
The NCA Flexes Its Muscles With Account Freezing Orders

MARCH 11, 2019

This article first appeared on [Money Laundering Bulletin](#) on 11 March 2019.

On 7 February 2019, the UK National Crime Agency (“**NCA**”) announced that it had, for the first time, successfully used its powers of account freezing orders (“**AFOs**”) to forfeit over £400,000 from three UK bank accounts suspected of harbouring dirty money. Three weeks later, the National Economic Crime Centre (“**NECC**”) indicated its intention to use AFOs to apply to freeze a further 95 accounts suspected of being funded by laundered money.

AFOs allow the NCA and Serious Fraud Office (“**SFO**”) to apply to freeze, and subsequently forfeit, funds held in bank accounts and building societies. The power to apply for an AFO was granted by the Criminal Finances Act 2017 (“**CFA 2017**”), which also introduced the offence of failure to prevent facilitation of tax evasion and Unexplained Wealth Orders (“**UWOs**”). Amid the fanfare of the failure to prevent offence and UWOs, AFOs have flown somewhat under the radar. However, they could prove to be a powerful tool for the NCA, providing an easy route to the recovery of criminal funds.

How do AFOs work?

Section 16 of the CFA 2017 came into force on 31 January last year. It inserted new provisions into Part 5 of the Proceeds of Crime Act 2002 (“**POCA 2002**”), expanding law enforcement agencies’ powers of civil recovery of the proceeds of crime. Under section 303Z1 of POCA 2002, an enforcement officer may apply to the Magistrates’ Court for an AFO if that officer has reasonable grounds to suspect that money held in that account constitutes “recoverable property”¹ or is intended for use in unlawful conduct. This is a fairly low bar, weighted heavily in favour of the applicant authority.

Once an AFO has been granted there are two methods of forfeiture. Firstly, an enforcement officer may issue an “account forfeiture notice”, which operates to forfeit all or part of the funds in a frozen account.² If no objection to such a notice is received, the balance of funds in the frozen account must be transferred to a nominated account at the end of the objection period. Alternatively, an application may be made to the Magistrates’ Court for forfeiture of money in an account subject to an AFO.³ The threshold for forfeiture is higher than for the initial grant of an AFO; rather than merely needing “reasonable grounds for suspicion”, the officer or the Court must be satisfied that the funds are

either recoverable property or are intended for use in unlawful conduct. This must be proved on the balance of probabilities – the civil, rather than criminal, standard of proof.

Moldovan money-laundering – the NCA's first test case

The powers yielded their first fruit for the NCA in May 2018, more than a year since coming into effect, when the agency applied for AFOs over three bank accounts held by 22-year old London-based student Vlad Luca Filat. Vlad Luca is the son of Vladimir Filat, the ex-Prime Minister of Moldova currently serving a nine-year prison sentence for his part in a \$1 billion banking fraud. Following an investigation, the NCA found that Vlad Luca had no registered income in the UK and that his extravagant lifestyle – which included an upfront payment of £390,000 in rent for a Knightsbridge apartment and £200,000 for a Bentley – was funded by large deposits from overseas companies. Forfeiture of the money in the accounts, totalling over £466,000, was granted at City of London Magistrates' Court on 5 February 2019, the District Judge being “*satisfied on the balance of probabilities that the cash was derived from his father's criminal conduct in Moldova.*”⁴

Similar to the NCA's use of UWOs, which it has issued in one investigation so far to require an Azerbaijani banker and his wife to account for the source of their wealth, this case highlights the agency's determination to tackle extravagant spending using its new powers. Prior to the introduction of AFOs, the usual way of freezing criminal property (including funds in bank accounts) would be via an application to the Crown Court for a restraint order under section 40 of POCA 2002, which property could then only be recovered under a confiscation order secondary to a successful criminal prosecution. Not only is that a much more lengthy and expensive process, but it also requires a finding of guilt beyond a reasonable doubt – a far greater ask than proof on the balance of probabilities. The alternative route of civil recovery in the High Court, while not requiring a finding of guilt, could nonetheless be protracted and technically complex. In comparison, AFOs represent an easy route to recovery.

AFOs may prove to be particularly useful in conjunction with suspicious activity reports (“**SARs**”); on receipt of a SAR, the NCA (or any other agency) can quickly apply, *ex-parte*, to the Magistrates Court to freeze the alleged criminal funds for a period of up to two years. Once frozen, forfeiture is remarkably quick and easy.

What does the future hold for AFOs?

The NECC's announcement that it was seeking to freeze a further 95 bank accounts⁵ demonstrates that authorities have been emboldened by this first success. However, these statistics may not be as impressive as they appear at first blush; it is likely that, as in the Filat case, multiple accounts will be associated with one individual or company. But while the figures might give an over-inflated picture of exactly how many suspects are being targeted in this new sting, the NECC estimates that around £3.6m in laundered funds is being held in these accounts – a not insignificant amount.

If nothing else, the announcement shows that AFOs may yet be converted into a substantial revenue stream for the government. They have the potential, if used efficiently, to become a key weapon in the fight against money laundering, not only seizing the proceeds of crime but also acting as a

deterrent to criminals hoping to hide illicit funds in the UK's banks.

¹ Broadly, "recoverable property" is that which is obtained through unlawful conduct – POCA 2002, s304

² POCA 2002, s303Z9

³ POCA 2002, s303Z14

⁴ NCA press release, 7 February 2019, *Son of Moldova's ex-PM renting £1000 per day Knightsbridge apartment forced to hand over nearly half a million pounds*
<http://www.nationalcrimeagency.gov.uk/news/1565-son-of-moldova-s-ex-pm-renting-1000-per-day-knightsbridge-apartment-forced-to-hand-over-nearly-half-a-million-pounds>

⁵ NCA press release, 28 February 2019, *Multi-agency day of action to freeze 95 bank accounts suspected of laundering millions* <http://nationalcrimeagency.gov.uk/index.php/news-media/nca-news/1573-multi-agency-day-of-action-to-freeze-95-bank-accounts-suspected-of-laundering-millions>