Declaration that funds from the sale of a property in the United Kingdom are not the proceeds of criminal conduct for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

[2025]GRC069

IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)
Civil No. 2578

Between:	**RASHAD ABDULLAYEV**	**Plaintiff**
	-and-	
	APEX FIDUCIARIES (GUERNSEY) LIMITED	**First Defendant**
	-and-	
	VFS DIRECTORS 1 LIMITED	**Second Defendant**
	-and-	
	VFS DIRECTORS 2 LIMITED	**Third Defendant**
	-and-	
	MOUNT STREET INVESTMENT PCC LIMITED	**Fourth Defendant**

Dates of hearings: 12 -14 November 2024
Judgment handed down: 19 August 2025

Before: Fionnuala A Connolly, Judge of the Royal Court
Jurats: Stephen Jones OBE, Tina Jane Le Poidevin and Paul Martin Burnard

Counsel for the Plaintiff: Advocate M.J. Adkins
Counsel for the Defendants: Advocate M.G. Dunster

Cases, texts & legislation referred to:

The Disclosure (Bailiwick of Guernsey) Law, 2007
The Royal Court (Reform) (Guernsey) Law, 2008
The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020
Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 2009

The Chief Officer, Customs and Excise, Immigration and Nationality Service v Garnet Investments Limited [2011 – 12 GLR 250]
Jakob International Inc, and HSBC Private Bank (C.I.) Limited (26/2016)
Hazel Liang v RBC Trustees (Guernsey) Limited [2018] GLR 189
Hazel Liang v RBS Trustees (Guernsey) Limited [2019] GRC 006
BD Limited v Investec Bank (Channel Islands) Limited [2022] GRC 103
Jakob International Inc v HSBC Private Bank (Suisse) SA, Guernsey Branch [2024] GRC 045
L, M. N and Mrs B v Credit Suisse AG (Guernsey Branch) [2023] GRC 026

JUDGMENT

Introduction

1. The Plaintiff, Mr Rashad Abdullayev ("RA"), is an Azerbaijani businessman and the beneficial owner of the Fourth Defendant ("MS") and has been since its incorporation. The First Defendant ("Apex") is a regulated financial services business in Guernsey. The Second Defendant ("VFS1") and the Third Defendant ("VFS2") are the Corporate Directors for MS.

2. In short compass, the issue for determination in this matter was whether or not the funds generated by the sale of Apartment 3.05, 20 Grosvenor Square, London, W1K, 6US ("the Property") are the proceeds of crime. The proceedings arise from the filing of a Suspicious Activity Report ("SAR") by Apex with Bailiwick of Guernsey Financial Intelligence Unit ("FIU") pursuant to Section 1 and Section 2 of the Disclosure (Bailiwick of Guernsey) Law, 2007. The funds from the sale of the Property in the sum of £17,800,000 ("the Sale Proceeds") were held in a client account of CDS Mayfair, a firm of Solicitors in London.

3. The primary relief sought by RA was a declaration that the Sale Proceeds are not the proceeds of criminal conduct for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and an Order that the Corporate Directors of MS cause or permit the Sale Proceeds to be transferred from CDS Mayfair to MS or RA. The Plaintiff accepted, for the purpose of these proceedings, that the MLRO at Apex was entitled to raise the SAR and by consequence, the only issue for the Court's consideration was the provenance of the sale funds of the Property.

4. The procedure followed has been in accordance with the relevant provisions of the Royal Court (Reform) Guernsey Law, 2008 ("the 2008 Law"). On the final day of the hearing, after hearing the closing speeches of both Advocates, the presiding Judge retired with the Jurats and directed them on the law. The Court then returned to inform the parties of the outcome and confirmed that the findings are the unanimous findings of the Jurats. This judgment sets out the reasons for the decision of the Court. The Court is grateful to Advocate Adkins and Advocate Dunster for their written and oral submissions.

Procedural Background

5. Proceedings were lodged on 7 June 2024. On 14 June 2024, the Cause was tabled before the Royal Court and placed Inscrite on the *Rôle des Causes à Plaider*. Defences were lodged on 12 July 2024.

6. There were three witness statements filed on behalf of RA before the Court. There were two witness statements of RA dated 2 August 2024 and 30 August 2024 respectively. There was a witness statement of Mr Benjamin Wade Newton, an Associate at Collas Crill LLP ("Collas Crill") dated 16 October 2024. RA was called as a witness during the trial. No evidence was filed on behalf of the Defendants. There was a skeleton argument on behalf of the Plaintiff dated 11 October 2024 and one on behalf of the Defendants dated 25 October 2024 in addition to supplemental skeletons on behalf of both parties. At the hearing, Advocate Adkins provided the Court with a helpful flow chart to describe the contributions to the purchase price of the Property in the present case.

7. This judgment has been prepared in accordance with the provisions of Section 16(5) of the Royal Court (Reform) (Guernsey) Law, 2008, ("the 2008 Law"). The presiding Judge did not sum up to the Jurats in open court, but instead retired with them, as permitted to do so under Section 14(2) of the 2008 Law. The presiding Judge reminded the Jurats of their respective roles. The presiding Judge is the sole judge on questions of law and procedure, and the Jurats are the sole judges on question of facts. The Jurats must accept the Presiding Judge's directions

on the law and follow them. The presiding Judge directed the Jurats to have regard to the whole of the evidence presented to the court and to form their own judgements about the oral and witness statement evidence and the exhibits thereto, and which evidence each of them regarded as reliable and accepted and which was not. The presiding Judge directed that the facts of the case are the Jurats' responsibility. If at any time the presiding Judge appeared to express any views concerning the facts, or emphasised any aspect of the evidence, the Jurats were not to adopt these views unless they agreed with them. When it comes to the facts of this case, it is the Jurats' judgement alone that counts. The presiding Judge directed the Jurats that the standard of proof is on the balance of probabilities and that the burden of proof is on RA throughout. To establish something on the balance of probabilities means to prove that something is more likely so than not so. On the final day of the hearing, after retiring with the Jurats the presiding Judge gave the decision of the court to the parties and confirmed that the findings are the unanimous findings of the Jurats. This is the judgment setting out the basis of the decision.

Relevant Legal Principles

8. The parties were largely in agreement on the relevant applicable law. The salient legal principles may be summarised as follows.

9. The judgment of the Court of Appeal of Guernsey in *The Chief Officer, Customs and Excise, Immigration and Nationality Service v Garnet Investments Limited* [2011 – 12 GLR 250] is the foundation authority for private law actions of the type in the present proceedings. The Plaintiff account holder at first instance successfully sought to judicially review a decision of the FIU to refuse consent after funds were frozen for eight years with no real prospect of any formal freezing action being taken. On appeal, the first instance decision was overturned. The Court held that whilst the remedy of judicial review was potentially available:

> *"58. The appropriate remedy for a person in the position of Garnet is to bring proceedings against the person or entity holding the funds. This enables the status of the funds to be determined by a court in circumstances where (unlike in public law proceedings) evidential issues may be fully explored and the fund owner and the fund holder are represented."*

10. In *Jakob International Inc, and HSBC Private Bank (C.I.) Limited* (26/2016) ("Jakob I"), the Bailiff set out the two-step process to be followed in these types of private law actions, namely:

    a. It is for the maker of the SAR to establish the suspicion which necessitated the disclosure being made under the Disclosure Law was reasonable; and
    b. It is for the Plaintiff to prove on the balance of probabilities the provenance of the funds in question are not the proceeds of criminal conduct.

11. On the burden of proof and the two-stage process, the Bailiff said this (para 40):

> *"…. once the Defendant demonstrates that there was suspicion, the Plaintiff is still able to succeed by establishing to the required standard that the provenance of the funds in the account is such that they are not the proceeds of crime. That is the ultimate question in the present proceedings. I regard that question as being related to the formation of suspicion but going further than just the Defendant's suspicion taken in isolation."*

12. In *Hazel Liang v RBC Trustees (Guernsey) Limited* [2018] GLR 189 ("Liang I"), the first private law action determined at trial in Guernsey, the Deputy Bailiff (as he was then known) summarised the approach to be adopted in a private law action and the relevant burden of proof (para 26):

"…. a court is considering whether to find on the balance of probabilities that the funds are not the proceeds of crime…. In my view, this formulation puts the finding in the negative and so indicates where the burden of proof lies. The statutory scheme is that an institution can protect itself by seeking law enforcement consent where it has suspicion. If it had no suspicion, it would act without needing to seek such consent. Because it has the evidence giving rise to that suspicion under its control, it is apparent why it must discharge the burden on that question. If it also had to prove to the civil standard that the funds are tainted by criminal conduct, this would escalate what it has to be aware about beyond establishing suspicion. All of a sudden, it would be required to prove its level of knowledge. In my view, this would be to add an unwarranted gloss on the statutory language. There is, I think, a difference between how the funds reached the institution, ie, the last step, and any explanation given about provenance at that time and thereafter, and the wider issue of how far back one needs to go to be satisfied that the funds are not the proceeds of criminal conduct. The latter are matters under the control of the person asserting the affirmative that the funds are not the proceeds of criminal conduct. In my judgment, the burden of proof properly shifts between the parties in this manner. A plaintiff will establish a prima facie case to have the instruction or request made to the institution complied with. A defendant will raise an impediment to being in a position to comply, which will be the combination of the suspicion held and the absence of law enforcement consent. In order to overcome that impediment, the plaintiff will have to prove that the position is that the suspicion is unfounded because the source of the funds is not tainted in the manner believed or suspected. Accordingly, I see no reason to depart from the indication I gave in Jakob International (supra) on where the burden lies. I am satisfied that the proper approach is to require the Plaintiff to discharge the burden of proof in respect of provenance."

13. In *Liang*, the Court held that where a financial institution or Money Laundering Reporting Officer ("MLRO") believes there is a possibility, which is more than fanciful, that a relevant fact exists giving rise to the underlying suspicion, then that is sufficient for a SAR to be filed with the FIU. On establishing the provenance of funds, the Court said this (para 26):

"I find the reasoning given in Gichuru (supra) persuasive and equally applicable to the present case. It also follows from the comment of the Royal Court of Jersey in Chief Officer of the States of Jersey Police v Minwalla 2007 JLR 409 (at para. 24), that a court is considering whether to find on the balance of probabilities that the funds are not the proceeds of crime. Similarly, it follows from the position described in Amalgamated Metal Trading Ltd v City of London Police Financial Investigation Unit [2003] 1 WLR 2711, to which I referred in the Jakob International case. In my view, this formulation puts the finding in the negative and so indicates where the burden of proof lies. The statutory scheme is that an institution can protect itself by seeking law enforcement consent where it has suspicion. If it had no suspicion, it would act without needing to seek such consent. Because it has the evidence giving rise to that suspicion under its control, it is apparent why it must discharge the burden on that question. If it also had to prove to the civil standard that the funds are tainted by criminal conduct, this would escalate what it has to be aware about beyond establishing suspicion. All of a sudden, it would be required to prove its level of knowledge. In my view, this would be to add an unwarranted gloss on the statutory language. There is, I think, a difference between how the funds reached the institution, ie, the last step, and any explanation given about provenance at that time and thereafter, and the wider issue of how far back one needs to go to be satisfied that the funds are not the proceeds of criminal conduct. The latter are matters under the control of the person asserting the affirmative that the funds are not the proceeds of criminal conduct. In my judgment, the burden of proof properly shifts between the parties in this manner. A plaintiff will establish a prima facie case to have the instruction or request made to the institution complied with. A defendant will raise an impediment to being in a position to comply, which will be the

combination of the suspicion held and the absence of law enforcement consent. In order to overcome that impediment, the plaintiff will have to prove that the position is that the suspicion is unfounded because the source of the funds is not tainted in the manner believed or suspected. Accordingly, I see no reason to depart from the indication I gave in Jakob International (supra) on where the burden lies. I am satisfied that the proper approach is to require the Plaintiff to discharge the burden of proof in respect of provenance."

14. In the second case of *Hazel Liang v RBS Trustees (Guernsey) Limited* [2019] GRC 006 ("*Liang II*"), the Court set the approach to be adopted for the detailed tracing exercise when determining the second question of provenance. The Deputy Bailiff (as he was then known) stated that (para 2):

> *"I should add that the exercise I have engaged in is not necessarily the same as a forensic accountant would perform, but is a layman's review"*

15. In *BD Limited v Investec Bank (Channel Islands) Limited* [2022] GRC 103, the Court conducted the exercise of tracing the relevant funds in order to determine the provenance thereof. As in the present case, the bank's suspicion was not challenged, and the Defendant adopted a neutral position on the provenance issue. The Bailiff held that the question needed to be resolved to the usual civil standard and that the Court was to undertake (para 26):

> *"a detailed analysis of the materials provided in order to track the funds sitting in… the Plaintiff's account with the Defendant to consider, to the required standard, whether [it] could be satisfied that the funds were not the proceeds of crime"*

16. In *BD Limited*, the Court worked backwards from the position at the time of the hearing, tracing the funds from the account to the asserted source. The judgment is also authority for the Court to overlook "the intermingling principle", namely that if there is a possibility that a small proportion of the funds in question could be argued to be attributed to criminal conduct and those funds have intermingled with the larger share of the funds, the Court can, in its discretion, overlook the potential comingling of funds.

17. In *L, M. N and Mrs B v Credit Suisse AG (Guernsey Branch) [2023] GRC 026* Lieutenant Bailiff Marshall reaffirmed the two-stage test set in *Jakob*. On the provenance of funds, LB Marshall held that a Plaintiff can either trace backwards "*proving affirmatively what the source of the funds actually was and that it was innocent*" or it can identify the proceeds of criminal conduct and prove that "*such proceeds could not reasonably be taken to be now "represented*" by funds in the relevant bank account (paras 104 and 105).

18. More recently, in *Jakob International Inc v HSBC Private Bank (Suisse) SA, Guernsey Branch*, [2024] GRC 045 ("Jakob II"), the Deputy Bailiff said (para 59):

> *"Whilst the burden of proof is on the Plaintiff, it does not require them to disprove an alternative version of events, their burden is to prove that its funds do not represent the proceeds of anyone's criminal conduct and the Plaintiff has discharged that burden in this case."*

19. The principles arising from case-law guidance may be summarised as follows:

    (a) the correct remedy for a plaintiff in the position of the Plaintiff is either raising a private law action against the holder of the funds or alternatively, bring forth judicial review proceedings (*Garnet*). In the present case, RA has brought a private law action against the Defendants.

(b) a private law action of this nature involves a two-step process (*Jakob I*). First, it is for the holder of the funds to establish the underlying suspicion and that the suspicion is more than fanciful. Second, thereafter, the burden shifts to the plaintiff to prove on the balance of probabilities, the provenance of the funds and that the funds do not constitute the proceeds of criminal conduct. This was subsequently affirmed by *Liang*.

(c) where a financial services business or MLRO believes there is a possibility, which is more than fanciful, that relevant facts exist, giving rise to an underlying suspicion, that will be sufficient for a SAR to be filed with the FIU (*Garnet*).

(d) in order to determine the provenance issue, the Court must undertake a tracing exercise of the funds to the usual civil standard (*BD Limited*). The tracing exercise is a detailed analysis of the materials provided in order to track the funds in order to determine whether the funds are not the proceeds of crime. This tracing exercise is not a forensic evaluation but rather, a layman's review (*Liang*).

(e) depending on the facts and circumstances of the case, the Court can overlook the "*intermingling principle*" (*BD Limited*).

(f) in applying the burden and standard of proof and when deciding whether the plaintiff has discharged it, the Court will pay appropriate regard to the likely or apparent difficulties which a plaintiff may face, for example, when gathering evidence from persons over which he or she has no control or when records have been lost or destroyed due to the passage of time. *"The necessary nexus has to be one of identity, and not simply of consequence, or subsequence, or mere context"* (*Credit Suisse*).

(g) in order to prove the provenance issue, the Plaintiff can either work backwards, tracing the funds to prove the provenance at any given point of time or alternatively, the Plaintiff can identify the proceeds of criminal conduct and prove that such proceeds could not reasonably be taken to be part of the funds held in the relevant account *(Credit Suisse)*.

(h) in discharging the burden, the plaintiff need only address the suspicion raised by the SAR. The plaintiff is not expected to address an alternative version of events *(Jakob II*).

Factual Background

20. It is important to set out the factual matrix which is of some complexity. Helpfully, the parties agreed the following chronology of salient facts and events.

21. Between 2015 – 2016, RA was gifted four properties by his grandfather, Adem Aliyev ("AA"). The four properties were located in Baku city in Azerbaijan. The transfer of ownership of the Azerbaijan properties was formally documented in a deed of gift between AA and RA dated 21 June 2016. RA's ownership of three of the Azerbaijan properties are set out in extracts from the Azerbaijan State Registry Service of Real Estate. RA was unable to locate the relevant extract for the fourth property in Baku city.

22. By letter dated 27 August 2024, the Azerbaijan State Registry Service of Real Estate confirmed that no information had been found by them regarding the transfer of the Azerbaijan properties to Adam Aliyev because of the historic nature of these transfers during a period of Soviet rule.

The letter also confirmed that the four Azerbaijan properties were transferred to RA in 2015 and 2016.

23. In a report dated 1 June 2016 that was commissioned by RA, the Central Asia and Caucasus B.V. Azerbaijan Republic Branch of PricewaterhouseCoopers provided an independent valuation of the Azerbaijan properties. They valued the Azerbaijan properties collectively as of 1 June 2016 at USD 15,566,723.

24. RA sold the Azerbaijan properties to Sadiqov Farid on 1 August 2016 for USD 15,000,000 and this is referred to in the agreement for sale of the same date.

25. On or around 15 June 2018, RA and Apex entered into an agreement for Apex to establish a Guernsey Protected Cell Company to be known as Mount Street Investments PCC Limited.

26. MS was incorporated on 27 June 2018 pursuant to section 20 of the Companies (Guernsey) Law 2008.

27. A Declaration of Trust was entered into by RA and VFS Nominees Limited dated 10 July 2018. VFS Nominees Limited hold 1 share in MS on trust for RA.

28. On 18 January 2019, Kvicha Makatsaria (KM) agreed to sell his interest in Nelgado Limited to Weco Investment Finance S.A ("Weco"). The Agreement for the sale and purchase of the entire issued share capital of Nelgado Limited is dated 18 January 2019.

29. Between 31 January 2019 and 2 April 2019, KM received USD 37,207,650 from Weco for the sale of his interest in Nelgado Limited. Weco paid the Nelgado proceeds into KM's account at CMB Bank (Monaco) ("CMB"). KM's CMB bank statements refer to the receipt of the Nelgado proceeds.

30. Between 7 February 2019 and 28 May 2019, KM transferred USD 27,311,509.20 and EUR 4,917,185.36 from his CMB account to accounts in his own name at other financial institutions.

31. From March 2019, RA entered into discussions with Finchatton, the Property's developer with a view to MS purchasing the leasehold in Apartment 3.05, 20 Grosvenor Square, London W1K 6US.

32. RA sought and secured funding from KM for the investment into the London super prime property market. KM loaned the money used to purchase the Property to MS. The signed loan agreement dated 5 December 2019 ("the facility agreement") was drafted by KM's UK Lawyers, Merali Beedle Solicitors, and the key terms were as follows:

    i. Principal: EUR23, 300,000
    ii. Term: 5 years
    iii. Rate: 2.5% per annum
    iv. Security: (1) a first registered charge over the Property, and (2) a personal guarantee from RA. As set out in his witness statement, RA did not have sufficient liquid capital to meet the stamp duty liability. He asked KM to pay the stamp duty and he gave KM a personal guarantee in relation to the value of the stamp duty. This meant that if the taxes were written off as a loss when the Property was sold, RA would personally cover this cost.

33. On 28 June 2019, a meeting of the Directors of MS took place during which it was resolved that Cell 2 of MS would be established and a bank account for Cell 2 would be opened at

Hyposwiss Private Bank, Geneva ("Hyposwiss"). This is reflected in the Minutes for that meeting of the same date.

34. On 4 October 2019, KM entered into a Lombard Facility agreement with Credit Suisse AG ("Credit Suisse") with a credit facility not exceeding EUR 30,000,000. This is referred to in the Lombard Facility Framework Agreement.

35. Between June 2019 and November 2019, KM deposited at least 28,000,000 of the Nelgado Proceeds with Credit Suisse. By letter dated 21 November 2019, Credit Suisse confirmed to KM that the total held on his account was equivalent to at least USD 28,000,000.

36. Having agreed to fund the purchase of the Property by way of a loan to MS, KM, on 29 November 2019, transferred EUR 23,300,000 from an account in his name at Credit Suisse to Merali Beedle's Client Account and this is evidenced in the SWIFT message fund transfer.

37. On 5 December 2019, MS purchased the Property for GBP 17,300,000. The HM Land Registry Official Copy of Register of Title dated 24 December 2019 shows that MS is the Proprietor, and that there was a registered charge on the Property dated 5 December 2019 in the name of KM.

38. On 5 December 2019, MS and KM entered into a legal mortgage in relation to the Property. On the same date, RA provided a personal guarantee in favour of KM in respect of part of the loan. The personal guarantee was provided to KM for the purpose of providing credit support to KM for MS's obligations under the Facility Agreement.

39. RA contributed GBP 376,513.61 towards the ancillary costs associated with the purchase of the Property.

40. On 12 December 2019, RA and KM entered into a Deed of Cooperation and Profit Sharing. This signed written agreement reflected an oral agreement entered into by RA and KM that they would split any profits generated by the sale of the Property.

41. By letter dated 15 September 2021, Hunters Law LLP Solicitors sent a Pre-action letter to RA on behalf of their client, Mr Parvin Mammadov. The letter related to a claim against RA for the recovery of a loan and payment of the sum of GBP 600,000 arising out of negotiations in relation to the Property purchase price.

42. The Property was let for the first time in January 2022. RA instructed Apex to sell the Property during the same year.

43. In 2022, RA's father gifted approximately USD 7 million to him. These funds reflected the remuneration and bonuses his father received in his position as Chairman of the Board of Directors of SOCAR Overseas Ltd between January 2020 and December 2022. By letter dated 19 December 2023, Emil Bayramli, Chief Financial Officer of SOCAR Overseas Ltd confirmed that RA's father had received the total sum of USD 7,064,000 during his tenure as Chairman of the Board of Directors of the company between January 2020 and December 2022.

44. The sale of the Property was protracted and a number of sales fell through. RA considered that the removal of KM's security might expedite the process for potential purchasers and this was supported by KM. Legal advice was sought from CDS Mayfair in relation to the termination of the mortgage agreement. The legal mortgage over the Property was released under a Deed of Release dated 24 May 2022. Subsequently, the Facility Agreement was varied by deed of variation between MS and KM and drafted by CDS Mayfair to reflect the release of the legal mortgage.

45. The sale of the Property was agreed in the final quarter of 2023. In October 2023, VFS Directors 1 Limited, as Director of MS, instructed CDS Mayfair to proceed with the sale of the Property for GBP 17,800,000. Contracts were exchanged on 21 November 2023 and the sale completed on 5 December 2023.

46. On 18 October 2023, VFS Directors 2 Limited was appointed as a corporate director of MS.

47. On 20 November 2023, RA entered into a Framework Cooperation Agreement with Advaita Trade DMCC ("Advaita"), a company incorporated in the United Arab Emirates.

48. On 21 November 2023, contracts were exchanged for the sale of the Property and the sale completed in December 2023.

49. Prior to 5 December 2023, RA instructed CDS Mayfair to send the Sale proceeds less Apex's costs directly to him. On 29 November 2023, Apex was provided with RA's bank details in the UAE for onward transfer of the proceeds of the sale of the Property. As set out in his second witness statement, RA and the Directors had engaged in discussions well in advance of the sale of the Property about the possibility of sending the Sale Proceeds directly to an account in his name in UAE. This was because the funds were required immediately after the sale of the Property in an account in his name in the UAE for investment purposes and he wanted the funds to get there as directly and swiftly as possible so that he could invest them in line with the Framework Cooperation Agreement. It was RA's understanding that the Directors fully understood and supported the direct transfer of the Sale Proceeds to an account in his name in the UAE.

50. Between 5 December 2019 and 5 December 2023, RA paid the sum of GBP 511,131 towards the upkeep and maintenance of MS and the Property.

51. The Property was sold on 5 December 2023 for GBP 17,800,00 and RA requested Apex to transfer the Sale Proceeds to his personal account.

52. By email dated 6 December 2023, KM advised Apex that he had signed the Deed of Variation to the loan facility and Novation of the loan facility. The effect of novation was that RA became personally liable to KM for the amount of EUR 23.3 million plus interest which totalled around EUR 26.2 million as at the time of RA's first statement.

53. On 7 December 2023, Apex's Money Laundering Reporting Officer ("MLRO") submitted a SAR to the Guernsey Financial Intelligence Unit ("FIU"). At the same time, consent was requested to transfer the Sale Proceeds to RA or to MS's Hyposwiss bank account.

54. On 8 December 2023, Apex was granted consent to transfer the Sale Proceeds to an account in MS's name at Hyposwiss. The request to transfer the Sale Proceeds to RA was refused.

55. Between December 2023 to June 2024, RA's lawyers engaged in correspondence with Apex and its lawyers in an attempt to address their concerns.

56. By letter dated 4 June 2024, Collas Crill wrote on behalf of RA directly to the FIU and it provided in that letter information intended to allay any concerns surrounding the transaction and the parties to it. By email dated 5 June 2024, the FIU refused an offer by Collas Crill to meet with them to discuss the FIU's concerns stating that "it is neither the function nor the policy of the FIU to comment upon actual or hypothetical operational matters."

57. RA instructed Collas Crill to issue proceedings against Apex and the other Defendants to this matter and summonses were served on them on 10 June 2024.

58. By letter dated 23 September 2024, DLA Piper UK LLP Solicitors ("DLA Piper") wrote to Carey Olsen, MS's Advocates, on behalf of their client, KM. DLA Piper advised that KM had a proprietary interest in the Sale Proceeds and he wished to notify MS and the other parties to the Guernsey proceedings of this interest to the extent that this proprietary interest had not already been notified to MS.

59. By letter dated 30 September 2024, Carey Olsen wrote to Collas Crill in relation to KM's proprietary claim in respect of the Sale Proceeds.

60. By letter dated 2 October 2024, Carey Olsen wrote to Collas Crill in relation to KM's source of funds and the identity of the individual who purchased the Azerbaijani Properties.

61. By letter dated 10 October 2024, Collas Crill wrote to Carey Olsen in relation to KM's proprietary interest in respect of the Sale Proceeds.

62. By letter dated 11 October 2024, DLA Piper wrote to Collas Crill in relation to KM.DLA Piper advised, *inter alia*, that KM did not enter into or continue with the business arrangement with RA whilst under duress or undue influence (see also para 129 below).

63. By letter dated 21 October 2024, Carey Olsen wrote to DLA Piper seeking information about KM's proprietary claim and about the sale of KM's shares in Nelgado Limited. Carey Olsen also sought information from KM about Mr Nasib Hasanov, the person to whom KM's shares in Nelgado were sold. Specifically, the letter referred to a number of open-source hits that had been returned on the name of Nasib Hasanov which included matters relating to drug trafficking in 2010, tax evasion and being linked to shell companies in the Panama papers.

64. Some aspects of this chronology are further discussed below (under *Evidence of RA*).

The SAR

65. The SAR filed by Apex on 12 December 2023 stated *inter alia* as follows:

"

- *London residential property ("Property") was purchased in 2019 (5th December 2019 for approx. £17.3m via a Guernsey PCC (the property being the sole asset of the PCC that Apex Fiduciaries (Guernsey) Limited "the "Firm") set up and has administered since 2018 (27th June 2018) on behalf of the UBO (Rashad Abdullayev)).*
- *Property purchased by PCC with equity (from UBO) and Euro 23m of debt (from Khvicha Makatsaria's ("Mr K")) via a secured* personal loan from Mr K to the PCC. *Security for the loan was a mortgage over the property (the "Mortgage").*
- *Property sold for £18,010,915.93m on Tuesday 5th December 2023 (the "Sale") following the voluntary release by Mr K of the Mortgage for no value/alternative security. He has also <u>not</u> accelerated his loan as is his contractual right under the loan agreement (highly suspicious in the circumstances).*
- *Net sales proceeds from the Sale of c. £17.3m are sitting in PCC's conveyancing solicitor's client bank account with Lloyds (CDS Mayfair). CDS Mayfair are the UBO's relationship law firm and conveyancer.*
- *The PCC that we administer for UBO has o/s loan to Lender (Mr K) for c. Euro 23m plus interest. The net asset position tonight (7th December 2023) of the*

PCC is negative c. £21m.

- *UBO has commenced a contractual assignment and novation process to have Khvicha Makatsaria's ("Mr K") Euro 23m loan novated to the UBO so that PCC's is left with no debt liabilities (just the £17.3m net cash asset position). If the novation is successful and valid, the PCC's <u>net</u> asset position would be c. £17m.*
- *UBO is requesting (ahead of any 'valid' novation (which is pending and subject to the PCC's approval)), that the PCC's corporate directors approve and authorise the transfer of c.£17m from the solicitor's client account directly to his personal bank account with NDB in the UAE…*
- *We have requested (satisfactory to us) written evidence that the Lender (Mr K) has sought and received independent UK legal advice (where we are concerned that any decision to novate the loan away makes no commercial sense to a legitimate lender (no rational economic actor would agree to novate the Euro 23m loan away for no consideration or security)). We fear undue influence from the UBO over the Lender and/or collusion by the Lender with the UBO to launder layer and integrate the money from the sales proceeds.*
- *The conveyancing lawyers (CDS Mayfair) do not wish to keep sales funds in their client account and have asked us to instruct it away to a bank account controlled by the PCC. We have not done this yet but are coming under increasing pressure to do so.*
- *UBO is concerned that if funds go into PCC's controlled account (at Hyposwiss) then there will be a delay in receiving his funds (where we believe that there is a Freezing Order in place on that account (hence why UBO wants to receive funds directly into his UAE personal bank account)).*
- *From the MLRO's limited investigation (this situation was notified to him on 5th December 2023), it appears that the PCC's administrator and supplier of corporate directors (Apex Fiduciaries (Guernsey) Limited (the "Firm")) has materially inadequate source of wealth and CDD on file on both the UBO and the Lender and the conduct of both parties looks highly suspicious throughout the Sales process and before (details below).*
- *The UBO's father and grandfather are Azerbaijani PEPs and there is significant adverse media around all parties (see Attachments).*
- *The public and private record and conduct of all parties indicates that the Property may have been purchased through the proceeds of crime (bribery and corruption) and now the UBO (and Lender) and his co-conspirators (see Subjects), having Layered the proceeds of crime by way of the property purchase and Sale, they are now attempting to Integrate the £17.3m gross proceeds from the sale (and sitting in the solicitor's bank account) by requesting the transfer of the PCC's assets to the UBO's personal bank account in the UAE.*
- *In summary, we have material suspicions that the establishment and funding of the PCC structure in Guernsey was placement, the property transaction was layering, and the requested return of funds is attempted integration.*
- *The Firm and the directors of the PCC request consent (or not*) to transfer the c. £17.3m net proceeds of the Sale from the solicitor's client account to the UBO's personal bank account in the UAE ……..*

***Key background information**: Rashad Abdullayev's maternal grandfather, Adem Aliyev, acquired a portfolio of property in the early 1990's in Baku, Azerbaijan. This property portfolio was gifted to Mr Abdullayev by his grandfather on June 21, 2016. Mr Abdullayev sold these assets on August 1, 2016 and transferred the proceeds to Bordier Bank, a branch of a Swiss vbank in London (as to $8million), and To (sic) HypoSwiss Private bank, Geneva (as to $7 million).*

Adem Aliyev (grandfather of Rashad Abullayev (sic) and the father-in-law of Rovnag Abdullayev) founded Bahar Energy that is widely alleged to have received lucrative state energy contracts from SOCAR (when Rovnag Abdullayev was president 2005 to 2022).

1) *Source of wealth obtained on Adem Aliyev (the original source of wealth for the property purchase by Rashad Abullayev (sic)), is wholly insufficient. We have no clear picture or understanding of the wealth creation. The foundation of our SOW information is an external Enhanced Due Diligence report obtained from KYC6 in June 2018 that does not provide adequate information to fully understand how wealth was created to purchase the four properties that were in turn gifted to Rashad Abullayev (sic). Given the PEP status of the father of the UBO and the grandfather of the UBO and the egregious record (public and private) of corruption, we have suspicions that the property was purchased with the proceeds of crime (that are now being laundered through Guernsey and the United Kingdom through property purchase and sale transactions).*

2) *The lending arrangement between Mount Street Investments PCC Limited – Cell 2 and Khvicha Makatsaria ("Mr K") is highly suspicious. The lending arrangement was for the following key terms:-*

    - *Repayment Date: 6th December 2024.*
    - *Secured over 'Apartment 3.05, 20 Grosvenor Square, London W1K'.*
    - *Interest rate of 2.5% P.A accruing daily.*
    - *Principal of €23.3M*

    Ahead of the property's sale, Mr Khvicha agreed to the release of his mortgage security without seeking any equivalent security or consideration. The process of agreeing to the reassignment/novation of the Loan to Rashad Abdullayev is activity that does not carry economic rationale with clear risk to capital.

    NB that we are aware that on Wednesday 6th December, some of the UBO's representatives flew to the Lender's home in Tbilisi to urgently obtain the signature for the novation and reassignment of the debt to the UBO continues in point 5 (possibility of acting under duress)).

    Key background information: Mount Street Investments PCC Limited – Cell 2 has incurred a loss over the lifetime of the Cell due to ATED charges, interest due under the loan facility, and with the asset (the property) not being let for large portions of time not generating revenue for the PCC to pay its liabilities.

3) *UBO Rashad Abdullayev demonstrated no desire to avoid losses by letting the company (generating an income) and expressly asked the corporate directors of the PCC to <u>not</u> let the Property in favour of accelerating a property sale despite there being opportunities to let the property with the flexibility to complete sales viewings. This meant that the PCC (Cell 2) had an asset that was not generating income whilst incurring loan interest and ATED charges, whilst also losing out on potential revenue from letting the property. This conduct does not carry a business rationale/prudent investor rule and is suspicious. The lack of concern to incurring losses is a key indicator of money laundering and is subsequently a material suspicion and concern.*

4) *With the recent activities and behaviour of the UBO and Lender (and the UBO's business colleagues) as discussed above alongside the inadequate CDD and*

SOW information from 2018 (when the property was purchased) we have material suspicions that the establishment of the structure was placement, the property transaction was layering, and the requested return of funds is attempted integration.

5) *Concerns are held that Rashad Abdullayev, who through open-source media and via a letter received by the corporate directors of the PCC (Mount Street Investments PCC Limited), is a highly volatile character and has in the past made serious criminal threats in connection with unconnected business deals (pointing to organised crime connections in Turkey), and as the reassignment of the lending arrangement does not carry economic rationale to the Lender, it is possible that the Lender could be acting under duress/undue influence from the UBO and his colleagues.*

   The MLRO continues to struggle to see the rationale for why the Lender would exchange a debt claim sitting against a professionally administered Guernsey company (a company with c. £17.8m (or thereabouts) of cash on its books (less costs pro forma)) for an unsecured personal claim against an Azerbaijani national resident in Dubai ("Rashad Abdulleyav (RA)").

   The MLRO would like to make sure that no undue influence is placed on the Lender to agree to this change in debt obligor (it doesn't appear to be an economically rational decision without other information)."

The Evidence

Evidence of RA

66. RA gave his oral evidence in Turkish language with the assistance of an interpreter. He adopted his statements as his evidence in the proceedings. RA's evidence-in-chief may be summarised as follows.

67. He was born on 9 May 1994 in Azerbaijan and he resides in Dubai. He is an Azerbaijani national and he has held Turkish citizenship since 2020.

68. RA lived in Turkey before moving to London in 2016. His business career began towards the end of his teenage years whilst he was studying in Turkey. He founded and was Chairman of a student organisation named Index which focused on assisting financially and pastorally Azerbaijani students studying in Turkey. Index received funding from the government of Azerbaijan. During the same period, he established Alpha Roger, a real estate development company in Turkey involved in the marketing and leasing of properties. He opened restaurants in Istanbul and Bodrum both of which proved to be very profitable. Since moving to London, he had successfully applied for an investor visa. He was granted a visa for a three-year period. The application and approval process involved enhanced due diligence by the Home Office in the United Kingdom as well as significant investments totalling some GBP 5,000,000 in UK based operational companies. He invested a further approximately USD 7,000,0000 in investment funds and other investment opportunities on the advice of his UK regulated investment adviser.

69. RA's father is Mr Rovnag Abdullayev ("RGA"). Between 2005 and 2022, RGA was President of SOCAR (the state oil company for the Republic of Azerbaijan). It is RA's understanding that under Guernsey regulation, he is considered a politically exposed person ("PEP") as a result of his father's position in this state-owned entity.

70. In evidence, RA summarised his core position as follows:

a. He identified the Property at Apartment 3.05 Grosvenor Square, London W1K 6US as a potential investment opportunity in the London super prime property market. He intended to fund the purchase of the Property by third party investment and by investing himself. KM, a Georgian businessman, was the source of the funds used to purchase the Property. KM did this by way of a five-year loan to MS in the sum of EUR 23,300,000. The loan amount covered the full purchase price of the Property and almost all of the ancillary costs relating to the purchase. RA stated in his first witness statement that "KM's source of wealth and source of funds used to make the loan are publicly known and beyond reproach".

b. The investment was not as successful as RA had hoped. The Property was sold on 5 December 2023 for GBP 17,800,000 ultimately resulting in a net loss. The funds held in the CDS Mayfair Account are the net proceeds of the sale of the property.

c. RA did not contribute any funds directly to the purchase of the Property save approximately 10% of the stamp duty payable together with approximately GBP 460,000 of miscellaneous legal fees and disbursements in connection with the Purchase. He funded the ongoing running costs of and other investments of MS. His contributions to MS totalled approximately GBP 987,000 and USD 500,000. These included payments made both before and after the purchase of the Property. RA's source of wealth, to the extent that it was relevant to the Purchase of the Property and the Sale Proceeds, was transferred family wealth deriving from his grandfather's Azerbaijani property.

d. On 5 December 2023, RA provided Apex with instructions to transfer the Sale Proceeds (less sufficient funds to meet MS's tax liabilities and fees) from the CDS Mayfair account to an account in his name. The Sale Proceeds remain in the CDS Mayfair account.

e. RA learned that MS's failure to procure the transfer of the Sale Proceeds to him (or to its own account) was due to the Defendants or some of them and/or their relevant officers holding a suspicion that the Sale proceeds represented the proceeds of crime. At the time of making his first witness statement, RA was aware that at the time the SAR was filed, the Defendants had – and continued to have - suspicions that the Sale Proceeds were in whole or in part directly or indirectly the proceeds of criminal conduct for the purposes of one or more of Sections 38, 39 and/or 40 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 based on the matters set out in the Defences and/or the FIU's refusal to grant consent to transfer the Sale Proceeds to RA.

f. RA said that the Sale Proceeds are not the proceeds of crime. The funds which generated the Sale Proceeds came directly from KM and the minor and indirect contribution he made personally is justified by and consistent with his documented personal wealth. His father had no connection with the purchase of his Property, the funds MS used to purchase the Property, and therefore the Sale Proceeds.

RA's Source of Wealth

71. Prior to 2022, RA's source of wealth was derived entirely from the sale of four properties that had been gifted to him in 2015 and 2016 by his grandfather AA, a successful entrepreneur in Azerbaijan in the 1980s. During a period of real instability in the USSR, AA moved into brokering the trade of essential goods, in particular fruit and vegetables. His business grew exponentially as a result of these market conditions. In the early 1990s, mindful of the instability

of the local currency following the collapse of the USSR, AA invested USD 200,000 - USD 300,000 of his wealth in 4 properties in Baku, Azerbaijan. These properties were purchased before 1998 when a title deed system for private land ownership was properly established in Azerbaijan. As such there is no documentation relating to AA's purchase of these properties. AA gifted the Azerbaijan properties to RA in 2015 and 2016. The deed of gift referencing the transfer of ownership from AA to RA dated 21 June 2016 and extracts from the Azerbaijan State Registry Service of Real Estate referencing RA's ownership of three of the properties gifted to him (the State Registry document for one of the properties had not been located by RA) were exhibited in evidence.

72. By letter dated 27 August 2024, the Deputy Chief of the Azerbaijan State Registry Service of Real Estate confirmed that (a) no information had been found by them regarding the transfer of the Azerbaijan properties to Adam Aliyev because of the historic nature of these transfers during a period of Soviet rule; and (b) all four properties were transferred to RA in 2015 and 2016.

73. RA said that following the oil boom of the early 2000s, there was rapid economic growth in Azerbaijan and the value of the properties "skyrocketed". On 1 August 2016, he sold the properties to Mr Sadiqov Farid ("SF") for USD 15,000,000. The Agreement for Sale between the parties was signed by both parties and witnessed by a partner from PSG Law firm in Azerbaijan.

74. In 2022 RA's father gifted approximately USD 7 million to him. These funds reflected the remuneration and bonuses he received in his position as Chairman of the Board of Directors of SOCAR Overseas Ltd between January 2020 and December 2022. By letter dated 19 December 2023, the Chief Financial Officer of SOCAR Overseas Ltd, Dubai, United Arab Emirates, confirmed that RGA was paid USD 7,064,000 in compensation during his tenure as Chairman of the company between January 2020 and December 2022.

MS

75. On or around 15 June 2018, RA entered into an agreement with Apex, then known as MJ Hudson Fiduciaries Limited. In the engagement letter dated 15 June 2018, Apex contracted to establish MS, a Guernsey Protected Cell Company, and to fulfil the role of Corporate Service Provider and registered Agent, which included taking full administration, provision of Corporate Directors and maintaining the books and records of MS to ensure that it remained in good standing. MS was incorporated on 27 June 2018 pursuant to Section 20 of the Companies (Guernsey) Law 2008. VFS Nominees Limited (VFS Nominees) were the registered holder of one ordinary share in MS and this share was the only share issued in MS and was held by VFS Nominees Limited as nominee and trustee for RA as beneficial owner of the share.

76. Apex provided the services set out in the Facility Agreement to RA under the 'MJ Hudson' name until October 2023 when MJ Hudson became part of the Apex group. It was RA's understanding that their relationship continued to be governed by the Service Contract. MS has two cells: Cell 1 and Cell 2. These proceedings solely concerned Cell 2 which was formed to participate in real property investments in the London super prime property market. The minutes of a meeting of the directors of MS dated 28 June 2019 referred to the establishment of Cell 2 and to the opening of a bank account for Cell 2 at Hypo Swiss Private Bank, Geneva ("Hyposwiss").

The purchase of the property

77. RA had a keen interest in investing in the super prime property market in London for some time prior to the purchase of the Property. In March 2018, he entered into discussions with Finchatton, the Property's developer, with a view to purchasing the lease of an apartment within the recently developed building on Grosvenor Square in London. On 5 December 2019, MS

purchased the Property for and on behalf of MS in the sum of GBP 17,300,000. CDS Mayfair acted for MS. The official HM Land Registry copy of register of title dated 8 July 2021 recorded that there was a registered charge on the Property dated 5 December 2019 and that the proprietor was KM.

The Loan between KM and MS

78. RA had always intended to use third party investors to fund the purchase of the Property. He believed that this would be an attractive proposition given the potential rental income and increase in value of the Property during the term of the investment. He always intended that any third-party investment would be by way of a loan and that he would manage the Property. RA and KM were acquaintances prior to entering into a business relationship. They mixed in the same Caucasus business circles and had been discussing a collaboration for some time. RA accepted an offer from KM to loan the full amount required to purchase the Property.

79. KM loaned the money used to purchase the Property to MS. The signed loan agreement dated 5 December 2019 was drafted by KM's lawyers, Merali Beedle. The salient terms of the Facility Agreement are set out at paragraph 32 above.

80. KM loaned MS the sum of EUR 23,300,000. He wanted to lend in EUR rather than GBP as he had concerns in relation to the fluctuating value of GBP. The loan covered GBP 17,304,431.92 purchase price (including adjustments) of the Property and GPB 2,712,981.82 of other costs including stamp duty associated with the purchase of the Property. The precise breakdown of the purchase costs is set out in the Completion Statement prepared by CDS Mayfair.

81. It was verbally agreed between KM and RA prior to the purchase of the Property that they would share on an equal ratio any profits generated by the sale of the Property. The verbal agreement was recognised shortly after the purchase in a signed Deed of Cooperation and Profit Sharing dated 12 December 2019.

82. KM transferred the EUR 23,300,000 loan amount directly to Merali Beedle, the English law firm which acted for him. A legal mortgage between MS and KM was secured against the Property, dated 5 December 2019. A written personal guarantee which RA gave in favour of KM in respect of part of the loan was dated 5 December 2019.

KM's source of wealth and source of funds

83. RA's evidence was that KM was a well-known Georgian businessman and founder of Caucasus Business Solution Group LLC ("CBS Group"). He had over 25 years of experience in different business fields including energy, telecommunications, entertainment, public transportation and others. CBS Group was founded in 2013 and was a leading Georgian investment and management company. KM also founded the first Abkhazian Commercial Bank.

84. The loan by KM to MS for the sale of the Property was funded from the sale of his shares in Nelgado Limited, a Georgian company ("the Nelgado proceeds"). Nelgado Limited directly and indirectly owned the entirety of the shares in Caucasus Online LLC, a Georgian internet provider. KM's shares in Nelgado were purchased by Weco Investment and Finance SA (Weco). Weco paid the Nelgado proceeds into KM's account at CMB Bank (Monaco). In total Weco paid USD 37,207,650 into KM's CMB USD account between 30 January 2019 and 3 April 2019. RA referred to and exhibited the Agreement for the sale and purchase (KM and Weco) of the entire issued share capital of Nelgado Limited dated 18 January 2019 and KM's CMB bank statements which he said evidenced the receipt of the Nelgado proceeds. In total, Weco paid USD 37,207,650 into KM's CMB USD account between 30 January 2019 and 3 April 2019.

Having decided to lend the money for the purchase of the Property, KM entered into negotiations with CMB and Credit Suisse AG Zurich (Credit Suisse) in relation to deposit covered loans. Credit Suisse ultimately offered better rates on USD deposits and EUR loans. Between June 2019 and November 2019 KM deposited at least USD 28,000,000 of the Nelgado Proceeds with Credit Suisse AG Ban. By letter dated 21 November 2019 addressed to KM Credit Suisse confirmed that the amount of KM's total assets was equivalent to at least USD 28,000,000.00 on his current account.

85. KM entered into a Lombard facility with Credit Suisse on 4 October 2019 in relation to deposit covered loans. Credit Suisse offered AG Zurich (Credit Suisse) as it ultimately offered better rates on USD deposits and EUR loans. KM signed a Framework Agreement with Credit Suisse for the Lombard Facility. KM transferred EUR 23,000,000 from an account in his name at Credit Suisse to Merali Beedle's Client Account on 29 November 2019. The funds that were transferred to Merali Beedle's Client Account were used to purchase the Property.

The sale of the property

86. The Covid-19 pandemic began shortly after the purchase of the Property and there then was a slump in the London super prime market. The Property was in consequence not let out until January 2022. In February 2022, Russia invaded Ukraine and that had a significant adverse impact on the London super prime property market. RA swiftly formed the view that the Property was not going to generate the profits he had anticipated. He instructed Apex to sell the Property so that he could invest the Sale Proceeds in more profitable endeavours for the remaining term of the loan. He needed to repay the loan in December 2024 with interest and any profit from the sale was to be split equally between KM and himself. KM was aware that the Property was to be sold and he was also aware that RA intended to use the Sale Proceeds to fund other investment opportunities. RA met with him twice in Dubai and twice in Georgia during this period in which the sale of the Property and further investment using the Sale Proceeds were being discussed.

87. The sale of the Property was protracted and involved a significant number of estate agents. Sotheby's sold the Property. A number of sales fell through. RA thought that it might improve the chances of closing a sale if KM's charge over the Property was removed. The sale of the Property to the tenant of the Property at the time was far progressed and in the final stages but the purchaser was unable to arrange finance. RA considered that by removing KM's security it might also expedite the process for other purchasers which he was happy to support. Legal advice was sought from CDS Mayfair in relation to the termination of the mortgage agreement. The legal mortgage over the Property was released under a Deed of Release dated 24 May 2022. The Facility Agreement was then varied by a Deed of Variation drafted by CDS Mayfair to reflect the release of the mortgage.

88. The sale of the Property was agreed in the final quarter of 2023. In October 2023, the Second Defendant, as a director of the Fourth Defendant, instructed CDS Mayfair to proceed with the sale of the Property for GBP 17,800,000. Contracts were exchanged on 21 November 2023 and the sale completed on 5 December 2023. Some time prior to 5 December 2023, RA instructed CDS Mayfair to send the Sale Proceeds less the First Defendant's costs directly to him. It was RA's understanding that CDS Mayfair were happy for a direct transfer to take place of some or all of the Sale Proceeds to him if it was possible. On 5 December 2023, CDS Mayfair chased Apex for bank details for MS so that the Sale Proceeds could be transferred the same day. Although he was unaware of it at the time, on 7 December 2023, the First Defendant filed a SAR with the FIU and requested permission to instruct the transfer of the Sale Proceeds to an account in his name or an account in MS's name.

89. On 8 December 2023, an employee of Apex sent to CDS Mayfair an email instructing them to transfer the net value of the Sale proceeds namely £17,319,742,37 to a bank account in the name of MS in Switzerland. On 13 December 2023, Carey Olsen (Guernsey) LLP wrote to CDS Mayfair on behalf of Apex and requested confirmation that none of the Sale Proceeds would be transferred without the Directors' authority.

90. In anticipation of the imminent sale of the Property, RA was keen to invest the Sale Proceeds into a Framework Cooperation Agreement on 20 November 2023 with Advaita Trade DMC (Advaita), a company incorporated in the United Arab Emirates, Advaita wished to enter into a long-term agreement with Kazakhmys Corporation LLC (KCL) to supply Advaita with copper cathodes. In so doing KCL required additional investment up to USD 25,000,000. He had hoped to invest the Sale Proceeds into the project for one year at a rate of interest of 18%, the Framework Cooperation Agreement was only valid until 20 December 2023. A deed of novation in relation to the loan from KM to MS was executed on 6 December 2023. As far as KM and he were concerned, this document transferred the debt from MS to him.

91. RA sought advice which confirmed that the Deed of Novation is enforceable against him irrespective of whether Apex had subsequently signed the document. The accepted effect of the novation was that he was personally liable to KM for the amount of EUR 23.3 million plus interest which totalled around EUR 26.2 million as at the date of the novation. The sum was due on 6 December 2024. RA stated that the only real means of repaying KM is by return of the Sale Proceeds to him. The Novation of Loan document, drafted by CDS Mayfair, was exhibited to RA's first affidavit.

RA's contribution to the purchase of the Property

92. RA's evidence was that between 29 August 2019 and 21 June 2023, RA made payments from his personal accounts to MS totalling GBP 987,000 and USD 500,000. To the best of his recollection, the funds were used for the following purposes:

    i. approximately GBP 726,513.61 was used to fund indirect purchase costs in respect of the Property:

    GBP 350,000 was paid to Lydus Partners, a UK registered Financial Conduct Authority regulated financial consultancy company with whom RA had previously worked on other investments which provided assessments of the feasibility and economic viability of the investment idea, detailed financial analyses and some assistance in negotiating the purchase of the Property;

    GBP 258,531.69 was paid in respect of a contribution towards the total stamp duty land tax levy payable on the purchase of GBP 2,595,000;

    GBP 117,981.92 was paid in respect of legal fees and miscellaneous charges and disbursements of CDS Mayfair in respect of the purchase. On this item, RA said that it was his understanding that Apex had suggested that he paid some GBP 102,500 to CDS Mayfair in respect of these fees directly and in this regard, he said that he may have done but he could not recall whether this amount was paid to them directly or whether it might have related to some other fees.

    ii. GBP 511,131 was paid to settle liabilities of the Fourth Defendant, being primarily the Annual Tax on Enveloped Dwellings 'ATED' levy of GBP 279,000, Property service charges of GBP 228,643 and council rates of GBP 3,488.
    iii. approximately GBP 600,000 was used in respect of Cell 1.
    iv. USD 200,000 (equivalent to approximately GBP 160,000) was returned to him by way of a dividend.

v. Apex levied its professional service fees of GBP 15,000 per annum, plus additional fees at hourly rates for specific work done by its staff.
vi. MS earned a net sum GBP 447,148.00 in rental income on the Property during its ownership of it.
vii. the purchase price and statutory transaction costs were significant and necessitated a loan the size of that which KM gave. Disbursements in connection with the purchase of the Property alone totalled GBP 2,717,981.92, the vast majority of which was allocated to the payment of stamp duty.

RA's discovery of and response to the SAR

93. In December 2023, RA engaged lawyers to correspond with the lawyers acting for Apex (Carey Olsen) in an attempt to understand why the Sale Proceeds were not being remitted in accordance with his instructions. Carey Olsen sought additional information, which was provided to them, but RA did not understand from this correspondence why the Sale Proceeds were not being sent to him. In April 2024, RA instructed Collas Crill (Guernsey) LLP to act on his behalf in relation to this matter. RA summarised the correspondence between Collas Crill and Carey Olsen as follows:

    a. by letter dated 17 April 2024, Collas Crill wrote to Carey Olsen to identify Apex's concerns and to provide the information necessary to allay those concerns.
    b. by letter dated 7 May 2024, Carey Olsen responded substantively to Collas Crill's letter. They raised further queries in relation to the transaction and confirmed that "*no suggestion is being made that RA has been involved in any wrongdoing*"; "*this is also true for KM, noting that there is no negative media to suggest otherwise*"; and they were concerned only to understand "*the full payment flow*".
    c. by letter dated 10 May 2024, Collas Crill again wrote to Carey Olsen to provide the requested information. This included a breakdown of the monies which RA personally paid into MS's bank account and the reasons for which those sums were transferred.
    d. on 23 May 2024, Carey Olsen wrote to Collas Crill and again indicated that Apex's concerns remained unallayed. As a result, Apex was unable to instruct CDS Mayfair to release the Sale Proceeds. In those circumstances, Carey Olsen acknowledged that RA would shortly be forced (if so advised) to seek an order against Apex for the release of the Sale Proceeds.
    e. in an effort to avoid the need to issue proceedings against Apex, Collas Crill wrote directly to the Financial Intelligence Unit (FIU) on 4 June 2024. In that letter, Collas Crill once again provided the information intended to allay any concerns surrounding the transaction and the parties to it. To the extent that the FIU remained unwilling to consent to the transfer of the Sale Proceeds, Collas Crill offered to meet with the FIU to discuss their concerns. The FIU refused to meet with Collas Crill to discuss this matter in their email of 5 June 2024, saying only that "*it is neither the function nor the policy of the FIU to comment upon actual or hypothetical operational matters*".

94. In the absence of substantial progress, RA instructed Collas Crill to issue these proceedings and each of the Defendants were summonsed on 10 June 2024.

95. In his second witness statement, RA set out a detailed response to the content of the SAR.

96. First, in response to the concerns in the SAR that KM had voluntarily released the mortgage for no value/alternative security and had not accelerated his loan release under the loan agreement, RA stressed that as far as he was aware, prior to the informal freeze of the Sale Proceeds, KM did not have any concerns that he would not repay the loan in full at the end of the 5 year term. The removal of the security did not relieve RA of his legal and moral obligation to repay KM

and he intended to repay in full. He said that there was a provisional agreement that had the Sale Proceeds been further invested after the sale of the Property, KM would enter into a different security arrangement in order to protect his position and that RA would have facilitated any such arrangement.

97. Second, in response to the concern that if funds went into MS's controlled account at Hyposwiss there would be a delay in receiving his funds where it was believed there was a freezing order in place on that account, RA said that he and the Directors had engaged in numerous discussions well in advance of the sale of the Property about the possibility of sending the Sale Proceeds directly to an account in his name in the UAE. This was because the money was required immediately after the sale of the Property in an account in his name in the UAE for investment purposes and he wanted the funds to get there as directly and swiftly as possible so that he could invest them in line with the Framework Cooperation Agreement. It was RA's understanding that banking institutions do not like the immediate onward transfers of large sums of money.

    RA said that this can cause them to question the necessity of the transaction and ultimately delay the transfer of the funds whilst they undertake internal checks. Further, he had a personal banking relationship with Hyposwiss. He said that he had found them, at times, to be quite determined in their efforts to retain his money so that they could invest it on his behalf. RA wanted to avoid any protracted discussions involving their inhouse investment opportunities, as he knew that the money was earmarked for investment elsewhere. RA said that as far as he was concerned, the Directors fully understood and supported the proposed direct transfer of the Sale Proceeds to an account in his name in the UAE. He said that he was not aware that there was any kind of freezing order or any other kind of similar restriction in place in relation to the account in MS's name at Hyposwiss. He referred to and exhibited a letter dated 19 August 2024 from Hyposwiss by which they confirmed that they did not have any concerns in relation to RA's ongoing banking relationship with the bank.

98. Third, RA said it was accurate that both his father and his grandfather are PEPs but underlined that in Guernsey, his grandfather is not a politically exposed person in his own right. Whilst in Guernsey, his grandfather is classified as a PEP, in relation to his familial relationship with RA's father, he does not now and nor has he ever held any political, business or charitable position which would have made him a PEP.

99. Fourth, RA said that it was not clear from the SAR as to what was meant by "*The public and private record and conduct of all parties indicates that the Property may have been purchased through the proceeds of crime (bribery and corruption)*". He said that that the Property was purchased using funds provided by KM under the Facility Agreement. The funds were transferred directly from KM to his London based solicitor for use in the purchase. RA said that in the limited circumstances where he had funded costs and fees associated with the purchase and upkeep of the Property, he had done so using funds generated by the sale of the Azerbaijani properties. There was in his opinion no evidence contained in the SAR or the public domain to support the assertion that those funds may be the proceeds of bribery and corruption.

100. Fifth, he said that he was aware of unsubstantiated claims in the media that his father may have unlawfully appropriated State funds whilst he held a senior position at SOCAR. He said those allegations were completely denied by his father and to the best of his knowledge had not been the subject of any formal investigation and/or proceedings in Azerbaijan or elsewhere. RA said that in any event funds generated by his father have never contributed directly or indirectly to the purchase or upkeep of the Property. Therefore, any assertion that the Property was purchased using any such funds was completely without basis. RA said that the funds used to purchase the Property were not the proceeds of criminal conduct and as such the sale of the Property cannot be considered the layering of any such funds and the request to transfer the Sale Proceeds to any account in his name could not be considered the integration of any such funds.

101. Sixth, RA referred to the extract from the SAR which stated "Adem Aliyev (grandfather of Rashad Abdullayev [sic] and the father-in-law of Rovnag Abdullayev) founded *Bahar Energy that is widely alleged to have received lucrative state energy contracts from SOCAR (when Rovnag Abdullayev was president 2005 to 2022)."* RA said that his grandfather is called Adem/Adam Aliyev but he neither founded nor owned Bahar Energy. He said he was aware of an OCCRP news article which alleges that: "Adem Aliyev, the father-in-law of SOCAR president Rovnag Abdullayev, and Fakhraddin Ismayilov, the head of SOCAR's Oil & Gas Research and Design Institute, were early directors in the company that became Bahar Energy." RA said that the assertions in this article were not true. His grandfather has never been associated with Bahar Energy or any of its predecessors. He was aware that there is another individual called Adam Aliyev who is associated with Bahar Energy. He said that it was his belief that his grandfather had previously had to provide a statement in relation to US proceedings relating to Bahar Energy to address this exact confusion.

102. Seventh, with regard to the claim in the SAR that *"…some of UBO's representatives flew to the Lender's home in Tbilisi to urgently obtain the signature for the novation and reassignment of the debt to the UBO …(possibility of acting under duress)"*, RA said that Mr Colin Borman, an Apex employee had made it abundantly clear during a telephone conversation and in *WhatsApp* messages that it was of paramount importance to secure KM's signature on the Deed of Novation. The importance and urgency of the situation appeared to be in order to protect the Directors from any liability. An email from KM to Samuel King, another Apex employee, confirming KM's understanding that MS would be released from all obligations arising from the Facility Agreement upon his signing the novation documentation. RA said that in an attempt to assist, a single person took at short flight to Tbilisi in order to update KM in person about what was going on and obtain his signature in a timely fashion. KM signed the document in the presence of his lawyer. RA said that the suggestion that KM was acting under duress was completely without foundation. He said that *"the SAR grossly misrepresents the dynamic of my business relationship with KM. I was in no position and nor did I have any inclination to make KM do anything against his will. That simply is not the nature of our business relationship. It is also important to remember that KM had and still has both Georgian and English lawyers advising him in respect to this loan."*. RA said that other suggestions elsewhere in the SAR that KM may have been acting under duress or undue influence from him or his colleagues was unfounded.

103. Eighth, RA said that the whole sale process was managed by employees of Apex. They were acutely aware of the difficulties of trying to sell the Property whilst it was rented out. RA wanted a swift sale to release the GBP 17,000,000 plus for more profitable investment elsewhere. He was of the opinion that the sale would be quicker and easier without a sitting tenant, and he was therefore willing to lose out on the comparatively small amount of rental income for what he hoped would be a relatively short period whilst the Property was sold. He formed the view that the sale would be quicker and easier without a tenant based on two factors: first, sitting tenants can put some purchasers off and he wanted the Property to attract as much interest as possible and second, there was a sitting tenant for a period whilst the Property was marketed. During this time, the Directors permitted viewings without having secured his consent. This caused additional complication and much embarrassment, ultimately resulting in the tenant breaking the lease early.

104. Ninth, RA said that he would not characterise himself as "highly volatile" and he did not as far as he was aware, have any such reputation. He said he was not aware of any open-source media that has made that assertion, and the SAR had not identified the evidential basis of that allegation. He assumed that the Hunters letter was referenced in the SAR, and he had addressed the allegations in that letter about himself in his first witness statement.

105. Tenth, he confirmed that he had had sight of the Enhanced Due Diligence – Express Reports that had been prepared by C6 on 5 June 2018 (Adam Bayram Aliyev) and 5 May 2022 (RA) ("the C6 reports"). He said that these reports were "littered with factual inaccuracies". Many were not relevant for the purpose of the present proceedings but by way of illustration, he set out the following. AA had never been involved in or associated with the oil business (save for through his familial link to RA's father). He was never associated with Rafi Oil FZE, Rafi Oil (BVI), Rafi Transport Ltd; or Fakhraddin S Ismayilov. He said that his name is not Rashad Ibrahim Abdullayev. He had never owned Apartment 703, 7 Pearson Square, London W1T 3BP nor a Mercedes – AMG S 63 V222. He said *"Disappointingly, it does not appear that even the most cursory enquiries were made with HM Land Registry in the UK, as these would have evidenced that the owner was Gaynor Lorraine Boydell".* At the time of this report, he had never used funds generated by SOCAR to fund his own business endeavours.

106. Eleventh, he said that he had commissioned an independent valuation of the Azerbaijan Properties in 2016. The report was prepared by PricewaterhouseCoopers Central Asia ("PwC") and Caucasus B.V. Azerbaijan Republic Branch (the PwC Report) and valued the Azerbaijan Properties collectively, as of 1 June 2016, at USD 15,566,723. He subsequently sold these properties on 1 August 2016 for USD 15,000,000. It was his understanding that Apex had seen a copy of the PwC Report as Apex has previously questioned whether AR Construction owned the Azerbaijan Properties. AR Construction, a company wholly owned by him, has never owned the Azerbaijan Properties. The PwC Report was requested in AR Construction's name because PwC would only provide a report of this nature to a corporate client.

107. RA supplemented his adopted statements in oral evidence. He said that this was the first time he had appeared in a Court and had provided a statement to a Court and for that reason, he might be a little anxious. On his grandfather's surname, RA said that during Soviet times in Azerbaijan, people used to have Soviet names. After Azerbaijan declared its independence in 1994, Heydar Aliyev became President of Azerbaijan. Subsequently, a law was passed that all persons would give up their Russian surname and would adopt Azerbaijani surnames. RA said that Aliyev is the second biggest surname. He said that Mammadov is another common surname as it relates to the prophet Mohammed. RA confirmed that the flow chart document (prepared by Advocate Adkins) describing the contributions to the purchase price of the Property was accurate.

108. Under cross examination, RA said that he did not have any formal qualifications in finance or in property. Before he purchased the Property he, along with Lydus partners, explored investments in other properties but decided that this was the best one. He had more than 15 years of friendship with Mr Mammadov. In 2018, with the support of Lydus, MS was established. He said that Mr Mammadov of Lydus Partners advised him in relation to the purchase of the Property. When asked, he said that Lydus partners had not prepared a written report in relation to the suitability of Property for investment but they had prepared an investment plan. This was the first time that he was involved in the purchase of a super-prime London property. At that time of the investment, he was approximately 25 years old and KM was about 60 years old.

109. When asked as to why he sold the properties gifted to him by his grandfather only two months later in August 2016, RA said that when he moved to London in 2015, he was trying to obtain an investor's visa and he needed cash. His grandfather did not have cash and he gave him the properties to sell. The reason the properties were sold after such a short time was that it took two months to find a buyer and to realise the Sale Proceeds. He said that PwC sourced the buyer for the properties, Mr Saidov Farid. He confirmed that PwC were involved in the sale of the properties.

110. RA said that the USD 7 million referred to as the compensation received from his father from SOCAR Overseas Ltd was not the only source of wealth of money his father had. The figure of USD 7 million represented some of his wealth.

111. When asked if there was any reason why his father and grandfather could not give evidence in Court, RA said that his grandfather did not have anything to do with it. His father had no involvement in the matter, and he had no involvement or information regarding RA's business.

112. RA was referred to the Estimated Completion Account document. He said that the figures set out in the document were broadly correct and when asked, he said that the reason why the GBP 350,000 owed to Lydus Partners for their involvement did not feature in this document was because that payment was made by MS and not by the London Solicitors.

113. RA accepted that Mr Mammadov was paid the sum of GBP 600,000 as he had negotiated a discount from the seller of the Property and that this sum was paid to him directly, not to Lydus Partners. He explained that the reason for making payment directly to Mr Mammadov was because this was not a formal agreement, but rather an agreement based on friendship. He accepted that negotiation was one of the key skills for any commercial activity but said that he himself could not negotiate. When asked as to why he could not save GBP 600,000 by phoning up the developer to ask for a discount and reach a deal himself, he said that his English was not sufficient enough to negotiate and the company in question did not give any discount. Mr Mammadov had a circle in London and was able to reach the senior members of staff at the company and secure a discount.

114. RA was asked if he knew the reason as to why KM wished to become involved in the transaction with him. He said that KM received 2.5% from the investment without doing anything. His income would have been about 5%. The anticipated income was GBP 2,700,000 per year and the objective target was to generate in total GBP 27.7 million. RA said that KM's advantage was that he did not have any risk to incur losses because of the personal guarantee that RA had provided to him. It was a very good deal for KM as he had 50% of the share of the profit but would not incur any loss. KM knew he would not incur loss and that is why he decided to come into the investment with RA. RA agreed that the significant factor that he offered KM was not only that he had found an investment property but he also offered to KM a EUR 3 million guarantee against a downside. The business plan offered KM profit but no loss.

115. RA said that apart from this transaction, he was not involved in KM's commercial activities. About eight months prior to the hearing of these proceedings, he and KM had been in discussions about another project but it did not come about because their relationship deteriorated because of the problems experienced with Apex. He accepted that the description set out by his Advocates, Collas Crill, in their letter dated 17 April 2024 addressed to Carey Olsen that "KM and RA were acquaintances prior to embarking on this transaction. Whilst not especially close, they are involved in the same Caucasus business circles" was an accurate statement about his relationship with KM.

116. RA was referred to the Framework Cooperation Agreement and proposed trade finance deal with Advaita. He confirmed that KM was aware of the fact that he was not planning to return the money borrowed to him but rather to take those funds and enter into a new commercial transaction. RA said that KM was informed about his intention to provide the loan to Advaita in the United Arab Emirates for trade finance paying 18% per year and that was the reason why the Deed of Novation was signed. KM had been provided with a copy of the Framework Cooperation Agreement.

117. RA was then referred to a letter from Hunters Law Solicitors in London dated 15 September 2021 addressed to him in relation to a claim against him by their client, Mr Parvin Mammadov. RA said that he had not had any engagement with this firm of Solicitors before. When asked

about why he had not paid the GBP 600,000 owing for the negotiation of the discount for the purchase of the Property, RA said that at the time, he did not have the cash. He said he found Mr Mammadov to be an honest person and they remain on good terms. His evidence in cross examination on this letter was as follows:

a. he was referred to paragraph 15 of the Hunters Law letter which stated "Our client requested payment from you of the sum of £600,000 at a meeting in London. You did not dispute the debt and said that you would pay once you had resolved an issue you were encountering with your bank in Switzerland which at the time had frozen your accounts because of money laundering issues." RA denied having said this to Mr Mammadov. He said it was correct that at that time there was a block on his bank accounts. That was solved within one month and his accounts were then active and in use. He said that this issue was solved with Apex and the directors. Mr Mammadov was paid the GBP 600,000 one month after this letter from Hunters was received by him. He said that they did have some misunderstanding and distancing with Mr Mammadov at the time and that in order to protect himself, Mr Mammadov had resorted to something like that. When asked if he thought that Mr Mammadov was lying when he told his solicitors that RA had said he was encountering problems with his bank in Switzerland which had frozen his accounts because of money-laundering issues, RA replied that he did not have any idea why he said anything like that.

b. on paragraph 11 of the letter, which stated that Mr Mammadov had arranged a viewing for the Property which was attended by RA and his father RGA and that subsequent to the viewing he was content to pay the full asking price for the apartment, RA said that it was true that his father visited the Property but his father had no involvement or role in negotiating the sale price and there was nothing as such. When asked as to why his father had attended a viewing of the Property with RA if their respective business affairs were separate, RA said that his father was in London at the time because the International Petroleum Forum was on in London and his father was aware about his attempts to make an investment. The investment in London with KM was one of his biggest investments, his father was aware of the investment and he, as a very eager young person, wanted to show his father about his investment.

c. RA was referred to the letter which mentioned a failed investment, and to paragraphs 18 and 19 which stated:

> *"You asked our client to meet you in Turkey to discuss this investment. The meeting took place at the Hyatt Centric Hotel in Istanbul. You told our client that you had run out of patience and were referring the issue to members of a Turkish mob who you repeatedly stated were "reckless" and "had blood on their hands". Such threats towards our client are totally unacceptable and must desist immediately and not be repeated.*
>
> *Please provide us with your written undertaking that you withdraw these threats and will not repeat any such threat to our client or any members of his family. Please be aware that should any such threats be repeated in any form our client shall immediately refer matters to the Metropolitan Police."*

RA denied having said these words to Mr Mammadov. He said no such threat was made by him. He said that during the pandemic period, there was distancing between them, perhaps people had reflected things mistakenly, and that there may have been miscommunications.

118. RA was then referred to an email dated 17 December 2023 that he had sent to two employees of Apex in which he was trying to obtain answers as to why the funds had not been paid to him. RA said that he was not getting answers. RA was referred in particular to the question that he had asked about why KM has released his security. He was referred to an extract from the email in which he stated "there were no concerns surrounding the loss of security given the historical, commercial and family relationships" and it was put to him that his previous evidence was that they were mere business acquaintances and he was asked if in fact there was a familial relationship with KM. RA said he knew KM's family and his wife and daughters visit him when they come to Istanbul. He said his wife knows the family. When asked, RA said that he thought KM was an honest man.

119. RA was asked whether there was anything similar to a completion statement at the end of the profit-sharing agreement with KM. He said that he could not see any profit and there was no need to prepare any documentation regarding the profit share because any loss incurred was RA's loss. He was obliged to pay to KM EUR 23.3 million plus interest.

120. It was put to RA that there were numerous publications which implicated his father in corruption in relation to his time at SOCAR. RA said that had his father had any involvement with corruption during the 17 years during which he led SOCAR, the Azerbaijani state would not have appointed his father as a wise and aged minister in economics. They instead would have sent him to prison. When asked if he accepted that there were numerous public source articles linking his grandfather to corruption, RA said that his grandfather had 'no relation' regarding those allegations. He said that the price for writing an article is USD 5,000 such that articles could be written against a person for that price. He said that the targeted person was his father not his grandfather, and in this article the person mentioned was not his grandfather but another individual.

121. RA was referred to an email dated 29 November 2023 that he had sent to Apex requesting that the funds be transferred to his bank account in the United Arab Emirates rather than his Hyposwiss account. In the email, he said that he preferred this account because the Swiss bank had been "a little difficult lately and I would rather receive the proceeds in my account in UAE directly at this stage." When asked if the difficulty was that he suspected that they had frozen his accounts because of money-laundering concerns, RA said that after he sent this email, he subsequently emailed Apex to say that if there was a difficulty sending the money to Dubai, the funds could be transferred to his Hyposwiss account as well but he did not receive a response to that email. RA said that he was concerned about his relationship with Hyposwiss and did not want to deposit funds only to then withdraw them. If he was depositing and withdrawing funds, Hyposwiss could have closed his accounts and he could have lost his accounts. He agreed that it was fair comment that he was realistic and financially sophisticated to recognise that his PEP status, his nationality and the way in which banks view transactions could lead to either closure of the account or to money-laundering concerns arising.

    On a reference to a Mr Hafiz Mammadov in an adverse media report concerning his family from "Organised Crime and Corruption Reporting Project" RA said that Mr Hafiz Mammadov was a former businessman and had no relationship to Mr Parvin Mammadov in the present case.

122. On the PwC valuation report for real estate properties owned by AR Construction LLC, RA said that the report was addressed to AR Construction LLC because PwC acts for corporate clients only therefore the valuation had to be done via a company. AR Construction LLC was a construction company that belonged to RA. He said that PwC stated in error in the report that the properties were owned by AR Construction LLC; the deeds were registered to his name.

123. On the question of how his grandfather earned the money to become owner of the properties, RA said that during the Soviet Union, his great grandfather was a tradesman and was doing trade with Russia and Iran but he could not provide any information or documentation regarding this because during the Soviet Union era there were no documentary records.

124. On the letter from DLA Piper dated 11 October 2024 on behalf of their client, KM, and addressed to Advocate Adkins, RA said he had not spoken to KM before this letter was sent. He said that in April, KM informed him that in order to protect his rights, he would have a solicitor because of the issues with Apex. RA said that he had enjoyed a good relationship with KM. He communicated with KM's Solicitor over the phone from time to time. Within the previous 7 months, he had spoken to KM's Solicitor once. RA was referred to paragraph 5.1 of the DLA Piper letter which stated, *"these funds* (that is to say the ones that went into MS) *were generated through Mr Makatsaria's lawful business endeavours specifically the sale of his shares in Nelgado in 2019, the funds raised from the sale of Nelgado were then lent to Mount Street".*

    When asked if he disagreed with KM's Solicitors about the source of KM's funds, RA said he only objected to KM's income coming from this sale from the company shares; RA stated that KM had other investments and he said that the money given to MS came from Nelgado.

125. RA was then referred to paragraph 5.4. in the DLA Piper letter which stated "*our client* (that's KM) *did not enter into or continue with the business arrangement with Mr Abdullayev whilst under duress or undue influence".* RA agreed that that was his case. He was referred to the same paragraph *"Mr Makatsaria understands the defendants have questioned why Mr Makatsaria released his security over the Property….The security was released as Mr Makatsaria understood that step was necessary in order to secure the sale of the Property".* When asked whether from his commercial experience he accepted that it is unusual for a lender to release their security, except at the point they are being repaid, RA said there was nothing unusual about this; KM was not a bank, he was a business partner.

126. RA was then referred to paragraph 1.3 of the letter from DLA Piper to Advocate Dunster dated 23 September 2024 which stated: "*as part of this agreement Mr Makatsaria and Mount Street agreed and/or Mr Abdullayev would transmit the proceeds of sale of the property directly to Mr Makatsaria for the purpose of repaying the sums due under the facility agreement albeit in part repayment.*"

    When asked if, in his view, there was an obligation to repay KM at the point when the Property was sold in December 2023 unless he had agreed to a variation with KM, RA accepted that he was obliged to make the payment but went on to state that MS did not pay and referred to the Deed of Novation signed by KM. The intention was for RA to proceed to make the investment in the UAE. He accepted that the creditor for the loan would not have been RA personally but rather the creditor would have been a company under his control and that company would be subject to regulation in Dubai and the financial authority of Dubai.

127. In re-examination, RA was referred to on questions put to him under cross examination about why he did not want the payment of the Sale Proceeds to be paid to his Hyposwiss account in Switzerland, RA was referred to the email sent by him to Samuel King and Colin Boreman on 13 December 2023 in which he stated:

> *"This unnecessary delay hinders both the promises I've made and harms my credibility. I prefer the sale proceeds to be deposited into my personal account. This is due to my close relationship with Hyposwiss Bank, as the bank may choose to retain the money for their investments, and they wanted me to keep this money with them. Otherwise, I*

would instruct to send sales proceeds to my personal account at Hyposwiss Bank, but I did not want to."

RA accepted that this paragraph gave a good explanation for his reasons for preferring not to send the sale proceeds to his account at Hyposwiss in Switzerland and rather send the Sale Proceeds to an account of his in Dubai.

128. When asked as to how he obtained the banking documents and statements put forward as belonging to KM, RA said that he asked a lawyer and a company Solicitor for KM to share those documents.

Evidence of Mr Benjamin Wade Newton

129. In his witness statement, Mr Benjamin Wade Newton referred to and exhibited a letter dated 11 October 2024 from DLA Piper UK LLP Solicitors on behalf of their client, KM. The purpose of the letter was to assist in these proceedings, and it expressly stated that it related to the loan of EUR 23,300,000 made by KM to MS to fund the purchase of Apartment 3.05, 20 Grosvenor Square, London, W1K 6US. The letter set out the following instructions on behalf of KM:

*"5.1 The funds that comprised the loan made to Mount Street for the purpose of purchasing the Property were transferred by Mr Makatsaria to his English lawyers who were advising him on the loan in 2019. These funds were generated through Mr Makatsaria's lawful business endeavours, specifically the sale of his shares in Nelgado Limited (**Nelgado**) in 2019. The funds raised from the sale of Nelgado were then lent to Mount Street and Mr Makatsaria understands the Property was purchased by Mount Street using those funds….*

5.3. The lending arrangement between Mr Makatsaria and Mr Abdullayev was documented by lawyers in England with each side having its own lawyers. As such, Mr Makatsaria had the benefit of legal advice throughout the transaction. Mr Abdullayev is well known to Mr Makatsaria as a business and personal acquaintance. Mr Abdullayev approached Mr Makatsaria with a business investment opportunity, namely a loan to enable Mr Abdullayev to invest in the super prime London property market. Unfortunately, the investment was ultimately not as profitable as either party had hoped, and the Property was sold at the end of 2023.

5.4 Our client did not enter into or continue with the business arrangement with Mr Abdullayev whilst under duress or undue influence. Mr Makatsaria is a prominent and extremely successful businessman in Georgia. He saw the transaction with Mr Abdullayev and Mount Street as a sound business opportunity and took it. Mr Makatsaria understands that the Defendants have questioned why Mr Makatsaria release his security over the Property. The security was released as Mr Makatsaria understood that step was necessary in order to secure the sale of the Property. Mr Makatsaria understood the implications of the release at the time and was comfortable with his actions. In these circumstances, our client retains a proprietary interest in the funds held by CDS Mayfair and in any event Mr Makatsaria expects the loan plus interest to be repaid on 5 December 2024. Mr Makatsaria understands that Mr Abdullayev is taking steps, which include the civil proceedings in Guernsey, to ensure the release of these funds."

Summary of the Submissions

Submissions on behalf of the Defendants

130. The Defendants adopted a neutral position in the case. Advocate Dunster submitted that it was not for his clients to advance a positive case of their own, nor was it for them to find evidence to counteract the Plaintiff's evidence and he said that his role was to assist the Court and to test the evidence. The only task of the Court was to determine whether the Plaintiff had proved, on the balance of probabilities, that the funds that represented the sale of the Property constituted "clean" funds.

131. Advocate Dunster submitted that two sets of funds had been injected into the structure, namely those of the Abdullayev family, which constituted 4.8% of the total sale funds, and those injected into the structure by KM, which amounted to the "lion's share" at over 95% of the total funds. In Advocate Dunster's submission, it was for the Court to consider both sets of funds and to consider them separately. It was submitted that the test for the Court was whether RA had proved the clean provenance of the funds and whether the MLRO's concerns about placement, layering and integration were correct. Advocate Dunster referred the Court in particular to *Garnet* at para 50:

> *"Funds in financial structures in Guernsey are often remote from the originating source of the funds because of the intervention of trust, corporate or other offshore structures (frequently connected with tax planning). This means that there may be limits upon the amount of information available on Guernsey to explain the source of any funds."*

132. On the central tenet of the Plaintiff's case, namely that the funds were legitimate, they came from the legitimately earned wealth earned by his family and they came from the funds of KM, a very wealthy and well-known businessman in Georgian circles, Advocate Dunster invited the Court to consider if there are any areas of concern which have been left so insignificant that the Court was satisfied that RA has discharged the burden of proof upon him. Advocate Dunster made the following suggestions as to the areas that the Court may wish to have regard to in relation to the evidence:

    a. on the original source of funds that were in RA's hands, was the Court satisfied with the explanation about how RA's grandfather generated those properties? Did the Court consider it was relevant that there was no evidence from RA's grandfather on this issue? What significance did the Court attach to the open-source media reports concerning the alleged activities of RA's grandfather? Was the Court satisfied that the person referred to in the open-source media reports was merely a person by the same name as his grandfather? It was suggested that the Court may wish to give consideration to RA's explanation on this point on the commonality of surnames in Azerbaijan following the change from the Soviet Union to the Azerbaijan independent state.

    b. on RA's father, the Court was invited to consider its conclusions on the open source media reports and the allegations of corruption and criminality of various sorts because of RA's father's role with SOCAR and the evidence that his father had neither been charged with nor convicted of any criminal offence and had become a government minister in Azerbaijan.

    c. on the sale of the Properties, Advocate Dunster suggested that the Court may wish to consider if questions remained such as why PwC had addressed their report to another vehicle. Was the Court satisfied that PwC would make a fundamental mistake when they addressed their valuation report to another vehicle, AR Construction, given that a review of the Land Registry extract confirmed that the Properties were owned by RA in his own name? Or, had PwC made a mistake when they said that the properties were owned by this company?

d. it was also suggested that the Court may wish to consider if it was satisfied with the explanation provided on the reference to an individual named Mr Farid who had been convicted of serious criminal offences in Azerbaijan? Was the Court satisfied that this was another coincidence of names? Was the Court satisfied with the explanation provided by the lawyers who were then acting for RA which stated that they had undertaken checks and that the individual named Mr Farid was a different person to the purchaser of the Properties?

e. on the wealth on KM's side, Advocate Dunster invited the Court to consider the open source reports that referred to an individual named Mr Hasanov, the same name as the person who had purchased the Nelgado shares from KM, who had been charged with drug smuggling and was under investigation for tax fraud and other matters. Was the Court satisfied that this was another unfortunate coincidence of names?

f. on KM's approach to the present case, Advocate Dunster made two points. First, it suggested that it was for the Court to consider whether KM ought to have engaged more closely with the case bearing in mind that his lawyers in the United Kingdom were clearly aware of the process, had written letters on his behalf and had sent a representative to attend the hearing. Second, it was suggested that the Court may wish to consider what it made of the apparent variance in the evidence on the expectations of RA and KM on what would happen to the funds upon the sale of the Property. On RA's evidence, when the Property was sold, he was free to continue to use the funds to pursue other business deals whereas in correspondence, KM's lawyers indicated that this was wrong and that upon the sale of the Property, the funds were to be returned to him.

g. on the nature of the Property deal, did the Court consider that it was normal commercial activity or were there points outside of the norm as to require explanation? If they were out of the norm was the Court satisfied with the explanation it had heard? Advocate Dunster made the following suggestions:

- if KM was seeking to invest and to provide a loan secured on a London super prime property, why would he not simply do it? If KM considered that he needed a partner to assist him to enter into the London super prime property market, would he approach someone who at that point, was around 25 years old and had not made a purchase into the London super prime market and didn't have any formal qualifications in property or finance?

- how satisfied was the Court with the explanation about Mr Mammadov's involvement in the negotiation of the discount for the purchase of the Property? Was the payment of £600,000 for negotiating a discount a normal figure and as such raised no issues?

- was the Court satisfied with the explanation on the reasons for the release of the security by KM?

h. On the concerns of the MLRO that there had been placement, layering and integration. Advocate Dunster submitted that in the present case there was a sale of shares in the company Nelgado by KM (step 1) and that those funds went into a bank account in Monaco which appeared to be a KM-controlled account (step 2). They then went to an account in Zurich in KM's name (step 3). In Advocate Dunster's submission, the fourth step appeared to be that those funds were used to facilitate a loan facility made by KM and secured by other assets, possibly money

in the Credit Suisse account. This fourth step was unclear, however, in Advocate Dunster's submission, as there was no evidence before the Court from KM. The funds then went to Solicitors in London and as such to another jurisdiction and were ultimately injected into the purchase of the Property. It was submitted that at that point, KM became a creditor of MS. In Advocate Dunster's submission, the difference between the positions of KM and RA was that, in KM's case he would be repaid by MS at some later point - 4 years later - with the sale of the Property. At that point, the funds would have been returned to KM and the circle would be complete. On RA's case, his position was that the funds were to move from MS to an account in his name at Hyposwiss Bank and then to another bank in the UAE in his name. RA said that he would have transferred the funds to another company under his control in the UAE and that company would have made the loan to Advaita. RA was clear that the money had to be repaid to KM and he wanted to do so. It was suggested that the Court may wish to consider the explanations and whether they involved normal commercial activity.

i. On the evidence about RA's bank accounts, Advocate Dunster invited the Court to consider the statement in the letter to RA from Hunters Law Solicitors dated 15 September 2021 to the effect that RA said that he would pay Mr Mammadov once he had resolved an issue he was encountering with his bank in Switzerland which at the time had frozen his accounts because of money laundering issues. The Court was invited to consider this with RA's explanation on the email dated 29 November 2023 that he sent to Apex requesting that his funds be transferred to his bank account in the United Arab Emirates rather than his Hyposwiss account. Was the Court satisfied with his explanation that he was concerned that his account may be closed if he deposited and withdrew funds and about his concerns as a PEP? Was the Court satisfied with the letter from the bank that said he was in good standing and did it support RA's credibility, removing concerns about money laundering? Advocate Dunster also invited the Court to consider the relevance of the allegations made by Hunters by letter dated 15 September 2021 on behalf of their client, Mr Mammadov, in relation to what RA had allegedly said to Mr Mammadov at the Hyatt Centric Hotel in Istanbul. Was this of relevance and did it affect the Court's views of RA's evidence as a whole?

133. Finally, Advocate Dunster invited the Court to look at matters overall and to consider if it was satisfied that the Plaintiff has proved the *bona fides* of the funds. Relying on *Garnet*, Advocate Dunster reminded the Court that the law does not require the Court to find at the top of this chain a criminal act and that Guernsey will often be in the middle of a structure. If placement was involved, layering that is where Guernsey will be, not further upstream. Advocate Dunster invited the Court to consider if it was satisfied with the explanations provided, and whether the Plaintiff had discharged the burden of proof on him or did it consider that there are so many questions and uncertainties on what the Court had seen to date, in particular witnesses the Court had not heard from, that the Court considered that that has outweighed the positive evidence which RA and his team have advanced such that he has not discharged the burden of proof.

Submissions on behalf of the Plaintiff

134. On behalf of the Plaintiff, Advocate Adkins submitted that in order to answer the ultimate question as to whether the funds in the CDS Mayfair account were the proceeds of crime, the Court should give consideration to two questions. First, were the funds used to purchase the Property the proceeds of criminal conduct? Second, did anything happen to the funds once the Property was purchased to render them the proceeds of criminal conduct?

135. In Advocate Adkins' submission, under robust cross examination, RA's evidence was consistent in and of itself and consistent with his witness evidence. It was submitted that despite his nervousness and unfamiliarity with the legal surroundings, he gave careful and considered testimony. On the Plaintiff's case on the provenance of the funds, Advocate Adkins relied on the following submissions. First, on KM's source of funds, it was submitted that KM was a Georgian billionaire with an impressive business portfolio across different sectors.

136. With regard to the payment received by KM from Weco for the sale of his shares in Nelgado, it was submitted that although the bank statements before the Court did not name KM as the account holder, the Court could conclude that this was KM's bank account for the following reasons; the account was nominated as KM's bank account in the Nelgado share sale agreement, it was clear from the statements that the transfers made from the CMB account to the other accounts in KM's name appeared in the reference field as "own funds" and finally, in his oral evidence, RA said that these bank statements had been provided to him by KM's inhouse company lawyer. It was submitted that whilst KM had not filed a witness statement in relation to the source of the funds for the loan to MS for the purchase of the Property, there was a letter before the Court from DLA Piper dated 11 October 2024 which confirmed that the source of the funds for the loan was from KM's lawful endeavours, namely the sale of shares in Nelgado. Most significantly, in Advocate Adkins' submission, there was no evidence before the Court to show that the loan from KM to MS was not funded from the sale of KM's shares.

137. Second, on RA's source of funds, it was submitted that RA was a young entrepreneur from a wealthy family who had been making his way in business since he was 16 years old. In his evidence he said that in 2016, he made plans to move to the UK and gain a special investment visa. In order to assist RA with the move and the next stage of his business career, his grandfather, a successful businessman himself, gifted four properties in Azerbaijan to RA in lieu of cash. These properties were sold and they raised some USD 15 million. Those funds were placed into RA's UK business endeavours.

138. It was submitted that due to AA having purchased the properties under Soviet law in the 1990's, there was no evidence of a formal record on the official register of the transfer to RA. There was documentary confirmation before the Court as to the lack of evidence at that time from the State Land registry. It was submitted that documentary evidence could not be provided of AA's entrepreneurial endeavours with Iran and Russia over 30 years ago and, RA's evidence was that AA was not at the hearing of these proceedings because the issue before the Court was not his difficulty. AA was approximately 78 years of age. Advocate Adkins posed the question as to what AA could be expected to address in evidence in relation to the purchase of the Azerbaijani properties in the early 1990s. It was submitted that there was no evidence to show AA was involved in any criminal conduct at the time of the purchase of the Azerbaijani properties.

139. Advocate Adkins referred to the evidence that RA's father began working with SOCAR in 2005. It was submitted that because of timelines in the case, there could be no question of a link between any SOCAR issue connected with the father and the grandfather's purchase of the properties in the 1990s.

140. In Advocate Adkins' submission there was absolutely nothing remarkable about PwC having been engaged in the name of the company owned by RA and similarly, there was nothing remarkable about the error by PwC in the opening paragraphs of their valuation report and that in any event, neither of these points were relevant to the question as to whether the Sale Proceeds were the proceeds of crime.

141. Advocate Adkins also referred the Court to the sale agreement for the sale of the Azerbaijan Properties to Mr Farid and to the letter from PSG Law who had confirmed their instructions to act on the sale. The Sale Proceeds of the Azerbaijan Properties were transferred to RA's Rabitabank account which in turn funded RA's Hyposwiss account. Advocate Adkins also

referred the Court to the letter from Rabitabank dated 8 May 2024 by which the bank confirmed that a number of payments had been transferred to RA's Hyposwiss bank account in Switzerland in 2018 and had been transferred to Switzerland after the source of the money had been checked and verified by the Rabitabank's compliance team. The MS account at Hyposwiss was then funded from RA's personal account in Hyposwiss.

142. Third, on the purchase of the Property, Advocate Adkins drew the Court's attention to RA's evidence that he had explored a number of investment opportunities with Lydus partners before deciding to buy the Property and he was keen to invest in the London super prime property market. RA had relied on the assistance of Mr Mammadov, the founder of Lydus partners, to negotiate the deal. In doing so, Mr Mammadov used his London connections to reach the right people in Finchatton and agree a discounted purchase price. In his evidence, RA said that Finchatton were not offering discounts to anybody at all, but Mr Mammadov was able to use connections within his circle to reach the right people at Finchatton, the developers, to be able to secure the discounts.

143. Having identified the Property, RA approached KM for funding. It was submitted that in cross examination, RA said that the various labels that have been placed on that relationship on assorted pieces of correspondence, namely business acquaintances, friends and family relationships were all accurate and he explained that he tended to have a social relationship with all of those he does business with. In Advocate Adkins' submission, the business proposition that RA advanced to KM was not intended to be anything other than entirely profitable. RA had explained the commercial drivers that he put to KM in significant detail in cross examination. On the financing aspects of the deal, before considering the Property itself, KM stood to make around 5% interest on his deposit and on the lending to MS for the duration of the loan without having to do anything.

144. It was submitted that RA and KM had entered a profit-sharing agreement. At that time, the London property market was increasing at a rate of 4 -5 % every year and that rate was not expected to change over the life of the loan (5 years). The rental income expected to be generated was GBP 5 million over that 5-year period. All of this was done against a backdrop on an historically low Great British Pound. As well as the pure commercial drivers, the investment in London property as opposed to anywhere else in the world had the promise of a foreign exchange profit if the 5-year loan of the Pound returned to its historically normal levels at the end of that period.

145. RA had calculated that the investment in property in total, taking into account the interest rate, capital interest gains and the commercial gains on the sale was expected to return in or around GBP 27 million or, and assuming the Pound bounced back as it was expected to do, in or around USD 48 million. That was why KM thought it was a good deal. For KM, the downsides were extremely limited.

146. Fourth, on the sale of the Property, Advocate Adkins drew the Court's attention to RA' s evidence that in the couple of months following the purchase of the Property, it was not possible to rent the Property during the Covid-19 pandemic. Subsequently, in February and March 2022, Russia invaded Ukraine. RA said in evidence that when they made the plan, they had not expected either event or he did not think that anyone could have anticipated them. When it became apparent that the Property was not going to become profitable as they had all originally anticipated, KM was advised of the decision to sell the Property and Apex was instructed to put it on the market. RA explained in his second statement that he was willing to make a comparatively small loss by not having a sitting tenant in the hope of having a swift sale. The Property went on the market around May 2022 but only sold in the final quarter of 2023 and it completed on 5 December 2023. The net proceeds of that sale had remained in the CDS Mayfair account.

147. In relation to matters that had been raised about what RA wanted to do with the Sale Proceeds and whether his understanding aligned with that of KM, Advocate Adkins submitted that this did not matter to the question that the Court was asked to decide on, namely whether or not the funds in the CDS Mayfair account were the proceeds of crime. In Advocate Adkins' submission, to the extent that the Court considered that those differing impressions went to issues of credibility of either RA or KM, RA had explained in evidence that things change in the business world and his relationship with KM had soured as a result of ongoing issues to extract the Sale Proceeds.

148. Finally, on the financial inputs by RA and KM, it was submitted that the figure contributed by RA to the purchase of the Property was 4.3% and the balance was contributed by KM. From the CDS estimated completion statement (pg. 151) it could be seen that the purchase price and transaction cost were around GBP 20,022,413.89. A further GBP 511,131 was subsequently paid by RA for the ongoing costs for the Property. The total input was therefore GBP 20,533,544.89. Of the inputs, KM paid GBP 19,640,900.88. RA paid GBP 376,512 in indirect purchase costs, and the GBP 511,131 in ongoing costs brought his total of the input costs to some GBP 887,643. Advocate Adkins submitted that KM's input was therefore 95.6% and RA's input was the inverse. The net Sale Proceeds at CDS Mayfair were around GBP 17.3 million. Of that GBP 17.3 million, KM's share was GBP 16,547,926.91 and RA's share was GBP 752,073.10. The sums set out by Advocate Adkins did not include the advisory fees that RA had paid to Lydus Partners.

149. In response to the suggestions put forward by Advocate Dunster, Advocate Adkins made the following submissions:

    a. the funds contributed by RA to the Sale Proceeds did not represent the proceeds of bribery and corruption conducted by his father at SOCAR. RA had shown a clean, comprehensive, corroborated and credible source of funds for his limited contribution to the Sale Proceeds. There was no evidence that RA's father had committed any crime of bribery and corruption save for a limited number of online articles which were all a number of years old. As conceded by the Defendants, there was no evidence to show that RA's father had been convicted, prosecuted or formally investigated in relation to any criminal allegations.

    b. similarly, the funds contributed by RA to the Sale Proceeds did not represent the proceeds of bribery and corruption or any other criminal offence committed by RA's grandfather. It was submitted that RA had shown a comprehensive, corroborative and credible source of funds for this contribution. There was no evidence before the Court that RA's grandfather was involved in any form of criminal conduct associated with SOCAR save for a very small number of news articles by a single organisation that published the article that made the false assumption about the ownership of the flat. There was no evidence before the Court that RA's grandfather had been convicted, prosecuted or formally investigated in relation to any criminal allegations.

    c. the person named Adem Aleyev in the OCCRP article was not RA's grandfather. His grandfather had no connection to Bahar Energy, the company named in the article. In Advocate Adkins' submission, it was the connection to Bahar Energy that appeared to form the entire crux of the allegations of bribery and corruption in relation to Mr Aleyev. Aleyev is a very common surname and is the name of the first post-independence President of Azerbaijan. The citizens in Azerbaijan were encouraged and then required to change their Russian surnames to Azerbaijani surnames.

    d. the funds contributed by RA did not represent the proceeds of terrorism conducted by an individual named Mr Sadiqov Farid who was convicted of terrorism in 2017. The purchaser of the Azerbaijan properties was also called Sadiqov Farid. It was submitted

that RA had not been cross-examined on this point and the Court might conclude that it is not of particular relevance to its deliberations. Advocate Adkins drew the Court's attention to the letter dated 10 October 2024 from PSG Law who acted on the conveyance of the Azerbaijan Properties. PSG Law confirmed in this letter that the purchaser, Mr Sadiqov Farid, was not the same person who was convicted of terror related offences in 2017 and they enclosed a letter from the Republic of Azerbaijan's Ministry of Internal Affairs dated 9 October 2024 which confirmed that the purchaser, Mr Farid, did not have any criminal convictions.

e. On KM's wealth, it was firstly submitted that there was no evidence before the Court that KM had been the subject of regulatory irregularities by Caucasus Online or the purchase of the Nelgado shares or that they amounted to a criminal offence. By letter dated 10 October 2024, Collas Crill advised Carey Olsen that none of the parties had been sanctioned by the regulator. It was submitted that it was of particular note that arbitration was used to resolve the dispute as to whether or not those Georgian regulations had been breached and that criminal offences did not tend to be resolved through international arbitration. The Court's attention was drawn to the letter from DLA Piper dated 11 October 2024 on behalf of KM which confirmed the advice provided in the Collas Crill letter on this point.

   In Advocate Adkins' submission, the purchaser was named Nasib Hasanov, the same name as an individual convicted of drug trafficking in 2010. It was submitted that KM could only be considered to be holding the proceeds of drug trafficking in his hands deriving from this shared purchase transaction if he was somehow knowingly part of the original crime or indeed the laundering of proceeds. It was submitted that there was simply no evidence to suggest that he might have done so and that it was highly unlikely on the balance of probabilities that this was the same Mr Hasanov. In Advocate Adkins' submission, there seemed to be a very slim chance that a convicted drug trafficker was involved in a very public multi-million-dollar telecoms acquisition. In addition, the Court heard from RA of his discovery that Mr Hasanov had recently received funding from large European banks for investment in Ukraine. It was suggested that the Mr Hasanov who had purchased the Nelgado shares was not the Mr Hasanov who was convicted of drug trafficking. It was submitted that it seemed to be highly unlikely that such funding would be provided to a convicted drug trafficker.

   It was further submitted that in the absence of any evidence of criminal conduct on the part of KM, the references to the stages of money laundering (placement, layering and integration) had no meaning. There was also no evidence of proceeds that KM would have to launder. He sold his interest in the company, the money was deposited in an account in his own name, he transferred the monies to an account in his own name before ultimately transferring the funds to an account at Credit Suisse again in his own name. These funds were then loaned to MS, a Guernsey entity and there must be nothing wrong with Guernsey as a jurisdiction to do business in. The Guernsey entity was administered by a regulated corporate service provider for the purchase of London super prime property. In order to protect his investment, KM took out a mortgage and put a charge on the Property in his own name. KM had made no attempt to hide his identity or the ownership of the funds at any stage.

f. On the issue as whether the nature of the relationship between RA and KM raised suspicion, it was submitted by Advocate Adkins that there was no evidence of any kind of a radical change in the nature of business and personal relationships between RA and KM before the Court. RA in particular did not approach business relationships in such a black and white fashion. His evidence was that he socialised with the people that he did business with as did his wife and family. Advocate Adkins posed the question as to whether it is so unusual that two businessmen dealing in excess of EUR

20 million would seek to properly document the nature of their business endeavour regardless of being friends or not. Was it so improbable that KM, who would have been acutely aware of the business impact of the first global pandemic and then the Russian invasion of Ukraine, would release his charge over the Property to secure a speedy sale? He was not releasing MS or, most importantly, RA from their respective legal obligations. The debt simply became unsecured.

g. It was submitted that RA had addressed at length in cross examination the economic rationale for the transaction. It was a highly profitable deal which was put together by RA with the assistance of Lydus and it had benefits for KM. It was an excellent business opportunity for KM and had been presented to him for minimal or next to no risk and excellent returns.

h. In relation to Mr Mammadov's involvement, it was submitted that RA had addressed this point comprehensively. What was apparent from his evidence was that RA was mindful of his own limitations or lack of experience in this particular market. He sought guidance from Lydus partners whom he described as a firm that advises him sometimes and goes into business with him as partners on other times whilst developing the proposed investment. He also looked to Mr Mammadov in assistance with the negotiation down of the purchase price, appreciating Mr Mammadov's better connections with a specific circle of individuals who were able to negotiate a reduction in the purchase price as an exception to what was otherwise being presented to the market.

   It was also submitted that the nature in which the Property was handled did not give rise to suspicion. The Property was purchased for two reasons as ultimately an investment opportunity to generate rental income and to appreciate in value over the five-year term of the loan. The Covid-19 pandemic prevented it from being rented for a prolonged period and the war in Ukraine significantly undermined the super prime London property market and then the anticipated increase in capital value over the loan. Having taken the decision to mitigate his loss and sell the Property, RA explained why he was willing to make a further but hopefully short-lived loss on rental income in order to secure a quick sale in a very challenging market.

i. It was submitted that KM was content to release his security on the basis it was said that he was paid back immediately. The sale of the Property took in or around 18 months. Over that time, there were further discussions between them and the market worsened and worsened as the war between Russia and Ukraine waged on. The uncrystallised losses particularly for RA mounted. RA identified further opportunities to invest and hopefully reduce some of his losses that he was going to suffer on the deal. He negotiated KM's consent to use the Sale Proceeds for that purpose. This was confirmed by KM directly to Apex This was at a point in time when the sale had just completed but importantly it was before RA or KM could have known that there were any kind of informal freezing type issues into this account. KM had his own lawyers advising him. Replacement security was contemplated but it was not implemented because the funds did not come out into some other investment.

j. It was submitted that RA had confidently dealt with the allegations made by Hunters LLP on behalf of their client Mr Mammadov that RA had made threats against him. RA's evidence was that whilst he did not think that Mr Mammadov was a liar, he had not said the words that had been attributed to him. He also gave a potential explanation as to why a mistake might have been made. He said that both he and Mr Mammadov were distant around the Covid time in terms of their friendship but also distant in terms of their physical location. They had not spoken directly and there were various intermediaries who were communicating between them. In those circumstances, it was

submitted that it was perhaps not beyond the realms of possibility that misunderstandings may have occurred. In any event, in Advocate Adkins' submission, notwithstanding RA's denial that he had said the words attributed to him, the allegation did not go to any issue regarding the funds in question in the present case and to whether the Sale Proceeds were the proceeds of crime. There was no link between the suggestion of a connection with a Turkish mob and these particular Sale Proceeds at all. It was simply irrelevant to that core question. On the suggestion made in the Hunters letter that RA's personal account at Hyposwiss was frozen, it was submitted that RA had again explained confidently in evidence the relevant circumstances. He did not say nothing ever happened and it was a complete mistake. He readily acknowledged that there was difficulty operating his account for a period of about one month. That difficulty was resolved and his account continued to operate normally from then on. He was able after that one-month period to make the payment to Mr Mammadov that was the subject of the Hunters letter. There was a letter from Hyposwiss before the Court which confirmed that RA's account is in good standing and has been over the relevant period.

150. On the questions for the Jurats, Advocate Adkins submitted as follows:

a. on the first question, in response to the question as to whether the Property or any money that came into the structure was the proceeds of crime, the answer was no. The Sale Proceeds were not the proceeds of crime.

b. the direct source of the Sale Proceeds was from KM and his funds were beyond reproach. They were not the proceeds of any person's criminal conduct. The Court could and should ignore the 4.3% contribution from RA to the indirect purchase and transaction costs. If the Court was not minded to ignore the 4.3%, the source of RA's wealth was also beyond reproach. The source of RA's wealth was his grandfather. It had nothing to do with his father and it had nothing to do with bribery or corruption. The adverse media reporting before the Court connecting RA's grandfather with RA's father was wrong. The adverse media reporting related to a different individual named Adem Aleyev.

c. in any event, the dates did not work to enable any kind of proceeds deriving from RA's father's role at SOCAR to have gone into the purchase of the Property at least some 10 years before that. There was no crime by RA's father, RA's grandfather, KM or RA or anyone else. The references to the adverse media in the SAR in relation to RA's father and grandfather related to a relatively small number of internet published articles which in any event appeared to go no further than alleging a lack of transparency and drawing on incorrect assumptions from incomplete remuneration information.

d. in relation to the Nelgado shares and to KM's source of wealth, there was no crime involved at all. There was a regulatory breach which may have contributed to the funds but in Advocate Adkins submission, that was not KM's regulatory breach. The Georgian authorities appeared to have subsequently conceded their case at international arbitration and this was confirmed in the letter of 1 November 2024 from KM's lawyer. In the case of the purchaser of the Nelgado shares, it appeared to be a different person than the one that was convicted of drug trafficking. Advocate Adkins submitted that on the balance of probabilities, absolutely all of the evidence suggested that the person who was engaging in multi-million telecoms transactions and other business transactions in that region - which are the subject of other regulatory transactions and investigations - was not the person who was convicted of drug trafficking and tax evasion. In relation to the purchase of the Azerbaijani properties, it was submitted that they were purchased by a different person to the one who was convicted of terrorism.

This had been conclusively proven by the letter from PSG Law from the Azerbaijan Ministry and the Court heard evidence that the grandfather is a different person.

e. some unusual features of the transaction did not at all suggest money laundering. They were not particularly unusual and they had been fully and comprehensively addressed by RA in his evidence which was tested in cross examination.

f. on question 2, there was no evidence of any crime that was said to have actually transformed the proceeds. The suggestion that there may have been some duress or influence exercised upon KM during the period when the funds were in the Property in the CDS Mayfair account had been addressed; by letter dated 11 October 2024, DLA Piper KM's lawyers confirmed that there had been no such duress.

Discussion

151. The parties agreed that the questions for consideration by the Jurats on the balance of probabilities were these:

Question 1: was the Property or any money that came into the structure the proceeds of crime?

Question 2: has anything happened since the Property was purchased that would have resulted in the Sale Proceeds becoming the proceeds of crime?

152. The presiding Judge directed the Jurats on the law as set out at paragraphs [9] – [19] above. On the Plaintiff's burden of proof, the Jurats were reminded by the presiding Judge of the comments of Lieutenant Bailiff Marshall in *L, M, N and Mrs B v Credit Suisse AG*, namely that in a private action of this kind the Court may be sympathetic to the burden placed on the Plaintiff to surmount the evidential test (para 140):

> *"…the Court will, in applying the burden and standard of proof and deciding whether the plaintiff has discharged it, pay appropriate regard to the likely or apparent difficulties which such a plaintiff may be facing, in endeavouring to gather evidence from persons over which he or she has no control, who may have no incentive to assist, and which evidence may well, in any event, have been lost with the passage of time and the destruction or loss of records."*

153. The Presiding Judge directed the Jurats on hearsay which is governed by *the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009* ("the 2009 Law"). Hearsay is a statement made by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters which are contained in that statement (Section 1(2) of the 2009 Law). A written record of what has occurred such as a letter from a bank or an email from a third person or a letter from a law firm can all be hearsay evidence if the author of the document does not attend Court and give evidence as to the matters stated within that document. There can be multiple levels of hearsay. If a witness statement records a statement by someone else and a party seeks to rely on what that person said, that is multiple hearsay if the Court does not hear from the maker of the statement. The letters in the bundle from DLA Piper Solicitors setting out what KM has told them is multiple hearsay for example as the Court has heard neither from DLA Piper nor from KM. In Guernsey, hearsay is admissible in civil evidence proceedings (Section 1(1) of the 2009 Law). The Jurats were directed that they should give consideration to how much weight to give hearsay evidence.

154. The Jurats were also directed by the Presiding Judge that if they were not satisfied they could reach a conclusion on the balance of probabilities, it was open to them to require RA to provide further evidence rather than dismiss the claim. They were satisfied that they could reach their conclusions, on the balance of probabilities, on the basis of the evidence before the Court.

155. The Presiding Judge further directed the Jurats that the issue of suspicion was not in issue in this case because for the purpose of these proceedings, RA had acknowledged for the purposes of the proceedings the suspicions of the relevant officer or officers of Apex and whilst he considered that they were misplaced, he acknowledged for the purposes of the proceedings that such suspicions did not appear to be fanciful. Consequently, it was agreed that the only issue before the Court was whether RA could prove on the balance of probabilities the provenance of the funds and that the funds do not constitute the proceeds of criminal conduct.

156. The Jurats considered that in giving his evidence to the Court, RA tried to be thorough in his answers and he did his best to assist the Court. He elaborated on some of his answers and supplemented some of them with further information. Where it appeared that RA was not giving direct answers, the Jurats were satisfied that this was because of language difficulties and the Court room environment which they accepted was unfamiliar to him. They also accepted his evidence that he was anxious, this being the first time he was in a Court room.

157. In accordance with the questions agreed by the parties, the Jurats first considered on the balance of probabilities if the Property or any money that came into the structure was the proceeds of crime (the first question).

158. The Jurats were satisfied on the evidence that RA's contribution constituted in or around 4.8% of the total sale funds. They accepted RA's evidence that his source of wealth, to the extent that it was relevant to the purchase of the Property and the Sale Proceeds, was derived from the sale of the Azerbaijani Properties that had been gifted to him in 2015 and in 2016 by his grandfather, AA. They accepted RA's evidence that the reason for the lack of documentation relating to AA's purchase of the Properties was because the Properties were purchased in 1998, prior to the establishment of a title deed system for private land ownership in Azerbaijan and that as such, the official records relating to AA's purchase of the Properties could not be verified. This was supported by a letter dated 27 August 2024 from the Azerbaijan State Registry Service of Real Estate which confirmed that no information had been found by them regarding the transfer of the Azerbaijan properties to AA because of the historic nature of the transfers during Soviet rule and it also confirmed that the four Azerbaijan properties were transferred to RA in 2015 and 2016. The Jurats were also satisfied that the deed of gift referencing the transfer of ownership from AA to RA dated 21 June 2016 and the extracts from the State Registry Service of Real Estate in Azerbaijan demonstrated RA's ownership of three of the Properties.

159. The Jurats were satisfied there was no evidence before the Court that AA had been investigated, charged or convicted in relation to any criminal offence. They were equally satisfied that the OCCRP article did not relate to AA, RA's grandfather and that AA had no connection to Bahar Energy, the company referred to in the article. They accepted RA's explanation that the name Aleyev is a common surname in Azerbaijan and that post-independence, citizens were encouraged to change their Russian surname to Azerbaijani surnames.

160. The Jurats gave consideration to the letter dated 10 October 2024 from PSG Law by which it confirmed that the purchaser of the Azerbaijani Properties, Sadiqov Farid was not the same person who was convicted of terror related offences in 2017 along with the enclosed letter from the Republic of Azerbaijan's Ministry of Internal Affairs dated 9 October 2024. The Jurats were readily persuaded on foot of the letter from PSG Law that the funds contributed by RA did not represent the proceeds of terrorism conducted by an individual named Sadiqov Farid who was convicted of terrorism in 2017.

161. The Jurats found that before he was engaged as a client by Apex on 15 June 2018, RA had already sold the Azerbaijani Properties on 1 August 2016. They were satisfied on the evidence that on or around 15 June 2018, RA entered into an agreement with Apex (at that time, MJ Hudson). In their letter of engagement dated 15th June 2018, MJ Hudson advised RA as follows:

"Please accept this letter as confirmation that we have concluded our take-on procedures and accepted the appointment to undertake the work detailed below on the terms as detailed in the enclosed Terms and Conditions"

The Jurats accepted RA's evidence that it was his understanding that under Guernsey regulation, he was considered to be a PEP because of his father's position in SOCAR. They considered that RA was already a PEP when MJ Hudson engaged him as a client. In the Jurats' consideration, the letter of engagement from MJ Hudson was of significance as it demonstrated that MJ Hudson had completed its acceptance and most importantly, it had discharged its due diligence obligations in respect of RA.

162. The Jurats were satisfied on the evidence that RA did not use funds from his father to fund the acquisition of the Property. They were equally satisfied that there was no evidence to show that his father had been investigated, charged or convicted of any criminal offence and this had been conceded by the Defendant.

163. The Jurats turned to consider the financial contribution of KM to the purchase of the Property. They were satisfied that KM had contributed over 95% of the total funds. They accepted that the loan from KM to MS was funded by the sale of KM's shares in Nelgado to Weco. In relation to the payment received from Weco by KM for the sale of those shares, whilst the bank statements in evidence did not name KM as the account holder, the Jurats were satisfied that this was his bank account for the reasons advanced by Advocate Adkins, namely, the account was nominated as KM's bank account in the Nelgado sale share agreement; the statements made clear that the transfers from the CMB account to the other accounts in KM's name appeared in the reference field as "own funds"; and RA's oral evidence was that the bank statements had been provided to him by KM's inhouse company lawyer. The Jurats accepted the letter from DLA Piper dated 11 October 2024 by which they confirmed that the source of funds for the loan were from KM's lawful endeavours, namely the sale of the shares in Nelgado. They were satisfied that there was no evidence that the sale of the shares amounted to a criminal offence.

164. The Jurats were satisfied that there was no evidence before the Court that KM had been the subject of regulatory irregularities by Caucasus Online. There was evidence before the Court that none of the parties had been sanctioned by the regulator, namely a letter from Collas Crill dated 10 October 2024 addressed to Carey Olsen.

165. The Jurats gave consideration to the question as to whether the funds paid to KM by Mr Nasib Hasanov, the purchaser of the shares in Nelgado Limited were the proceeds of crime. The Jurats were satisfied that the fact that the purchaser had the same name as an individual who was convicted of drug trafficking and tax evasion was a coincidence. They considered that it was likely that due diligence would have been undertaken on who the shares were being sold to. They were persuaded by Advocate Adkins' submission that a major telecommunications operator would not have allowed the sale to a convicted drug trafficker. The Jurats were satisfied that there was no evidence before the Court of any criminal charges or convictions against KM. They were equally satisfied that KM sold his interest in Nelgado, that money was deposited in an account in his own name, that he transferred the monies to an account in his own name before ultimately transferring the funds to an account at Credit Suisse bank, again in his own name. They accepted that these funds were then loaned to MS and he took out a mortgage and put a charge on the Property. The Jurats were satisfied that KM did not at any point seek to hide his identity or the ownership of the funds at any stage.

166. As regards the alleged threats to Mr Mammadov referred to by Hunters Law in their letter dated 15 September 2021, the Jurats gave careful consideration to the evidence of RA, particularly under cross examination. They accepted RA's evidence that he not did not make any such threats. They accepted his explanation as to why a mistake may have occurred, namely that he

and Mr Mammadov had communicated indirectly only through intermediaries for some time prior and as such misunderstandings may have occurred. The Jurats were also satisfied with RA's explanation in response to the suggestion in the Hunters Law letter that his personal account with Hyposwiss had been frozen because of money laundering issues, namely that the block on his account had been resolved within one month and his accounts then became active and were in use. The Jurats accepted the letter in evidence from Hyposwiss which confirmed that RA was in good standing.

167. The Jurats considered that it was unnecessary to give consideration to whether KM had a proprietary claim in the Sale Proceeds and if so, the reason as to why KM's view of the arrangement differs to that of RA as this was not in their consideration, a relevant issue.

168. In response to the first question, the Jurats were therefore satisfied for the above reasons on the balance of probabilities that the neither the Property nor any money that came into the structure were the proceeds of crime.

169. The Jurats then gave consideration to the second question, namely had anything happened since the Property was purchased that would have resulted in the Sale Proceeds becoming the proceeds of crime? They were satisfied that any concerns about whether duress or undue influence had been exercised on KM was addressed in the letter from DLA Piper Solicitors on behalf of KM dated 11 October 2024. In their letter, DLA Piper confirmed that KM did not enter into or continue with the business arrangement with RA whilst under duress or undue influence. The Jurats accepted this evidence and they considered that on the balance of probabilities the investment was not procured under duress or undue influence. The Jurats were also satisfied that there was no evidence before the Court of any crime that was said to have transformed the proceeds. Therefore, in response to question 2, the Jurats concluded on the balance of probabilities that nothing had happened since the Property was purchased that would have resulted in the Sale Proceeds becoming the proceeds of crime.

Conclusion

170. The Presiding Judge directed the Jurats that declaratory relief was a discretionary remedy. Having reached their conclusions as set out above, the Jurats unanimously concluded that it was appropriate to exercise the Court's discretion to make the first declaration sought in the Cause, namely that the Sale Proceeds are not the proceeds of criminal conduct for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.