

Contesting Account Forfeiture Orders

11 Mar 2020 Syedur Rahman.

Syedur Rahman of Rahman Ravelli assesses the first contested account forfeiture application.

The significance of National Crime Agency (NCA) v Vlad Luca Filat was that it involved the NCA's first contested account forfeiture application. Its outcome, it could be argued, gives UK law enforcement agencies plenty of scope to identify and pursue the proceeds of crime by the use of account freezing orders and account forfeiture orders.

The case centred on money that was held in Filat's name. The NCA claimed that the money had derived from bribery and corruption. Filat's father is the former Prime Minister of Moldova and is serving a nine-year prison sentence in that country after being convicted of involvement in \$1 billion being stolen from Moldovan banks and laundered through Latvia.

Granting of Account Freezing Orders

In May 2018, Westminster Magistrates' Court granted the NCA account freezing orders over the balances of three HSBC bank accounts belonging to Filat in accordance with Section 303Z3 of the Proceeds of Crime Act 2002 (POCA). The orders gave the NCA time to investigate the origin of the funds in the accounts as there were reasonable grounds to suspect the balances were 'recoverable property'; obtained by or in return for unlawful conduct or intended for use in unlawful conduct.

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Four months later, the NCA applied for the forfeiture of the balances (which totalled almost £500,000) on the grounds that it could now be proved, on the balance of probabilities, that the sums were recoverable property or intended for use in unlawful conduct.

The NCA alleged that although Filat had no independent income he was receiving payments into these accounts via hawala, a traditional, trust-based money transfer system commonly found in Eastern Europe, the Middle East, Africa and the Indian sub-continent. The money was coming from Iraq, Turkey and the Cayman Islands and included a \$5.5M cash loan from an Iraqi company.

Hawala is often a cheap, efficient means of transferring money around the world where traditional banking is not as comprehensive. While some countries have a regulatory oversight of hawala payments, there is no global, unified framework for it. When raising a defence relating to hawala payments, therefore, it is important to assess the legalities. As an example, hawala is legal in the UAE so long as payments are regulated with the central bank.

Granting of Account Forfeiture Orders

In February 2019, Westminster Magistrates' Court granted the forfeiture orders in accordance with Section 303Z14 of POCA. The district judge focused on the lack of a satisfactory explanation from Filat of how he came to have such large amounts of money in his accounts; adding that if a transaction looks like money laundering and the respondent is unable to show otherwise then it probably is money laundering.

Filat appealed within the 30-day statutory time limit, which led to a de novo hearing of the application in the Crown Court.

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In the Crown Court the NCA submitted that based on the circumstances, including Filat being a full-time student with no UK financial profile, it could be inferred that the money in the accounts had come from his father. The NCA argued that the conviction of Filat's father and the way the money had arrived in the accounts indicated that the money had been obtained through corruption and money laundering. Filat referred to his and his family's existing sources of legitimate wealth and his business dealings overseas. He argued – and produced documents which he said showed – that wealthy friends had lent him the money. He said that this was the only source of funds for business or personal use that he had following his father's conviction.

The court determined that, on the balance of probabilities, the money had been obtained by bribery and corruption offences and money laundering.

The Challenge Facing Respondents

The case illustrates the value of account freezing orders and account forfeiture orders to law enforcement agencies – and the position in which such orders place the respondent. Introduced to POCA by the Criminal Finances Act 2017, they came into force on 31 January 2018. Under an account freezing order, law enforcement agencies have up to two years to decide whether to seek forfeiture or unfreeze the account.

But NCA v Vlad Luca Filat also highlights other aspects of the process. The initial test for a freezing is on the basis of 'reasonable grounds to suspect' while an application for forfeiture can be granted on the balance of probabilities. This means there is no need for a direct link between the proceeds of crime and the crime from which it has been obtained.

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As was seen in this case, the courts can draw their own inferences and come to their own conclusions based on the way an account has been used. As a result, the onus is on the respondent to do all they can to show to the court that the money in a frozen account is from a legitimate source – otherwise the court may well decide otherwise. It is a case that emphasises why account freezing orders and account forfeiture orders are a powerful tool for law enforcement agencies.



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Syedur Rahman is a Legal Director at Rahman Ravelli with a great depth of experience in top-level global investigations and corporate crime. Legal guides have highlighted his achievements in the fields of worldwide asset tracing and recovery, high-stakes commercial and financial disputes and cross-border investigations.

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