections 304 to 310 of the Act. Section 304 defines recoverable property as:

"304 Property obtained through unlawful conduct

> (1) Property obtained through unlawful conduct is recoverable property.
>
> (2) But if property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.
>
> (3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by—
>
> (a) the person who through the conduct obtained the property, or
>
> (b) a person into whose hands it may (by virtue of this subsection) be followed".

11. By virtue of section 305 property is also recoverable property if it represents property that was originally obtained through unlawful conduct:

> "(1) Where property obtained through unlawful conduct ("the original property") is or has been recoverable, property which represents the original property is also recoverable property.
>
> (2) If a person enters into a transaction by which—
>
> (a) he disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and
>
> (b) he obtains other property in place of it, the other property represents the original property.
>
> (3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property)."

12. It is this section which permits the tracing of, and the recovery of, any property which was obtained using property which was originally obtained through unlawful conduct.

13. Section 306 provides that:

> "(1) Subsection (2) applies if a person's recoverable property is mixed with other property whether his property or another's.
>
> (2) The portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.
>
> (3) Recoverable property is mixed with other property if, for example, it is used,
>
> …
>
> (b) in part payment for the acquisition of an asset."

14. Section 307 permits the recovery of accruing profits. It is this provision which provides for the recovery of rental income received from a property which is, of itself, recoverable property, although no such claim is made in the present case.

> 15. The Court's jurisdiction to make a recovery order is provided for by way of section 266. Section 266 operates so that the making of such an order is mandatory (subject to the limited exceptions set out therein) if the Court is satisfied that the property is recoverable.
>
> 16. Sections 270-272 deal with associated and joint property and what is to happen where the entire property interest is not recoverable property.
>
> 17. In summary, to establish their claim to the properties in question SOCA has to prove that it is or that it represents property which has been obtained "by or in return for" "unlawful conduct"
>
> …"

IV Inferences to prove an unlawful act

15. There is a line of cases which shows the way in which the Court will consider how unlawful conduct is proven and the extent to which inferences may be drawn.

16. In *DARA v Green* [2005] EWHC 3168 (Admin), Sullivan J held that the applicant did not need to allege or prove the commission of any specific criminal offence stating at para. 25:

> "In my judgment, the Act deliberately steered a careful middle course between, at the one extreme, requiring the Director to prove (on the balance of probabilities) the commission of a specific criminal offence or offences by a particular individual or individuals and, at the other, being able to make a wholly unparticularised allegation of "unlawful conduct" and in effect require a respondent to justify his lifestyle."

17. This view was approved in *DARA v Szepietowski and others* [2007] EWCA Civ 766 with the qualification at para. 107 (Moore-Bick LJ) that *"it is necessary for her to prove that specific property was obtained by or in return for a criminal offence of an identifiable kind (robbery, theft, fraud or whatever) or, if she relies on section 242(2), by or in return for one or other of a number of offences of an identifiable kind."*

18. In *SOCA v Gale* [2011] 1 WLR 2760 the Supreme Court addressed the same issue at para. 4 per Lord Phillips PSC, concluding that it was not necessary to prove that individual items of property were derived from specific offences.

19. In *Pelekanos (No.1)* above at para. 22, Hamblen J said:

> "22. Unlawful conduct

> The authorities make it clear that although it is not necessary to prove the commission of a specific criminal offence, it is necessary to identify the kind(s) of unlawful conduct being alleged and to prove that the property was obtained by or in return for criminal conduct of an identifiable kind."

20. Reference is made to the criminal appeal of *R v Anwoir & Others* [2009] 1 WLR 980 (which has been referred to repeatedly in cases of civil recovery orders including *Gale* and *Namli* referred to below). In that case, Latham LJ discussed the 'irresistible inference' principle at para. 21:

> "there are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime. This in our judgment gives proper effect to the decision in the Green case, …

21. The authorities demonstrate that the Court ought to look at the global picture. It is not enough to prove by itself that the identifiable sources of income did not explain the lifestyle of the recipient of the money. As Sullivan J pointed out in *R (Director of Assets Recovery Agency) v. Green* [2005] EWHC 3168, and the Court of Appeal approved in *Olupitan v. Director of the Assets Recovery Agency* [2008] EWCA Civ 104 *"A claim for civil recovery cannot be sustained solely on the basis that a respondent has no identifiable lawful income to warrant his lifestyle."* However, the Court of Appeal emphasised the word "solely" and said that if there were other factors, then the feature of no identifiable lawful income to warrant the lifestyle may be a relevant feature.

22. In *Olupitan v ARA* [2007] EWHC 162 at first instance, Langley J commented as follows at para. 23:

> "23….I think there is a danger in seeking to identify absolutes where questions of proof are in issue. The question in this case is whether Mr Olupitan obtained the property in issue through the unlawful conduct alleged. The test is whether it is more probable than not that such is the case. The evidence has, as one would expect, covered a number of matters, some more compelling than others, and including oral and documentary evidence from both Respondents. **It is the whole picture which has to be balanced. For example, it is one thing to point to an unexplained lifestyle, it may be another if an explanation is offered but rejected as untruthful; and taken with other evidence either might be more or less persuasive."** (emphasis added)

23. In *ARA v Jackson* and others [2007] EWHC 2553 King J endorsed Langley J's approach. He stated at paras. 115-116:

> "115. I also echo what Langley J. said on the emphasis to be put on the qualifying adverb "solely" in the context of proof of obtaining property through unlawful conduct, by reference to a comparison between lifestyle and identifiable sources of income. Such a comparison will not in itself be sufficient but as in Olupitan so in the present case **the Claimant is entitled to ask the court to look at the totality of the evidence and the whole picture which emerges.** As Langley J. said at paragraph 23 it is one thing to point to an unexplained lifestyle, it may be another, "if an explanation is offered but rejected as untruthful; and taken with other evidence either might be more or less persuasive".
>
> 116. I equally reject the submission made on behalf of the Respondent that I am not entitled to take a global approach to the issue of proof that the property in issue is recoverable within the meaning of the Act. **The question is whether the Respondent obtained the property through the unlawful conduct alleged or whether the property in the Respondent's hands is representative of property so obtained. The test is whether it is more probable than not that such is the case. It is as was said in Olupitan the whole picture painted by the totality of the evidence which has to be balanced.** I see nothing wrong in the court ultimately concluding that any significant asset of the Respondent has been obtained by or represents the proceeds of his criminal conduct as particularised by the Claimant in the terms set out at paragraph 51 above, if the court is satisfied on the evidence that this is more probable than not. **I do not consider it essential that the court considers each property transaction on an item by item basis in the sense that the Claimant has an obligation to show some particular unlawful actions by the Respondent at some particular time which enabled the particular transaction."** (emphasis added)

24. In *Jackson*, it was also held that the Court was entitled to draw inferences from the manner in which property (in that case cash) was held and from the failure to keep business records (para. 118). The absence of records was addressed at para. 120.

25. The approach of examining the entirety of the evidence including inferences drawn from the explanation or absence of explanation provided by a defendant was endorsed by Griffith Williams J in SOCA v *Gale* [2009] EWHC 1015 (QB). He commented on *Green* in the following terms [at para. 14]:

> "14 With respect to Sullivan J, I consider his second answer is too restrictive. While a claim for civil recovery may not be sustained solely upon the basis that a respondent has no identifiable lawful income to warrant his lifestyle, the absence of any evidence to explain that lifestyle may provide the answer because the inference may be drawn from the failure to provide an explanation or from an explanation which was untruthful (and deliberately so) that the source was unlawful".

26. Griffith Williams J also cited at para.17 a case from the Criminal Division of the Court of Appeal, namely *R–v- Anwoir & Other*s [2008] 2 Cr App R 36 at para. 21 referred to above. Latham LJ also said that it was *"a mixed question of law and fact"* in whether the property derived from the unlawful act(s).

27. It is necessary to look at the facts of each case carefully. The case must not be based on mere speculation or conjecture. In *Caswell v Powell Duffryn Associated Colours Limited* 1948 AC 152 at 169-170, it was said that:

> "there can be no inference unless there are proved objective facts from which to infer the other facts sought to be established. If there are no such positive proof facts from which the inference can be made, the method of inference fails, leaving mere speculation or conjecture."

However, where there are objective facts from which to infer the other facts sought to be established, then the connection might be proven by inferences or irresistible inferences seen in the context of the case as a whole.

28. In some cases, the court may find that there is a combination of factors which lead to the irresistible inference that the property is recoverable. One such example is *NCA v Khan* [2017] EWHC 27 (QB), in which O'Farrell J was, like the instant claim, dealing with a case involving both mortgage fraud and capital sourced from an alleged OCN. Under the heading "Approach to the Evidence" at paras. 26 to 28 O'Farrell J summarised the cases and in relation to the drawing of an inference that the property could only be derived from crime (at para. 28):

> "the inference may be drawn from the failure to provide an explanation, or from an explanation which was untruthful (and deliberately so), that the source was unlawful" [caselaw cited]

The NCA's case on the facts was summarised by the Judge at para. [12]:

> "The only plausible explanation for acquisition of the properties, and the convoluted way in which the defendants have dealt with the properties, is that the funds used are the proceeds of crime, namely, drug dealing, money laundering, mortgage fraud and tax evasion."

V The role of inferences in connection with money laundering

29. In *SOCA v Namli* [2013] EWHC 1200 (QB) (at paras. 47-48), the Court referred to the underlying case law and the use of inferences to prove unspecified money laundering when relied upon under s.241 POCA. *DARA v Olupitan* [2007] EWHC 162 was cited, in which it was said at para.65 that:

> "a substantive offence of money laundering can be proved by inference from the way in which it was handled and it is not necessary to prove the underlying offence which generated the cash".

30. In *Namli* [at para. 49], Males J said the following in respect of a Part 5 case based upon money-laundering:

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

31. In *Pelekanos No.1*, citing passages not yet referred to from *Olupitan* and *Jackson*, Hamblen J said the following at paras. 34-36: -

> "34….In order to demonstrate that property derives from crime, for the purposes of proving money laundering, it is legitimate to rely upon inferences drawn from the way in which the money was handled."

32. In *ARA v Olupitan* [2007] EWHC 162 (QB) Langley J summarised the position as follows [at paragraphs 65- 66]:

> "65 A substantive offence of money laundering can be proved by inference from the way in which cash is dealt with and it is not necessary to prove the underlying offence which generated the cash: R v El Kurd [2001] Crim. L.R. 234 ; and R v L,G,Q and M [2004] EWCA Crim 1579 . As Mr Eadie submitted, if money is handled in a manner consistent only with money laundering, "the inference is that it must be criminal property because no one launders clean money". Mr Krolick submitted that it was a condition precedent to any allegation of money laundering that the property should be the proceeds of a criminal offence. He referred to the decision of the House of Lords in R v Montila [2005] 1 Cr. App. R 26. But what is

> required in law to establish money laundering and how that may be proved raise different issues. El Kurd was cited in Montila and referred to in the Opinion of the Committee with apparent approval and certainly without adverse comment on the question material to this case.
>
> 66. In this case, the evidence is, as the Director alleges, that around £195,000 cash (and £24,000 in unidentified credits) were credited to the accounts of Olupitan and Makinde in a period of some five and a half years. They remain unexplained and without any supporting documentation. Such explanations as have been offered have been rejected as untruthful. I accept Mr Eadie's submission that in the circumstances of this case as I find them to be it is a proper inference that money laundering has occurred".

33. The judgment of King J in *Jackson* was to similar effect [at paragraphs 118-119]:

> "118 I also consider that the court is entitled to take a commonsense approach to the inferences to be drawn from the manner in which the Respondent chose to store his accumulated cash and from the failure of the respondent to keep any business records in the context of the evidence as a whole.
>
> 119 Equally, as the Receiver said in evidence, one would expect any successful law abiding businessman to keep some sort of record no matter how simple, of what he was buying, what he was selling and the amounts of his overheads – if only to work out the sort of profit he was making and which were his most profitable items. The criminal dealer in, for example, illicit drugs will of course eschew any record by which his activities might be detectable."

VI Additional cases referred to by the First Defendant

34. The First Defendant has sought to say that a civil recovery claim involves making good a tracing exercise which properly links the proceeds generated by the unlawful conduct with the acquisition of the asset or interest in an asset which is the target of the claim. Reference is made to *NCA v Robb* [2014] EWHC 4384 (Ch) per Sir Terence Etherton C (as he then was) at para. 56. It is stated that this can *"broadly be seen as the statutory equivalent to a private party's civil claim for breach of fiduciary duty followed by tracing the proceeds into any substitute assets."* (skeleton argument at para. 10.)

35. The First Defendant has also referred to the case of *DARA v Szepietowski* above at [107] per Moore-Bick LJ, where the full passage may be set out (only a part of which

is quoted at para. 10 of the First Defendant's skeleton argument). Moore-Bick LJ said:

> "…it is sufficient, in my view, for the Director to prove that a criminal offence was committed, even if it is impossible to identify precisely when or by whom or in what circumstances, and that the property was obtained by or in return for it. In my view Sullivan J. was right, therefore, to hold that in order to succeed the Director need not prove the commission of any specific criminal offence, in the sense of proving that a particular person committed a particular offence on a particular occasion. Nonetheless, it is necessary for her to prove that specific property was obtained by or in return for a criminal offence of an identifiable kind (robbery, theft, fraud or whatever) or, if she relies on section 242(2), by or in return for one or other of a number of offences of an identifiable kind."

36. The First Defendant has also drawn attention to police intelligence evidence which is admissible but treated with considerable caution and care: see *Pelekanos (No.1)* at [paras. 52-55]. She has also referred to the fact of criminal association where the association must touch upon involvement in the allegations made. The mere fact of association with people with convictions may prove *"little, if anything"*.

37. The First Defendant placed reliance on references in other cases to the onus of proof, but in my judgment, they do not affect the thrust of the above case law. In particular, reference was made to *DARA v Virtosu* [2008] EWHC 149 QB per Tugendhat J at para. [187]:

> "If the Director has no admissible evidence that certain property of a Respondent has been obtained by any unlawful conduct that the Director can specify, the mere fact that the Respondent is found to have lied about how he did obtain it, cannot be evidence that it was obtained by unlawful conduct."

38. That is not inconsistent with the matters set out above, because it envisages a case where the sole evidence is a lie about how the property was obtained, absent any evidence from the applicant about any unlawful conduct. If the case is not the "mere fact that the Respondent is found to have lied" about how the property was obtained, then the lie may still be probative to prove that the property derives from crime. That is consistent with the cases of *Olupitan*, *Jackson, Gale* and *Anwoir*. If there were an inconsistency, I should follow those cases.

39. The First Defendant also placed reliance on the case of *SOCA v Bosworth* [2010] EWHC 645 (QB) at para. 56 in which HH Judge Richard Seymour QC cited Sullivan J in *Green,* but he referred to the evidence of the respondent in a particular case and said that *"the ability, or not, of a person against whom SOCA is seeking a recovery*

order to show what was the source of the funds out of which the property was acquired, and that that source was not unlawful conduct, is likely to be relevant…" Whilst a civil recovery case might not be sustained *"solely on the basis that a respondent has not demonstrated that the funds used for the acquisition of particular property were acquired lawfully. In each case, it is necessary to consider the evidence put before the court."* That case is consistent with the above cases of *Olupitan, Jackson* and *Gale* in emphasising the word "solely" in the quotation in *Green*, and the need to consider the case based on the evidence put before the court including the matters put before the court by the person against whom a recovery order was sought.

VII The burden and standard of proof

40. In *Serious Organised Crime Agency v Pelekanos (No.1),* at para. 19, Hamblen J said:

> "19. The burden of proof is on the claimant and the standard of proof is the balance of probabilities. However, the serious nature of the allegations being made and the serious consequences of such allegations being proved mean that careful and critical consideration has to be given to the evidence for the Court to be satisfied that the allegations have been established."

41. In *In Re D* [2008] 1 WLR 1499 at paragraph 27 Lord Carswell, with whose speech the other Law Lords agreed, said the proper state of the law on the topic had been summarised by Richards LJ in *R(N) –v- Mental Health Review Tribunal (Northern Region) [2006] QB 468* at para. 62:

> "62 Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus, the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities".

42. The one qualification which Lord Carswell added was at para.28 that the standard is *"finite and unvarying. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied with the matter which has to be established".*

VIII The rules and case law in respect of summary judgment/strike out

43. CPR 3.4 provides as follows:

> "(2) The court may strike out a statement of case if it appears to the court –
>
> **(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;**
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order."

44. CPR 24.2 provides as follows:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
>
> (a) it considers that –
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial.
>
> (Rule 3.4 makes provision for the court to strike out a statement of case or part of a statement of case if it appears that it discloses no reasonable grounds for bringing or defending a claim)"

45. Relevant principles were set out in *Partco v Wragg* [2002] 2 BCLC 323 by Potter LJ at para. 27 as follows (emphasis added):

> "It seems to me that the following principles are well established, at least as articulated in relation to summary disposal under Part 24 of the CPR.

> (1) The purpose of resolving issues on a summary basis and at an early stage is to save time and costs and courts are encouraged to consider an issue or issues at an early stage which will either resolve or help to resolve the litigation as an important aspect of active case management: see Kent –v- Griffiths [2001] QB 36 at 51B-C. This is particularly so where a decision will put an end to an action.
>
> (2) In deciding whether to exercise powers of summary disposal, the court must have regard to the overriding objective.
>
> (3) **The court should be slow to deal with single issues in cases where there will need to be a full trial on liability involving evidence and cross examination in any event and/or where summary disposal of the single issue may well delay, because of appeals, the ultimate trial of the action.**
>
> (4) **The court should always consider whether the objective of dealing with cases justly is better served by summary disposal of the particular issue or by letting all matters go to trial so that they can be fully investigated and a properly informed decision reached.** The authority for principles (2)-(4) is to be found in: Three Rivers District Council v Bank of England (No.3) [2001] UKHL 16; [2001] 2 All ER 513 per Lord Hope at paras. 92-93 (pp.541-542),considering Swain v Hillman [2001] 1 All ER 91 at 94-95; Green v Hancocks [2001] Lloyds Rep. PN212, per Chadwick L.J. at para. 53 page 219, Col. 1; and Killick v Price Waterhouse Coopers [2001] Lloyds Rep. PN17 per Neuberger J. at p.23 Col.2, 2-27. (emphasis added)".

46. At para. 28 in *Partco*, Potter LJ said the following:

> "….It is inappropriate to deal with cases at an interim stage where there are issues of fact involved, unless the court is satisfied that all the relevant facts can be identified and clearly established: see Killick v Price Waterhouse at 20, Col.2 and 21 Col.1.
>
> …It is inappropriate to strike out a claim in an area of developing jurisprudence. In such areas, decisions should be based upon actual findings of fact: see Farah v British Airways The Times, January 26, 2000 (CA) per Lord Woolf MR at para.35 and per Chadwick LJ at para.42, applying Barrett v Enfield London Borough Council [2001] 2 AC 550 and X (Minors) v Bedfordshire CC [1995] 2 AC 633 at pp.694 and 741."

47. The general principles applicable to summary judgment applications were set out by Lewison J (as he then was) in *Easyair Ltd (Trading As Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch):

> (i) The court must consider whether the claimant (or defendant) has a "realistic" as opposed to a "fanciful" prospect of success.
>
> (ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.
>
> (iii) In reaching its conclusion the court must not conduct a "mini-trial".
>
> (iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in its statements before the court. In some cases, it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.
>
> (v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application, but also the evidence that can reasonably be expected to be available at trial.
>
> (vi) Although a trial may turn out not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus, **the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case:** see Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63.
>
> (vii) On the other hand, **it is not uncommon for an application under CPR 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it.** The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the

> court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction (emphasis added)."

48. This guidance has been adopted in the Court of Appeal including in the case of *Price v Flitcraft Ltd*. [2020] EWCA Civ 850 at para. 39.

IX The case in outline

(a) The First Defendant's case

49. As is apparent from the above summary, the Application seeks a summary disposal of only part of the claim. The basis of the Application is that the allegations of unlawful conduct do not make out a tracing exercise required in order to give rise to interests in the properties being recoverable. In support of this, the First Defendant submits as follows:

(i) it is necessary to identify the unlawful acts or the kind of unlawful acts relied upon and then to demonstrate as in equitable tracing how the proceeds of the unlawful acts or money representing such proceeds came into the possession or control of the defendant. It is not permissible to start with the assets in the hands of the defendant and then to go backwards in time, whether by inferences or conjecture to seek to connect the defendant with the ill-gotten gains of some third party;

(ii) not only is the tracing forwards in time, but it is rigorous, particularly where there is a gap in time between the unlawful acts and the receipt by the defendant. This is because the ability to trace might easily be lost, for example, where moneys go into an overdrawn account or to pay creditors or where they are frittered away by the person who committed the unlawful acts;

(iii) there is a difference in principle between a case where the defendant is the person who committed the unlawful acts and the case where the defendant is a third party who was not privy to the unlawful acts. In the first case, there can be an inference from the failure of the defendant to give evidence about matters which in the ordinary course of things would be within his own knowledge. On the other hand, in respect of a third party the position is different because that person is not expected to know about the original unlawful act. The onus is on the DPP or the prosecuting authority to trace the property from the fraud to the moneys in question, and so the position would not be advanced at trial by cross-

examination of the third party, since it cannot be expected that this would advance the forward tracing exercise.

(iv) The submission on behalf of the First Defendant is that where the focus of the application is on particular unlawful conduct by a non-party or non-parties and money is derived from them, this needs to be pleaded with a higher degree of precision than a case where a defendant is alleged to have engaged in the unlawful conduct themselves. It is not for the First Defendant to prove that the monies received were untainted, let alone that a particular asset has been acquired out of funds obtained lawfully.

(v) To that end, the case of the First Defendant focuses on an inability to trace from monies obtained fraudulently by non-parties to the moneys paid to the Defendants. With this in mind, there have been prepared for the First Defendant flow charts seeking to expose the inability of the DPP to trace the money received from fraud of non-parties to monies received by the defendants.

(vi) The First Defendant submits that there is no reason to believe that the evidence required for forward tracing will get any better by the time of trial in that the Claimant will not be able to provide a connection between the unlawful acts and the moneys received by the Defendants in this case.

(vii) If the case is flawed in these respects, there is no reason why there cannot be reverse summary judgment or a strike out. Although the application, if successful, will not be dispositive of the action as a whole, the First Defendant's case is that the application is discrete from the remainder of the action. It will greatly shorten the ambit and length of the resulting trial. It is therefore submitted that allowing the application is not only consistent with, but is mandated, by the overriding objective.

(b) The DPP's case

50. The DPP recognises that the onus is on an applicant to prove that the moneys received are derived from the proceeds of the unlawful acts relied upon or represent proceeds thereof. However, he does not accept that the tracing exercise must go forwards in time. It may be legitimate to start with the property and work backwards. The burden of proof might be discharged by looking at the matter globally, forwards and backwards. There might be irresistible inferences particularly from lies told about the source of the moneys where the reason to lie is to conceal money from proceeds of crime.

51. As regards irresistible inferences, there is no distinction in principle between a case where the defendant is the person who committed the unlawful acts relied upon and a third party who was not privy to the unlawful acts. It might not be sufficient by itself that the moneys received exceed the earnings and resources of the defendant, but in combination with other factors, the connection might be established. There will be cases where there is an irresistible inference which can be drawn against such a third party defendant. It depends on an analysis of all the circumstances of the case.

52. In the instant case, if it be proven that the source of the moneys received had been concealed fraudulently from mortgagees or solicitors, the effect would be to raise questions about the motive for concealment or for fraudulent statements. Likewise, if positive explanations are given about the source of the moneys which are demonstrated to be false, questions would arise for the reason for the falsity. In such circumstances, there might be scope for an irresistible inference as to the knowledge of the third party, whether actual or reckless knowledge, that the moneys were the proceeds of unlawful acts or represented proceeds thereof.

53. In the instant case, where the application is for summary judgment, it is not a question as to whether an irresistible inference can be drawn, but whether there is a real prospect at the end of a trial that the irresistible inferences suggested by the DPP will be capable of being drawn. The DPP reminds the Court that there is the alternative that there may be some other compelling reason for a trial to take place, albeit that the scope for such a finding absent a real prospect of a basis for the claim is limited in practice.

(c) Discussion

54. There are a number of points whilst considering this case in outline. First, if the court allows this application for summary judgment and/or striking out, there will still be a full trial on liability. Whilst the scope of the trial may be reduced, it may not be to the extent apprehended by the First Defendant. For example, a part of the trial will be about whether there was dishonesty on the part of the First Defendant in respect of the mortgage applications for both properties. That will involve a detailed examination of the state of mind of the First Defendant in connection with both acquisitions. That will in turn raise issues about her state of knowledge relating to property derived from or attributable to Mr Beqiri's business and investment activities, as well as her connections with Ingmason and Rexhepi. Whilst some of the tracing issues may fall away, there will be a considerable overlap between the scope of the trial with and without summary judgment. The Court is mindful and applies the third stricture of Potter LJ in *Partco v Wragg* about being slow to deal with issues where there is still to be a full trial on liability, especially because of the risk of delay, because of appeals, of the ultimate trial of the action. In the instant case, the trial is scheduled to take place in July 2025.

55. Second, and closely related to the first point, there is a danger that the evidence in a trial following a summary judgment in favour of the First Defendant, may lead the Court to rue the decision not to deal with all of the issues at once. In my judgment, the issues are too closely connected to make it safe to have a summary judgment. When determining the issue of dishonesty in respect of the mortgages, there is the distinct risk that this will throw light upon the issues relating to the source of the funds received by the First Defendant from Ingmason and Rexhepi. Further, in considering whether there are irresistible inferences in this case particularly as regards money laundering, there is the real possibility that the evidence of the purpose of the concealment of the source of the moneys from the mortgagees will result from appreciation by the First Defendant that the source of the money was tainted.

56. Third, this is not a case where there is a crisp point of law such as to make the issues to be decided on the application discrete from the issues which would remain for trial.

On the contrary, the overlap or potential overlap is such that there is a serious risk that the intended shortcut of the application may turn out to be misguided. Whilst that would be with the advantage of hindsight, it is the responsibility of the court at the summary stage to be vigilant and protect against that risk.

57. Fourth, whilst there may be no new witnesses at trial, there will undoubtedly be considerable cross-examination. Whilst there may be no new documents, the oral evidence in cross examination may shed a new light on the existing documents. This is a case where a full trial is preferable on all of the issues so that they may be fully investigated and a properly informed decision reached.

58. Fifth, as is apparent from the authorities referring to the need to look at the whole picture when considering if the property held by a defendant is derived from unlawful acts, it is important not to look at parts of the picture in isolation. If each part is considered in isolation, and not joined with the other parts, there is the possibility of not stepping back and seeing the overall picture. The danger is then of salami slicing, as each piece is analysed and perhaps reaching the opposite conclusion from that which would be reached on an appreciation of the whole picture.

59. There is no reason to decide a legal point at this summary stage. This is a case where the facts have not been established for once and for all. There is no discrete point of law. The point which arises is one of mixed law and fact. It would be premature or otherwise undesirable to decide the legal point prior to the facts being established. In the instant case, the Court is not satisfied that an irresistible inference cannot be found against a third party who was not a party to the unlawful act. Nor is it satisfied that tracing must happen only forwards and not backwards.

60. There are now to be set out a number of propositions which emerge from the above cases regarding the connection which must be shown between the moneys received and the unlawful acts. It is not for the purpose of setting out a definitive statement of the law or providing a list of points of application to other cases. It is in the context of the submissions which have been made by the parties for the purpose of dealing with this summary judgment/strike out application. They are matters which are intended to answer the submissions in the context of this case and in the context of the application which is before the court, not following a trial, but at this stage. They are as follows:

    (i) The authorities make it clear that although it is not necessary to prove the commission of a specific criminal offence, it is necessary to identify the kind(s) of unlawful conduct being alleged and to prove that the property was obtained by or in return for criminal conduct of an identifiable kind.*: Pelekanos (No.1)* [2009] EWHC 2307 (QB) at para. 22.

    (ii) As has been noted above, there is much greater latitude in defining the nature of the unlawful conduct. This is different from a tracing exercise where it would be necessary to identify the specific unlawful act. In this context, the court steers a careful middle course in the quotation from *Green* per Sullivan J at para. 25.

    (iii) Whilst the First Defendant relies on para. 56 of *Robb* in support of her submission that a civil recovery claim involves making good a tracing exercise, this reasoning did not arise at the stage of the NCA (or its

predecessor the SOCA) proving that the property was recoverable property, but at a later stage. At this point, many tens of claimants sought to identify parts of the recoverable property as their own pursuant to sections 304-308 of POCA. At this stage, there may have been less scope for latitude, and a greater scope for insistence on proving their ownership.

(iv) The question in each case is whether the moneys received are derived from the proceeds of the unlawful acts relied upon or represent proceeds thereof: see POCA ss.304-306 and *Pelekanos (No. 1)* at para. 17;

(v) It is for the claimant to prove that case and not for the defendant to demonstrate that the property is not derived from unlawful acts: see *R(N) –v- Mental Health Review Tribunal (Northern Region) [2006] QB 468* at para. 62, *In Re D [2008] 1 WLR 1499* at para. 27 and *Pelekanos (No. 1)* at para. 19;

(vi) The applicant can prove the case in two ways, namely (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime: see *R v Anwoir & Other*s [2008] 2 Cr App R 36 at para. 21 and SOCA v *Gale* [2009] EWHC 1015 (QB) at para. 17 and in *SOCA v Namli* [2013] EWHC 1200 (QB).

(vii) The authorities do not show that every case must fail unless an claimant can show transaction by transaction how the money can be traced from an unlawful act to the receipt of the money by the defendant (which has been referred to as a forward looking tracing case). It may be probative to start with the property received and then to work backwards in time;

(viii) Whilst the onus and burden of proof is on the DPP, these are cases where there is scope for irresistible inferences about the source of the moneys. It is the whole picture which has to be balanced including the explanations offered by a defendant, particularly where they are untruthful, the absence of explanation by a defendant, the absence of business records and all the facts of the particular case: see *Olupitan v ARA* [2007] EWHC 162 at para. 23 and *ARA v Jackson* and others [2007] EWHC 2553 at paras. 115-116 and *NCA v Khan* [2017] EWHC 27 (QB) at [paras. 26-28];

(ix) A substantive offence of money laundering can be proved by inference from the way in which cash is dealt with and from the absence of records and it is not necessary to prove the underlying offence which generated the cash: see *Olupitan* at paras 65-66 and *Jackson* at paras 118-119 and see also *R v Anwoir* above cited at para. 21.

(x) The court must be cautious about irresistible inferences in that there can be no inference unless there are proved objective facts from which to infer the other facts sought to be established: see *Caswell v Powell Duffryn Associated Colours Limited* [1948] AC 152 at pp.169-170. A useful reminder of this and other limits of inferential finding is contained in *Leeson v McPherson* [2024] EWHC 2277 (Ch) per Richard Smith J at para. 177. Care has to be taken before drawing an inference where, due to the nature of the case, there are

facts which cannot be known and may have a bearing on the safety of the inference: see *Easteye Ltd v Malhotra Property Investments Ltd.* [2020] EWHC 2606 (Ch) at paras. 140-143.

(xi) The authorities do not support a case that an inferential case can only be supported against a party to the original unlawful acts and not against a non-party to those acts. Each case turns on its own facts. It may be that greater caution might be exercised in the latter case than the former case before finding an inference to be irresistible in that a non-party often does not have the knowledge of the participant in the unlawful conduct. That said, there is no point of principle, and the question of whether the irresistible inference exists depends on the facts as a whole.

(xii) In each case, it is question of mixed fact and law as to whether enough has been done to prove the case that moneys or property received by the respondent: see *R v Anwoir & Other*s above cited at para. 21]

61. This is not the end of the summary judgment/strike out application because the First Defendant submits that there is not a properly articulated case, nor does the evidence support a case linking the frauds to the purchases of the properties. Even if tracing can be backwards as well forwards and even if irresistible inferences can be drawn against third parties, in many cases, the civil recovery case will be more difficult to establish without forward tracing and/or where irresistible inferences are sought to be drawn against a third party rather than against a party to the unlawful act or acts relied upon.

62. Whether tracing comes forwards or backwards or even if there is scope for irresistible inferences, the First Defendant's case is that the criminality is too remote from the transfers and that there are not objective facts from which to make the inferences sought to be established. The First Defendant's case is that this much is clear at this stage, and there is no real prospect that it will get any better bearing in mind the advanced stage of the case. It is therefore to the factual position in respect of the two properties that it is now necessary to turn.

X The unlawful conduct relied upon

63. In the case summary, it is stated that the DPP relies upon alleged unlawful conduct which can be summarised as follows:

(i) Drug Trafficking in Sweden and Spain by an Organised Criminal Network ("OCN") of which D1's late husband Flamur Beqiri is alleged to have been a member;

(ii) Money-laundering in Sweden and Turkey by Rexhepi of funds from the OCN

(iii) Fraud by Rexhepi in Sweden;

(iv) Fraud by Ingmanson in Sweden;

(v) Mortgage Fraud – 15 BCR by the First Defendant in the UK;

(vi) Mortgage Fraud – 19 SC by the Second Defendant (in part through the First Defendant) in the UK.

64. The DPP acknowledges that some "legitimate" money was used in the purchase of 15 BCR and that the RTB discount for 19 SC was also legitimate. POCA makes provision for directions to respect legitimate interests if and when a civil recovery order is made.

65. The source of the moneys which are in dispute in the proceedings are Ingmanson and Rexhepi from Sweden, both of whom were convicted after the death of Mr Beqiri. The APoC (para. 13) refer to fraud in Sweden by Rexhepi between August 2016 and November 2019 and to his conviction: see para. 10(i) above.

66. The APoC (para. 15) refer to frauds by Ingmanson (aka Max Serwin) who between 2012 and the end of 2017 committed frauds on a Swedish pension fund and money laundering and to his conviction: see para. 10(ii) above.

67. The DPP relies upon a summary judgment given by Foxton J in the High Court on 27 October 2022 in which Ingmanson and others were found liable for fraud and ordered to pay damages in the sum of $28,529,981: see para. 10(ii) above.

68. The First Defendant's account is that she had the misfortune to know two people who were subsequently convicted of fraud, namely Ingmanson and Rexhepi. The fact that she received money from them before they were convicted does not mean that the moneys received were recoverable. The introductions were through her husband Mr Beqiri.

69. Ingmanson was introduced as an entrepreneur with investments in hedge funds, pension funds and as being very successful. The First Defendant had experience in law, financial due diligence and introductory services, and Ingmanson said that he was investing in London and Malta and needed this type of expertise. She ran a company called FDB Consulting or FDB Consulting Ltd. Through this vehicle, she received money from Ingmanson or his business at consultancy rates which pleasantly surprised her.

70. As for Rexhepi, he invested money for Mr Beqiri from his business and investments described above. Eventually Mr Beqiri came to suspect that Rexhepi was defrauding him and put him under pressure to repay resulting in the 2019 payments. Various false documents appear to have been prepared by Rexhepi to substantiate his representations that the investments had been made on behalf of Mr Beqiri and that they were real and with reputable entities. This was part of the modus operandi of Rexhepi. The First Defendant received some payments organised by Rexhepi in 2019, but it is conceded by the DPP that these payments cannot, by their timing, be traced into the properties.

XI The Funds from Denver Consultants FZE and Emil Ingmanson (£100K and £150K in July 2017, used to purchase 15 BCR)

(a) The DPP's case

71. The starting point is the sum from Emil Ingmanson or his company totalling £250,000 in July and August 2017. The first £100,000 was transferred in 2 tranches of £50,000 on 4 July 2017 and is said to have been an advance payment from Denver Consultants FZE to FDB Consulting Ltd for consultancy services to be provided in relation to investments in the UAE: see the witness statement of the First Defendant dated 12 March 2024 at para. 106. The payment of £100,000 by Denver Consultants to FDB Consulting was described by the First Defendant in her interview as "too good to be true". The contract dated 29 June 2017 by way of explanation does not seem to have lasted for very long as only two subsequent bi-monthly payments were made. Ingmanson was arrested for fraud in December 2017.

72. The second pair of payments were made on 9 August 2017, each of £75,000 and were said to be a personal loan by Ingmanson to the First Defendant. For this transfer, a document was drawn up incorporating a purported first legal mortgage of "the Property" which is undefined in the written document. The First Defendant was in the course of buying the property for which she would use the money with a first legal mortgage to Goldcrest Finance Limited. Although the document was signed by both parties it was not witnessed, never completed or dated (other than bearing an inapposite typed year of 2016). No secured loan was ever registered over 15 BCR or any other property held by the First Defendant. No secured prior loan (or indeed any loan from Ingmanson) was ever revealed to Goldcrest.

73. The First Defendant and her witnesses have not advanced an explanation as to why such a loan would be secured on the property when (a) no security was ever established, (b) the First Defendant never told her solicitor or her commercial lender about the security (she told the solicitor that the source of the funding was Denver Consultants which was inconsistent with the documents signed by her showing a personal loan from Ingmanson), (c) there could never have been a first charge to Ingmanson as she was buying 15 BCR with a mortgage from a commercial lender, (d) the First Defendant has not explained how she could have thought (formerly as a property expert and later a solicitor) how two first legal charges could be exist over the same property to two different lenders, and (e) Ingmanson has never demanded repayment of the loan.

(b) The First Defendant's case

74. The First Defendant's case is that Ingmanson was introduced as an entrepreneur with investments in hedge funds, pension funds and as being very successful. The First Defendant had experience in law, financial due diligence and introductory services, and Ingmanson said that he was investing in London and Malta and needed this type of expertise. She ran a company called FDB Consulting or FDB Consulting Ltd, and although the income was much less once she had children, there was some evidence in the statement of the First Defendant dated 12 March 2024 of early success in terms of income received by FDB Consulting. Through this vehicle, she received money

from Ingmanson or his business at consultancy rates which pleasantly surprised her. She had no knowledge that Ingmanson was dishonest.

75. The First Defendant's case is that she had the misfortune to know two people who were subsequently convicted of fraud in Sweden namely Mr Ingmanson and Rexhepi and she happened to receive moneys from them. However, her case as related in her witness statement dated 12 March 2024 is that there are explanations for the same and there is no onus on her to explain any of these receipts. In any event, there is no temporal connection between the receipts and the unlawful acts for which they were convicted. The submission is that the DPP is unable to undertake and prove a tracing exercise. The charts attached to the skeleton argument show that there are unexplained years between the unlawful acts and the transfers of money to the First Defendant.

76. The First Defendant's case is that there is no evidence to support a tracing case. The fraud is explained in the APoC as being an involvement between 2012 and 2017 in frauds upon a Swedish pension fund and money laundering. Reliance is placed on convictions in Sweden in 2020 (the Optimus phase) and in 2021 (the Falcon phase). There was evidence of contact between Mr Beqiri and Ingmanson relating to payments as early as 2013.

77. The First Defendant submits that there is no evidence of a link between any money in 2012 or thereafter and the receipt of moneys potentially many years later in 2017. There is no basis to infer that moneys received so many years later can be traced back to the earlier fraud. There is no evidence adduced by the DPP to show that it was the same money or that it represented the same through intermediate transfers. There are so many scenarios where funds would become untraceable or would trace to a different direction e.g. monies used to purchase different assets or used to discharge a debt with no traceable substitute or moneys mixed in an overdrawn bank account.

78. As regards the reliance of the DPP on the summary judgment of Foxton J in *Sweden v Serwin* above, the First Defendant responds to this saying that (a) the reference to the judgment is inadmissible to prove the facts stated therein (see *Hollington v Hewthorn [1943] QB 587* and *Lakatamia v Su* [2024] EWHC 1749 (Comm) at para. 14), (b) in any event, the amount of money received by Mr Ingmanson was about US$3.55 million, and not a sum of over US$26 million: see the skeleton of the First Defendant at para. 30 (citing paragraphs from *Sweden v Serwin*) and (c) there is no evidence presented to connect that much lesser sum from the starting point to the end point of the receipt by the First Defendant and to show that it is the same money or represents the same money through a number of intermediate transfers.

(c) Discussion

79. The issue at trial will be whether the funds transferred to the First Defendant came from Ingmanson's fraud or whether they came from legitimate activity. The defence do not propose to call Mr Ingmanson as a witness, but it is not for the Defendants to prove the legitimacy of the funds. Nevertheless, the DPP will rely inter alia upon arguments as to the inherent unlikelihood of the transfers being an advance fee payment or a loan, the apparently bogus nature of the documents, and the absence of

frankness of the First Defendant with her solicitor. There will also be considered the impact of the alleged mortgage frauds which involved as regards 15 BCR seeking to conceal the origin of the moneys received from Ingmanson.

80. Based on the above facts, there is at least a real prospect of success of establishing an inference that this was all providing a false cover for the reality, namely that Ingmanson (who had known Flamur Beqiri since at least 2013, when Ingmanson was committing part of his enormous frauds) was trying to find a safe place for his money in a London property.

81. The second issue will be whether the disposal of these funds to the First Defendant can come within the scope of s.308 of POCA as being received in good faith, for value and without notice that it was recoverable property. There is evidence which suggests (chronology entry 30 October 2016) that the First Defendant was aware in October 2016 that Ingmanson was suspected of fraud, but she still accepted funds of £250,000 after that date. The DPP is entitled to pursue a case at a trial that when the First Defendant applied for the mortgage for 15 BCR, she not only failed to reveal that Ingmanson was the source of part of the funds for her deposit but made the false representation to the lender that the source was inheritance and savings. That is evidence which is supportive of a case of the DPP that there was a dishonest cover up of the source of the funds because they were not received in good faith. Further and in any event, if in fact the moneys were a loan which she promised to repay, that would not be "for value" within the meaning of s.314 POCA.

82. There is a real prospect that the money received from Ingmanson will be shown not to be payment paid in respect of services rendered or to be rendered. The relevant features where there is a real prospect that the sums received will not be in respect of services include, but are not limited to the following, namely:

(i) there is limited evidence of the services;

(ii) the amounts received being "too good to be true" and being paid very large sums in advance must have put the First Defendant on inquiry at the very lowest and might evidence a reckless disregard as to whether the money was legitimate. If this is shown, then it in turn raises questions for trial as to whether the services were actually rendered or agreed to be rendered;

(iii) The timing of the payments at the time of the acquisition when the First Defendant needed the moneys to pay the deposit for the purchase of 15 BCR also raises questions as to whether moneys were in fact for services.

83. Further sums received from Ingmanson were said to be a loan, but there is a real prospect that this will not be true in that:

(i) the document was said to be a first legal mortgage of the property which could not have been intended as such because there could not have been a first legal charge in addition to the one taken by the mortgagee Goldcrest Finance Limited;

(ii) no secured loan was registered and the document was not witnessed, completed or dated save to bear an inapposite date of 2016;

(iii) no explanation has been provided by the First Defendant of these matters;

(iv) no attempt has been made to secure repayment of the alleged loan.

84. All of this casts doubt on the veracity of the evidence of the First Defendant about the nature of these payments from Ingmanson. As already noted, it will be necessary to connect the matters relating to 15 BCR with questions regarding whether there was concealment of the position from the mortgagee about the source of the funds. This begs questions and this can only be answered, if at all, through cross-examination at a trial. In these circumstances, a trial is necessary to investigate matters fully and properly to ascertain the truth.

85. This then takes the analysis back to forward-looking tracing, and the case of the First Defendant that this cannot be established in this case. In the case of Ingmanson, the First Defendant says that the unlawful conduct of which he was convicted took place in 2012, years before any transfers to the First Defendant. The DPP says that the sums involved were huge, such that the moneys are likely to have been around also in 2017 and that the Court is able to infer that the moneys at the time of the transfers to the First Defendant would have originated from Ingmanson's unlawful conduct, even years after the event.

86. The First Defendant says that the gap cannot be bridged. It is not possible to look to the totality of the sums found to be the subject of Ingmanson's fraud of a sum of in excess of $26 million in profit, but it is necessary to consider the sum which found its way to Ingmanson himself. This is said to be about $3.55 million: see skeleton argument for the First Defendant at para. 30, citing paragraphs from *Sweden v Serwin*). Further, and in any event, it is said that the gap in time cannot be bridged because the moneys may have been used to purchase different assets or may have been used to discharge a debt leaving no traceable substitute or may have been paid into an overdrawn bank account. There is no evidence in this case as to what happened in the intervening years, and Ingmanson will not be giving evidence at the trial.

87. Whilst these are forceful points, I do not regard them as rendering the case of the DPP as lacking any reality such that it has no real prospect of success. I am satisfied that the DPP has made out a case with at least a real prospect of success that when the whole picture is considered, looking forwards and backwards and also considering the scope for irresistible inferences, there is a real prospect that it may be established at trial that the moneys received by the First Defendant from Ingmanson are derived from unlawful moneys. For all of the above reasons, this is a case which requires a trial in order to consider the picture as a whole and to reach proper conclusions on the totality of the evidence.

XII The funds received from Rexhepi of £227,313 in January 2017 used for 15 BCR and £194,606 received in April 2018 for 19 SC

(a) The DPP's case

88. The starting point is that the sum of £227,313 was a very large sum of money for the First Defendant to receive without a satisfactory explanation. The sum of £227,313 was transferred to the First Defendant by Rexhepi in January 2017, it came from his account and was funded by deposits in Euros in cash (Nakat Yatan) made within the ten day period before the transfer.

89. Whilst the Court has to be careful not to reverse the burden of proof, especially in transactions which call into the question the provenance of money in the hands of a non-party to the unlawful act, there are shortcomings in the evidence of the First Defendant about not being able to explain how she came into such large sums of money.

90. It is suggested that Rexhepi was repaying the proceeds of investments made by Mr Beqiri and/or the First Defendant, said to have been to a value of €3 million to €4 million (and there are some references in the papers to as high as €5 million). However, at least at this stage there is no explanation of the following facts and matters, namely:

(i) how, when or by what means those investments were made in the first place. Given that she was married to Mr Beqiri and that time has elapsed in which these payments were questioned and there have been interviews and requests for documents, there is reason for close questioning. This is particularly so given her background as a consultant in respect of investments (FDB Consulting) and her becoming a solicitor subsequent to her husband's death;

(ii) why neither Mr Beqiri nor the First Defendant did not themselves report Rexhepi to the police on the basis that on the account of Mr Beqiri, there were vast sums of money which had apparently been embezzled by Rexhepi;

(iii) why there are limited documents to evidence any such investments being made before 2017 and no bank statement of Mr Beqiri and his company. Reliance is placed on screenshots of investments in cryptocurrency: see especially the witness statement of the First Defendant dated 12 March 2024 especially at paras. 47 and 48 and 82-83. This gives rise to questioning particularly given the value of the alleged investments of millions of Euros, since if there were such investments or if they were legitimate, then one would expect that there would be much more extensive documents, and in turn that such documents would have been tracked down in the context of the preparation for the murder trial;

(iv) why the documents which were found purporting to show investments for the First Defendant were false and fraudulent (see Weide's witness statement at para. 16), and in any event dated in 2019 after the transfers in question to facilitate the purchase of 15 BCR and 19SC, and not showing any history or account of previous repayments to the First Defendant;

(v) the evidence from Atom8 (witness statement of Shayer) and of Kraken (witness statement of Hoddinott), that no investments were made in the names of Mr Beqiri or the First Defendant. There were investments held in the name of Rexhepi and his company J & S Capital AB at Atom8, and cryptocurrency by Rexhepi and Albert Vasolli at Kraken, but no withdrawals of these investments that could have been used to fund the 2017 transfers to the First Defendant;

(vi) there is no audit trail to suggest that they were the source of the 2018 transfers which came to the First Defendant from a bank account in Vilnius, Lithuania: see in respect of these matters the witness statement of DC Robert Duckworth at paras. 162-173.

91. In short, if moneys were being held for Mr Beqiri and the payments were to restore to his estate by payment of large sums to or for the benefit of the First Defendant, then there would be no reason not to document this and to record the same contemporaneously. It would appear at this stage, albeit without all the information which will be available at trial, that the position was quite the reverse, namely that there were no documents or very few documents where documents or a large amount of documentation would be expected to exist. It also appears that there were false and fraudulent documents where there would be no reason not to have genuine documents if the transaction was legitimate.

92. If the trial court were to find that the First Defendant was lying in relation to the source of funds (as regards her belief about the character of the repayments from Rexhepi as well as in other respects including as regards the mortgage in respect of 15 BCR and concealing Rexhepi), then that could lend support to an irresistible inference case about the character of the moneys from Rexhepi.

93. The DPP also runs a forward tracing case about the moneys of Rexhepi coming from Bolezek as set out in the APoC at paras. 11-11B quoted above. It is pleaded that there was a transfer of €250,000 from Mr Bolezek to Rexhepi and that this *"was the proceeds of crime committed by members of the organised crime network headed by Daniel Johansson Petrovski"*.

94. The evidence to support the existence of an OCN, of which Flamur Beqiri is alleged to have been a member, is set out in the witness statements of DI Kajsa Delmar-Wigstrom of the Swedish Police. It includes a compilation of photographs showing a wide range of criminal associations of Flamur Beqiri, as well as various charges and convictions against those individuals for serious criminal offences. There is evidence that this went back a long time, and in respect of Ingmanson, of contact with Mr Beqiri in respect of a company in Malta as far back as 2013 (which was proximate in time to the unlawful acts of Mr Ingmanson for which he was convicted): see statement of Chana para. 23. In a witness statement of Ben Posener (the First Defendant's solicitor) dated 26 June 2024 at paras. 10-30, he analyses the information so as to show that the convictions were not of the relevant persons acting together with one another and of the underlying offences happening at times when they may not have known Mr Beqiri or post-dating his death.

95. In addition to the foregoing, the DPP relies on the following matters relating to Mr Beqiri, namely that Mr Beqiri had possession of a firearm. This is derived in part from a message on an iPhone attributed to Mr Beqiri with a message of 14 March 2019 referring to his having a gun in front of him. There is a corresponding entry in the (unagreed) chronology drafted by the DPP recording his interpretation of these messages that the gun was in Spain and that he had threatened the builder Sami.

96. Further, attention is drawn to the fact that Mr Beqiri was murdered on 24 December 2019, about four months after an assassination attempt on his friend Naeif Adawi (in which Mr Adawi's wife was killed). They were both targeted by a hitman in the presence of family. There were other connected shootings according to police intelligence. The probative value of this evidence is ultimately to be assessed, but at this stage it is a factor in tending to show that Mr Beqiri was assassinated in the context of organised crime. Whether admissible at trial or not, the trial judge in the murder case following Mr Beqiri's death, Mrs Justice Cheema-Grubb DBE was satisfied that the murder had been in connection with organised crime of sufficient seriousness that it led to gang warfare and killings. The submission is that that ought to be a relevant factor in meeting the case at the summary stage that there was no OCN and/or no compelling reason for a trial.

(b) The First Defendant's case

97. The First Defendant's case is that the DPP has not properly articulated a basis for his allegations, and in particular she submits that:

(i) there is inadequate evidence to the effect that the alleged OCN said to be headed by Mr Petrovski exists;

(ii) if it did exist, there was inadequate evidence that Mr Beqiri was a member or that he was involved in drug trafficking. He did not have convictions for such serious offences. The Swedish police would be expected as part of the murder investigation to have produced evidence of this, if it could have been established, but none was produced;

(iii) it is speculation that the murder of Mr Beqiri or the attempt to murder his friend raises any case of his involvement in an OCN, let alone one specifically connected with the receipts from Rexhepi;

(iv) there is no adequate evidence to support a case that a transfer of €250,000 from Mr Bolezek to Rexhepi was the proceeds of crime or that the same was derived from an OCN headed by Petrovski;

(v) there is nothing to connect the matters for which Rexhepi was convicted with the funds used to acquire the properties. There is no connection between the offences which were the subject of Rexhepi's conviction and the moneys received by the First Defendant;

(vi) there is no adequate evidence to trace back or make referable the moneys received by the First Defendant to the unlawful acts alleged. The charts

attached to the skeleton argument are relied upon to show that the forward tracing case must fail.

98. In the case of the funds received from Rexhepi, the First Defendant's case is that these funds are or represent the return from legitimate investments made by her late husband Mr Beqiri. The defence case refers to Mr Beqiri having run a successful music company in Sweden and investing money in cryptocurrency which had increased significantly in value. Mr Beqiri told the First Defendant that Rexhepi was managing these and other investments worth €3 million to €4 million. The defence case is that Rexhepi was repaying the proceeds of investments made by Mr Beqiri and/or the First Defendant.

99. As regards the funds paid by Mr Bolezek to Rexhepi, the theory of the OCN is said to be refuted by the following matters, namely:

(i) the DPP does not allege that Mr Bolezek was a member of the OCN;

(ii) there is no evidence of any criminal convictions, charges or even arrests in respect of Mr Bolezek;

(iii) it is not alleged by the DPP that Mr Bolezek was doing anything unlawful when he made the payment of €250,000 to Mr Rexhepi, which is inconsistent with the allegation that the funds derived from the alleged OCN's unlawful activity of drug trafficking;

(iv) there is no evidence as to the source of the sum of €250,000 prior to its receipt by Mr Bolezek.

100. The DPP has responded to the effect that Mr Bolezek's income and asset position in Sweden did not appear to explain his large payments. The payment of €250,000 was only one payment out of a total sum of €2.8 million transferred by him to Rexhepi. This has not led to the identification of a paper trail which is at odds with the declared profits of two kebab shop businesses in Sweden with which Mr Bolezek was associated, which were largely loss making. His taxable income and taxable capital gains were low, which might have indicated that the moneys did not come from his declared income. The DPP suggests that this may be inferred to look like money laundering. Whilst the First Defendant may not have knowledge directly relating to the same, if the allegations about dishonesty about the moneys which she did receive are made out and if she has lied about the reasons why moneys were received by her, then there may be made out at trial a case based on irresistible inferences in respect of the source of the money which she received.

101. This is then countered by the First Defendant by stating that there were limited inquiries of Mr Bolezek, and in particular his income and assets position in other jurisdictions such as Turkey was not investigated. Whilst there were large cash movements in Turkey, having cash deposits or making large cash transfers in Turkey

was not illegal. In any event, it is submitted that none of this connects Mr Bolezek's funds to the funds generated by alleged drug trafficking.

102. The First Defendant submits that it is unreasonable to expect that she would be able to provide any evidence as regards the source of the moneys. The fact that she did not know that Rexhepi received the money from Mr Bolezek or that she had no knowledge of Bolezek is relevant. The onus of proof is not on her, and the Claimant is seeking to reverse that onus in seeking to draw inferences from the absence of explanations by the defence. This is especially so when there was no evidence to prove that she or Mr Beqiri let alone herself was a party to the unlawful acts relied upon. In short, the submission is that the DPP cannot rely on the First Defendant to fill the essential gaps in their knowledge or to prove a case which the DPP is unable to prove.

103. Further, it is submitted on behalf of the First Defendant that a part of the moneys paid from Rexhepi to the First Defendant went through a bank account in Lithuania. Although there is evidence of foreign law to show that money laundering was an offence in Turkey and Sweden, there is no such evidence that it is an offence under the law of Lithuania. Yet it is a requirement to prove double criminality under POCA to prove that not only is the act unlawful in the UK, but that it is also unlawful under the law of the foreign state. Having failed to prove that, then the allegation must fail for this reason also.

(c) Discussion

104. The First Defendant makes a whole slew of points of some force criticising the paucity of evidence relating to the existence of the OCN or the inferential case that the moneys received by the First Defendant from Rexhepi were paid to the OCN. There are also criticisms of the same kind relating to the absence of direct evidence to connect Rexhepi's conviction with these moneys. Likewise, the criticism of money laundering without showing the unlawful acts pursuant to which the money laundering took place is criticised.

105. Whilst this is forceful, the Rexhepi moneys do not exist in a vacuum, but in a context which suggests that the moneys received may not have been for the benefit of the First Defendant but for repayment to others. The following matters show that there is a real prospect that this will be shown to be the case at trial.

106. First, the payment of between €500,000 and €800,000 in respect of the refurbishment of the property at 15 BCR in the period January 2018 to March 2019 with the inference that this was not for the First Defendant, but was money being laundered and held for others. It was paid by third parties without any security documentation or evidence of a gift to the First Defendant. The DPP's case is that neither the First Defendant (who had needed third party funding in 2017 to purchase the house) nor Mr Beqiri had declared legitimate income (either in the UK or Sweden) to support this level of expenditure: see the witness statement of DC Duckworth at paras. 183-195. This is consistent with the property not being held by the First Defendant for herself, but on the basis that moneys are to be repaid to third parties.

107. Second, as has been found, there is a real prospect of success in the case of the DPP relating to the Ingmanson moneys. If it is held that these moneys were not received as consultancy fees and/or that they are proceeds of fraud, then the principle is further supported that the moneys received by the First Defendant were not for herself but were for repayment.

108. Third, in the next section of this judgment, there will be an analysis of the case relating to the alleged fraudulent nature of the mortgage applications. There is a real prospect that a case of fraud in respect of the same will be found at trial, and whilst defending the same, the First Defendant has not included these allegations as part of the summary judgment/strike out application. The significance here is that if the moneys received from Ingmanson and Rexhepi had been legitimate and not the proceeds of fraud, then there would have been no need to make false representations about the same, but the sources could have been identified. If the case of concealment is found, then this is not only relevant to fraudulently obtained mortgages but is more evidence to prove that the moneys received from the concealed sources were not legitimate.

109. Fourth, if it emerges at trial that there are lies that have been told about the reasons for not only the Ingmanson moneys (alleged consultancy fees, and the unanswered questions in that regard are relied upon by the DPP), but also the Rexhepi moneys (repayment of investment moneys held for Mr Beqiri, and the unanswered questions in that regard are relied upon by the DPP), then that is further concealment about the reasons for the First Defendant receiving these payments.

110. The matters set out above in connection with the Rexhepi moneys under the heading of "the DPP's case" must be appraised in this context. If there was no legitimate reason for the Rexhepi moneys to be paid to the First Defendant or to Mr Beqiri, then against the background of these other moneys, there is a real prospect that it will be seen that these moneys were the proceeds of crime and/or intended to be repaid. Whilst criticisms can be laid about precisely to whom such moneys were to be repaid or the quality of the evidence about the OCN, this Rexhepi part of the case should not be the subject of summary judgment or striking out.

111. Whether or not the Court draws inferences at trial will be a matter for the trial judge, having heard oral evidence, including cross-examination of witnesses and being able to take into account all the facts and the whole picture. The witness statement of DC Duckworth contains over 200 paragraphs of analysis including of the First Defendant and Mr Beqiri as well as those who have provided money to the First Defendant. There is an analysis of documents and references to interviews with the First Defendant. It is apparent from those documents and interviews that there were many questions put to the First Defendant. It is inevitable that in seeking to cast light on what has occurred and the knowledge of the First Defendant that the DPP at a trial would be revisiting these areas and/or asking different questions.

112. It is not appropriate in a judgment at this stage to revisit large parts of that material, but by way of example, there is the extent of her knowledge about investigations being made into Mr Ingmanson in 2016 which preceded her dealings with her and receipt of large sums of money from him. There is also the extent of her knowledge of Mr Beqiri's financial affairs. They had been together since 2014. There were questions about his lifestyle. There were questions about the company which he kept.

At the same time, the First Defendant had a background expertise in money laundering from 2013-2014, before she qualified as a lawyer. Whilst her good character and qualification are matters which can redound to her favour, her expertise is such that she would be expected to be more alert about the source of unexplained moneys coming to her account. It is less likely that she would be trusting and gullible.

113. One of the matters to take into consideration on a summary judgment application is the evidence that may emerge by the time of the trial. The evidence of DC Duckworth, among other evidence, indicates that the whole story may not have emerged. It is not what was once described by Sir Robert Megarry as "mere Micawberism" to take into account evidence which may emerge. There is a real possibility that under cross-examination, whether in answers volunteered or in questions not answered adequately or at all, the DPP's case may be further advanced. This is raised at this stage in connection with the character of the Rexhepi moneys, but it applies also to other sections of the analysis.

114. The evidence at this stage provides at lowest a real prospect of success in the case of the DPP that the source of funds was not investments made by the First Defendant or Mr Beqiri. Further, in the context of the various points identified above which are the context against which this part of the case is to be analysed, the case about the money being proceeds of the unlawful acts identified and being property against which a civil recovery order should be made is a matter which should go to trial. None of the matters raised in the case of the First Defendant in this regard provides a knockout blow such as would justify a summary judgment or strike out of this or any part of the claim without a full trial.

115. For the purpose of completeness, it should be added that the absence of expert evidence in respect of Lithuanian law has been answered sufficiently at least for the stage of resisting summary judgment. It is to the effect that in respect of Rexhepi, the clear evidence as it appears from the witness statement of Mr Weide is that he had created a Ponzi scheme. That was an unlawful act, and pursuant to that scheme, moneys were moved around to pay off one person at the expense of some new investor. When some of those moneys went through Lithuania, the essence was not a money laundering offence in Lithuania as suggested on behalf of the First Defendant. It was the movement of the Ponzi scheme moneys which had been initiated and was executed in countries in respect of which there was expert evidence as to criminality. It therefore follows that the fact that moneys went through a Lithuanian bank did not mean that the unlawful acts took place in Lithuania. The argument is that it sufficed for the purpose of foreign illegality that there was illegality in the transfers in the other foreign countries in respect of which foreign law evidence about the illegality of money laundering has been tendered.

XIII The effect of the mortgage applications

116. It is now necessary to say more regarding the impact of the alleged part of the case about frauds in respect of the mortgage applications (not the subject of the applications before the Court) and how they impact on the part of the case where the First Defendant seeks summary judgment and/or strike out. The claim in the APoC

(at paras. 17–19B) is that the First Defendant made false representations to the mortgagee in order to obtain a mortgage in a sum of £750,000 in claiming that the funding for her purchase of 15 BCR was derived from savings from income, inheritance, income from a sale of property abroad plus a family gift of £300,000. The claim is that this was false because the cash funding was derived largely from Ingmanson and Rexhepi.

117. If this part of the claim is successful, it is likely that it would involve a finding that there was a dishonest concealment by the First Defendant of the source of funds from Ingmanson and Rexhepi. This in turn raises the question as to why the First Defendant should conceal these sources. It might be that at trial it will be found that she did receive (a) income from Ingemanson through her business entity for services rendered, and (b) an inheritance from her husband through the return of the investment moneys. In that event, there will arise the question as to whether the moneys received from Ingmanson and Rexhepi are accurately described as savings from income (which might not be accurate) or an inheritance (when in fact the moneys were paid directly to her for her purposes).

118. In any event, it might be that it will be found at trial that there was no income from Ingmanson for services rendered and that the moneys from Rexhepi were not referable to investments held for Mr Beqiri. If that is the case, then the reason for concealment may be relevant to whether the moneys received were the product of money laundering or other unlawful acts. Further, the First Defendant relies on a defence of being a bona fide recipient for value and without notice. All of the elements of that defence may be tested and even rejected in the event that there was a dishonest concealment.

119. The position is less stark in connection with the issues relating to concealment in respect of 19 SC where the concealment was that the Second Defendant was to move out on completion. Whilst that may not be directly related to concealment of the source of the moneys, it may be connected with the acquisition of 15 BCR in that it may be relevant to the propensity to be dishonest to get the mortgage.

XIV Disposal

120. For all the above reasons, the application for summary judgment and/or strike out in respect of the parts of the claim must fail. I am satisfied that all this shows that there are no discrete issues relating to the case which is the subject of the summary judgment application and the remainder of the case which is not the subject of the application. All of this informs the conclusion that it would not be appropriate to give summary judgment in part, and that the entirety of the issues needs to be investigated fully at a trial and a properly informed decision reached.

121. It remains to thank Counsel on both sides for their skill in the presentation of the case both in their oral and written submissions and for the expertise which they demonstrated about the law.