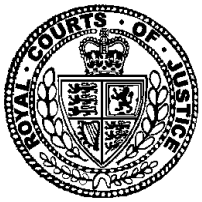

Neutral Citation Number: [2024] EWHC 2240 (Admin)

Claim No: AC-2023-LON-001875
Former Claim No: CO/2247/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 August 2024

Before :

THE HONOURABLE MR JUSTICE MURRAY

- -

Between :

NATIONAL CRIME AGENCY

Applicant

- and -

(1) JIANGBO HAO
(2) WENJUN TIAN
(3) VIBE STUDENT LIVING LIMITED
(4) VIBE (ABBEY HOUSE) LIMITED
(5) UNINN REGENT STREET HOLDINGS LIMITED
(6) UNINN ABBEY HOUSE HOLDINGS LIMITED

Respondents

- -
- -

Andrew Sutcliffe KC and **Emmanuel Sheppard** (instructed by **NCA Legal**) for the **Applicant**
Nicholas Yeo and **Ciju Puthuppally** (instructed by **Gherson LLP**) for the Respondents

Hearing date: 2 May 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 30 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Murray:

1. This is my public (open) judgment on an application by Ms Jiangbao Hao and Mr Wenjun Tian, made by Application Notice dated 5 January 2024 ("the Set-aside Application"), to set aside a disclosure order made against the respondents by Johnson J on 27 June 2023 ("the Disclosure Order") under section 357 of the Proceeds of Crime Act 2002 ("the 2002 Act"). The Disclosure Order was made on the application of the National Crime Agency ("the NCA"), by Application Notice dated 19 June 2023 ("the Disclosure Application").

2. Although in this judgment I am dealing with an application by Ms Hao and Mr Tian, namely, the Set-aside Application, to which the NCA is the respondent, these proceedings began with the Disclosure Application, for which the NCA is the applicant and to which Ms Hao, Mr Tian, and various related corporate entities are the respondents. In this judgment, for consistency with much of the background documentation, including the correspondence between the parties, I refer to the NCA as the "applicant" and Ms Hao, Mr Tian, and the related corporate entities named as respondents in the Disclosure Order as the "respondents".

3. In a short separate private (closed) judgment, I deal with one aspect of the case, a single, relatively narrow issue, that I have determined should be dealt with in private, having regard to CPR r 39.2.

4. Ms Hao and Mr Tian are Chinese nationals. They were each born in 1974. They married on 27 January 2014.

5. On 14 July 2017, Ms Hao applied to the Home Office for entry into the United Kingdom under the Tier 1 Investor Visa Migrant Scheme, with Mr Tian and two of their children applying on the same day to enter as her dependents.

6. Ms Hao left China for the United Kingdom on 18 August 2018. Mr Tian followed her on 20 September 2019, travelling first to Thailand and then the UK. Ms Hao and Mr Tian live, or have lived, at an address in Hampstead, with their children.

7. On 11 November 2019, Ms Hao was granted indefinite leave to remain in the UK as a Tier 1 Highly Skilled Investor. On 21 July 2022, Mr Tian was granted indefinite leave to remain. On 31 July 2022, Ms Hao lodged an application to naturalise as a British citizen.

8. Each of the other respondents is a company associated with Ms Hao and Mr Tian that holds, directly or indirectly, commercial property that the NCA suspects of being recoverable property.

9. The Disclosure Order was made following a without notice hearing before Johnson J on 27 June 2023 that was conducted in private.

10. Ms Hao and Mr Tian seek to set aside the Disclosure Order on two principal bases, namely, that:

    i) the judge was wrong to conclude that there were reasonable grounds for suspicion that any of the respondents holds or, at a relevant time, held

recoverable property or associated property and/or that the property specified in the Disclosure Application is recoverable property; and

ii) the judge's error was due to numerous relevant failures of the NCA to comply with its duty of full and frank disclosure in the making of the Disclosure Application and at the hearing on 27 June 2023.

11. Ms Hao and Mr Tian also complain that:

i) there was no adequate justification for the hearing before Johnson J to have proceeded without notice; and

ii) the NCA has failed to comply with its ongoing duty of full and frank disclosure since the Disclosure Order was made.

12. Finally, Ms Hao and Mr Tian argue that, even if the court concludes that the Disclosure Order was properly made, the court should use the discretion conferred by section 362(4)(a) of the 2002 Act to discharge it.

13. The NCA submits that the Set-aside Application should be dismissed for the following reasons:

i) there were at the time of the Disclosure Application, and there remain, reasonable grounds for suspicion that the respondents hold or have held recoverable property and/or that the property specified in the Disclosure Application is recoverable property; and

ii) the allegations by Ms Hao and Mr Tian that there were failures of disclosure by the NCA at the hearing before Johnson J are either misconceived or concern matters that are not material and, in any event, would not justify the discharge of the Disclosure Order even if material.

Procedural history

14. As permitted by section 362(1) of the 2002 Act and paragraph 8.2 of the Practice Direction – Civil Recovery Proceedings ("the CRP Practice Direction"), the NCA requested that the Disclosure Application be dealt with by a judge without notice to the respondent and without a hearing.

15. The Disclosure Application was supported by a witness statement dated 16 June 2023 by Ms Anna McClintock ("AM1"), a financial investigator and member of staff at the NCA. Ms McClintock exhibited several hundred pages of documents to AM1.

16. On 16 June 2023, the papers were placed before Ellenbogen J, who ordered that the Disclosure Application be determined at an oral hearing and made other relevant directions.

17. As already noted, that oral hearing took place before Johnson J on 27 June 2023 and was held in private. At the hearing, Johnson J made the Disclosure Order, giving his reasons in an *ex tempore* judgment that also set out his reasons for conducting the hearing in private ("the Judgment").

18. On 21 November 2023, the NCA served the Disclosure Order on the respondents, with the supporting evidence required by paragraph 5 of the Disclosure Order served between 22 and 27 November 2023. The transcript of the hearing before Johnson J was served on the respondents on 22 December 2023.

19. On 10 January 2024, the Set-aside Application was issued by the court, supported by detailed grounds dated 5 January 2024 settled by counsel to the first and second respondents, Mr Nicholas Yeo and Mr Ciju Puthuppally, who represented the respondents at the hearing before me.

20. On 13 February 2024, in opposition to the Set-aside Application, the NCA filed a second witness statement of Ms McClintock ("AM2"), with a short documentary exhibit.

The Disclosure Application and AM1

21. The NCA sought the Disclosure Order under section 357 of the 2002 Act in support of a civil recovery investigation, pursuant to section 341 of the 2002 Act, that was being conducted by Ms McClintock.

22. In AM1, Ms McClintock stated that the NCA was approached on 4 August 2021 by the Public Security Bureau ("PSB") in Changzhi in the People's Republic of China in relation to an investigation that the PSB was conducting of criminal and financial matters relating to Ms Hao and Mr Tian, who were then living in the UK. The Changzhi PSB had commenced its criminal investigation into the activities of Mr Tian, Ms Hao and others on 26 April 2020. On 5 January 2021, the Changzhi PSB issued warrants for the arrest of Ms Hao and Mr Tian in relation to the financial frauds alleged against them.

23. The Changzhi PSB has counterpart PSBs in the other provinces of China. The Ministry of Public Security ("MPS") of China supervises the PSBs. The MPS is both the national policing function of China and the government ministry exercising oversight of day-to-day law enforcement. The Changzhi PSB, through the MPS's Economic Crime Division, provided information and documentation in support of its request for assistance from the NCA.

24. The NCA has initiated a civil recovery investigation under section 341 of the 2002 Act in respect of real property and bank accounts of Ms Hao and Mr Tian in the UK specified in AM1. The NCA did so having concluded, on the basis of the information provided by the Changzhi PSB, that there were reasonable grounds to suspect that the real property was obtained with the proceeds of unlawful conduct (as defined in section 241 of the 2002 Act) that had occurred in China and that the contents of the bank accounts were, in whole or part, proceeds of unlawful conduct that had occurred in China.

25. The Changzhi PSB has alleged that Ms Hao and Mr Tian were involved in unlawful conduct consisting of financial frauds committed by a criminal group headed by Mr Tian. The group consisted of more than 60 individuals, including Ms Hao, who, by the obtaining of fraudulent loans from seven (or eleven) financial institutions, defrauded these institutions out of monies totalling CNY 267.47 billion. CNY (Chinese Yuan) is the basic unit of the official currency of China, which is RMB (Renminbi).

26. In AM1, Ms McClintock set out the three principal methods by which the frauds were allegedly carried out, using a combination of 1,010 loans taken out by 59 shell companies under the control of Mr Tian, with the assistance of over 60 individuals, including Ms Hao. The fraudulent activity, according to the Changzhi PSB, included the use of fraudulent instruments, the use of forged VAT invoices, the concealment of accounting vouchers and accounting books, and the manipulation of the Chinese stock market in order to (i) inflate various stock prices and (ii) transfer supposed stock earnings to financial institutions using forged financial materials.

27. CNY 267.47 billion is worth approximately £29 billion. The Changzhi PSB has alleged that circa £1.2 billion of this amount represents the portion of the fraudulent proceeds accruing to the benefit of Ms Hao and Mr Tian. The NCA believes that there are reasonable grounds to suspect that a portion of those proceeds have been used to purchase real property and a portion has been placed as deposits in bank accounts in the UK.

28. On 1 December 2022, the NCA commenced a frozen funds investigation in relation to Ms Hao ("the First FFI"). According to Ms McClintock in AM1, this came about as follows:

    i) On 23 May 2022, Ms Hao made a cash deposit of £69,500 to an account of hers at Barclays Bank PLC with an account number ending with the digits "… 461" ("the 461 Account"). By email on that day, Barclays asked her about the source of the funds. She replied that the funds had been brought back to the UK "following a recent trip to China" and that they came from Mr Tian's business activities.

    ii) On 29 May 2022, Ms Hao transferred £66,000 from the 461 Account to another of her accounts at Barclays with an account number ending with the digits "…141" ("the 141 Account").

    iii) On or before 4 November 2022, Barclays emailed Ms Hao requesting further information regarding the funds, in her email response to which she said that the funds were "from my previous trip to China" and that the cash came from Mr Tian's business income in China.

    iv) Until 22 November 2022, the funds remained in the two accounts, accruing a small amount of interest, until they were moved to a Barclays sundry account ("the Sundry Account"). The funds in the Sundry Account were made up of £3,500 from the 461 Account and £66,047 from the 141 Account.

    v) On 1 December 2022, the NCA commenced the First FFI in relation to the funds in the Sundry Account.

    vi) On 14 December 2022, the NCA applied for and were granted an Account Freezing Order ("AFO") in relation to the Sundry Account for a period of six months, in order to protect the funds from dissipation.

    vii) On 13 February 2023, Ms Hao attended a voluntary interview at the NCA, where she gave a different explanation of the source of the funds, stating that it consisted of cash given to her by Mr Tian following his visit to Genting Casinos,

51 Curzon Street, London. She produced a document issued at Genting Casinos on 10 March 2022, which stated that "in 2020 Mr Wenjun Tian had visited the casino premises requesting that the sum of £70,000 be provided in sterling cash". Ms Hao also stated that the reason she wanted to lodge the cash in May 2022 was because "the notes weren't valid anymore", although she refused to comment on the denominations of the notes she had lodged. Although she did answer a few questions, she answered "no comment" to a significant proportion of the questions she was asked during that interview. Among other things, she refused to confirm Mr Tian's location.

viii) Following the interview with Ms Hao on 13 February 2023, the NCA wrote to Mr Tian inviting him to attend an interview. When no response was received, the NCA sent a copy of the letter to Ms Hao's email address.

ix) On 6 March 2023, the NCA received an email from a Gmail account with the account name "Vincent Field" and an email address referring to "vincentbull". The text read as follows:

> "I am Wenjun Tian, I saw the letter you wrote to me. About the cash paid into my partner's bank account in May 2022, I gave her, and I already gave her the letter which can explain it. I hope it is helpful. But I am sorry I don't want to attend the interview."

x) The NCA was unable to link the name "Vincent Field" or the Gmail address to any of the known addresses connected to Mr Tian or Ms Hao, but Ms McClintock discovered that Mr Tian had provided to one financial institution, as part of his contact details, the name "Vincent Tian" and that Gmail address.

xi) The NCA were not satisfied with the explanations given by Ms Hao and Mr Tian for the source of the money, given the inconsistent accounts, and the suspicion that, whether the money was from Mr Tian's business activities in China or from gambling in the UK, it was likely to have been derived, directly or indirectly, from their unlawful conduct in China. The NCA's suspicions were reinforced by Ms Hao's failure to answer many questions in interview and Mr Tian's refusal to engage with the NCA or be interviewed.

xii) On 12 May 2023, an Account Forfeiture Notice was served on Ms Hao.

xiii) On 1 June 2023, Ms Hao lodged an objection to the Account Forfeiture Notice with Westminster Magistrates' Court, but this was not communicated to the NCA until 6 June 2023, resulting in the AFO lapsing.

xiv) At a hearing on 13 June 2023 attended by Ms Hao and Mr Tian, just two weeks before Johnson J heard the Disclosure Application, the Westminster Magistrates' Court gave the NCA a fresh AFO and made case management directions for the resolution of Ms Hao's objection to the Account Forfeiture Notice.

29. One of the complaints made by Ms Hao and Mr Tian in their grounds supporting the Set-aside Application is that the NCA gave "a wholly one-sided, partisan and misleading account of the evidence from the first frozen funds investigation". I will deal with the ways in which Ms Hao and Mr Tian say that the foregoing summary was seriously misleading when I summarise their submissions on this point. In AM2 at paragraphs 18-33, Ms McClintock set out further evidence regarding the First FFI, including related proceedings following the making of the Disclosure Order.

30. In AM1, Ms McClintock also dealt with another strand of the civil recovery investigation, which concerned Dolfin Financial (UK) Limited ("Dolfin"), ostensibly a "wealth management" company. This was the company that Ms Hao instructed to act on her behalf in relation to the validation of her Tier 1 Investor Visa application. From her investigation, Ms McClintock concluded that Dolfin invested in excess of £10 million on behalf of Ms Hao from 28 November 2017 in accordance with the requirements set out by the Home Office for a Tier 1 Investor Visa.

31. On 30 June 2021, the High Court made a special administration order in relation to Dolfin, appointing two insolvency practitioners from Smith & Williamson (now known as Evelyn Partners LLP) as special administrators to take over responsibility for and management of all of Dolfin's activities.

32. From enquiries made with the special administrators, Ms McClintock obtained records from Dolfin documenting Ms Hao's "source of wealth", namely, a bank statement provided to Dolfin by Ms Hao suggesting that Mr Tian had transferred some £12 million to Dolfin towards the end of 2015. Ms McClintock also discovered that on or about 20 January 2020 Ms Hao instructed Dolfin to transfer £5 million from her Dolfin UK account to her Dolfin Malta account. In their records, Dolfin purport to verify the source of Ms Hao's wealth, stating that the £10 million which she invested in the UK as a Tier 1 Investor was gifted to her by Mr Tian for that purpose and was derived by Mr Tian from selling his shares in a Chinese company named Dongsheng International Investment Group Co., Ltd ("Dongsheng Group") for RMB 200 million (roughly equal to £20 million) in October 2015. This is evidenced by a Memorandum of Deed of Gift signed by Mr Tian on 1 November 2019, which was exhibited to AM1.

33. Ms McClintock obtained other documents from Dolfin, also exhibited to AM1, supporting the derivation of the funds gifted by Mr Tian to Ms Hao from his sale of shares in Dongsheng Group, which, according to information provided by the PSB to the NCA, was one of 10 shell companies established by Mr Tian in connection with his alleged criminal activity in China.

34. For the foregoing reasons, the NCA concluded that it had reason to suspect that the monies used by Ms Hao to obtain her Tier 1 Investor Visa were derived from the alleged unlawful conduct of Ms Hao and Mr Tian in China and the documents used to verify Ms Hao's wealth were forged as part of their alleged financial frauds and used to transfer the proceeds of the fraud into the UK and elsewhere. This meant that the NCA had reason to suspect that Ms Hao and Mr Tian had engaged in the unlawful conduct of money laundering, contrary to sections 327, 328 and 329 of the 2002 Act.

35. In AM1, Ms McClintock noted that she had discovered through open-source research on the internet that Dolfin was being investigated by the Financial Conduct Authority (FCA). In a First Supervisory Notice issued by the FCA on 12 March 2021, the FCA

indicated that it was investigating Dolfin for having operated a scheme designed to enable its clients to obtain Tier 1 Investor Visa in breach of immigration rules and therefore unlawfully. A copy of the relevant Notice is exhibited to AM1. All of Dolfin's clients participating in that scheme were from the People's Republic of China. From her investigation into Dolfin, Ms McClintock concluded that there was reason to suspect that Ms Hao and Mr Tian had benefited from allegedly illegal activities of Dolfin, and this was the reason why Dolfin was instructed to act on Ms Hao's behalf in relation to obtaining a Tier 1 Investor Visa.

36. In AM1, Ms McClintock provided details of:

i) income declared by Ms Hao and Mr Tian to HMRC since their move to the UK, including income from company dividends and interest from UK banks, building societies and securities;

ii) details of tax payments made by Ms Hao and Mr Tian to the Haidian District, Beijing Tax Office, as disclosed to the NCA by the Chinese authorities, for the period 2006 to 2020, during which the criminal offending in China by Ms Hao and Mr Tian is alleged to have occurred;

iii) details of the following four UK corporate entities associated with Ms Hao and Mr Tian, which are also respondents to these proceedings:

a) the third respondent, Vibe Student Living Limited, the registered owner of commercial property comprising purpose-built student accommodation at two sites on Queens Road in Coventry, Granton House and Julian Court, treated as a single property investment ("Property 1"), for which Mr Tian has been a person with significant control since 24 May 2018 and Ms Hao has been the sole director since 11 March 2020;

b) the fourth respondent, Vibe (Abbey House) Limited, the registered owner of another commercial property comprising purpose-built student accommodation at a site in Manor Road in Coventry, Abbey House ("Property 2"), for which Mr Tian has been a person with significant control since 14 September 2018 and Ms Hao has been the sole director since 11 March 2020;

c) the fifth respondent, Uninn Regent Street Holding Limited, the parent company of the third respondent, for which Mr Tian has been a person with significant control since 24 May 2018 and Ms Hao has been the sole director since 11 March 2020; and

d) the sixth respondent, Uninn Abbey House Holding Limited, the parent company of the fourth respondent, for which Mr Tian has been a person with significant control since 24 May 2018 and Ms Hao has been the sole director since 11 March 2020;

iv) information regarding Erec Estates Management Services Limited and Erec Estates Limited, which manage the administration side of the student accommodation on behalf of the third and the fourth respondents, and a related

company, European Real Estate Company Limited, and regarding some of the other individuals associated with these companies; and

v) information regarding Spring Capita Limited, a British Virgin Islands company, which the NCA suspects has been used by Ms Hao and Mr Tian to launder monies from China into the UK to invest in UK businesses and the UK property market;

vi) information regarding the purchase by Ms Hao of:

a) a residential property in Hampstead, London NW3 ("Property 3"); and

b) a further residential property in London NW3 ("Property 4"); and

vii) details of 39 bank accounts held in the UK by Mr Tian, Ms Hao, or corporate entities linked to them, the banks being Bank of China (UK) Limited, Bank of Scotland PLC, Barclays Bank PLC, Coutts & Company, Bank of Scotland PLC (Halifax), Lloyds Bank PLC, Metro Bank PLC, National Westminster Bank PLC and Santander UK PLC, although Ms McClintock cautioned that this was not necessarily an exhaustive list of such accounts.

37. In AM1, Ms McClintock noted that the purpose-built student accommodation properties in which Ms Hao and Mr Tian have invested, namely, Property 1 and Property 2, are subject to a charge registered in favour of Gatehouse Bank PLC ("Gatehouse"). Documents provided by Gatehouse to the NCA show that the credit application submitted to Gatehouse in March 2018 on behalf of the fifth and sixth respondents as borrowers states that the fifth and sixth respondents are "wholly owned by Spring Capita Limited, BVI, which in turn is 100% owned by Mr Wenjun Tian", although this appears to the NCA to be incorrect, with Mr Tian owning each of the fifth and sixth respondents directly.

38. As at the date of AM1, Gatehouse was owed approximately £13.8 million in respect of its investment financing of Property 1 and Property 2, with repayment of the loan then two years overdue, and Gatehouse on the point of appointing receivers to take over sale of those properties.

39. In AM1, Ms McClintock stated her belief that there were reasonable grounds to suspect that the investments in commercial and residential properties in the UK (namely, Property 1, Property 2, Property 3, and Property 4), as well as various funds held in UK bank accounts are recoverable property or associated property and that therefore the NCA intended to investigate the circumstances of the UK property investments made by Ms Hao and Mr Tian, the source of the funds used to make those purchases, and the veracity of the information provided by Ms Hao and Mr Tian to their lender, Gatehouse. The information about these matters to be sought by the NCA using the Disclosure Order was likely to be of substantial value to the NCA's civil recovery investigation in relation to Ms Hao and Mr Tian.

The hearing before Johnson J, the Judgment and the terms of the Disclosure Order

40. As previously noted, Johnson J heard the Disclosure Application on 27 June 2023. A transcript of the full hearing was included in the bundle for the hearing before me,

including the Judgment, which was given *ex tempore* by Johnson J at the hearing. In the course of preparing this judgment, bearing in mind the wide-ranging criticisms by the respondents of the NCA's conduct of the hearing before Johnson J, I have carefully reviewed, along with all the other relevant documents, not only the Judgment but also the transcript of the rest of the hearing.

41. The NCA was represented at the hearing before Johnson J by Mr Andrew Sutcliffe KC and Mr Oliver Newman. As the hearing was without notice, the respondents did not appear and were not represented.

42. I summarise various findings made and conclusions reached by Johnson J in the Judgment:

i) It was appropriate for the Disclosure Application to have been made without notice, given the nature of the conduct in which the respondents were allegedly engaged, and for essentially the same reasons it was appropriate for the hearing to be held in private. The respondents were aware of the frozen funds investigation (that is, the First FFI), but not of the civil recovery investigation. The NCA intended to initiate further frozen funds investigations, but those would not in themselves alert Ms Hao and Mr Tian to the broader civil recovery investigation.

ii) Ms McClintock had provided "very detailed information" regarding the basis for the civil recovery investigation, in aid of which the Disclosure Order was sought. In AM1, supported by documentary exhibits, Ms McClintock set out the detail of the PSB's investigation into Ms Hao and Mr Tian, as well as the details of companies and financial institutions associated with Mr Tian in China. The PSB had provided to the NCA the details of frauds allegedly perpetrated by Mr Tian with the assistance of Ms Hao and others.

iii) The Chinese authorities had not been able to arrest Mr Tian or Ms Hao because they were now located in the UK.

iv) Ms McClintock had undertaken open-source searches in relation to Ms Hao and Mr Tian and their associated corporate entities, setting out in her statement and exhibiting a large number of media articles, "almost all of which originate in China", which were "at a very broad level" consistent with the PSB's allegations against Ms Hao and Mr Tian of financial wrongdoing.

v) Ms Hao and Mr Tian were not aware of the civil recovery investigation, but they were aware of the frozen funds investigation. Given the conflicting accounts given by Ms Hao of the source of the funds and for other reasons, the NCA concluded that it had reason to suspect that those funds were the proceeds, directly or indirectly, of alleged criminal conduct of Ms Hao and Mr Tian in China, namely, the fraudulent loan activity that was being investigated by the PSB. In May 2023, an AFO was served on Ms Hao in relation to the relevant account (namely, the Sundry Account).

vi) At a hearing on 13 June 2023, attended by Ms Hao and Mr Tian, the NCA obtained a fresh AFO and lodged an application for forfeiture of the account, to

which Ms Hao objected. The Magistrates' Court gave case management directions and set a directions hearing for 25 July 2023.

vii) The NCA had conducted an investigation into Dolfin and ascertained that Dolfin had invested more than £10 million on behalf of Ms Hao, it was now in special administration, and it was suspected by the FCA of having operated a scheme to enable clients to obtain a Tier 1 Investor Visa unlawfully.

viii) The NCA's investigations showed that for the tax years 2018/2019 and 2020/2021, there is no, or very limited, evidence of sources of income for Ms Hao and Mr Tian. They appear to have set up a number of companies in the UK and to have acquired very substantial assets here. In particular, they have acquired properties providing student accommodation, held through the corporate respondents to the Disclosure Application. The properties that are part of the civil recovery investigation include:

a) two properties in Coventry that provide student accommodation, purchased in January 2017 for £850,000 and in September 2017 for £1.5 million, respectively, which together, after allowance for a loan, have a net value of £7 million; and

b) two residential properties in north west London, valued in the region of £7 million.

ix) Ms McClintock set out in her statement (AM1) why she considered that there was recoverable property available to the investigation.

43. In the Judgment at [19], Johnson J set out the text of section 357 of the 2002 Act, which sets out the procedural requirements for the making of a disclosure order and its effect. In the Judgment at [23]-[28], Johnson J addressed the procedural requirements and concluded that these had been satisfied by the NCA.

44. In the Judgment at [29], Johnson J set out the text of section 358 of the 2002 Act, which sets out the substantive requirements for the making of a disclosure order. Section 358 reads, in relevant part as follows:

"**Requirements for making of disclosure order**

(1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that—

…

(b) in the case of a civil recovery investigation—

(i) the person specified in the application for the order holds recoverable property or associated property,

> (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
>
> (iii) the property specified in the application for the order is recoverable property or associated property.
>
> …
>
> (3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
>
> (4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained."

45. In the Judgment at [30], Johnson J set out the definitions of "recoverable property" and "unlawful conduct". There is no dispute as to his interpretation of these terms.

46. In the Judgment at [31], Johnson J set out his conclusion that, for the reasons given by Mr Sutcliffe and based on the evidence of Ms McClintock (set out in AM1), there were reasonable grounds for suspecting that the respondents hold or have held recoverable property and/or that the property specified in the application is recoverable property. He noted that the "threshold test of reasonable grounds for suspecting is relatively low".

47. In the Judgment at [32]-[34], Johnson J commented as follows on the foregoing conclusion:

> "32 I am acutely conscious that the source of the information that the NCA is relying on is the PSB in China. Ordinarily, one would attach significant weight to information provided by the law enforcement agencies of another country. I have not been provided with any sufficient evidential basis in order reliably to calibrate the weight that can be attached to material provided by the PSB. I have not, for example, been given evidence that the NCA have a longstanding relationship with the PSB and have always found its information to be credible and reliable, or that it has never had reason to doubt information provided by the PSB.
>
> 33 I therefore consider it appropriate to take a more circumspect approach than might be appropriate in the case of cooperative law enforcement activities with

> some other countries. Nevertheless, the detail of the information provided by the PSB, the extent to which it is consistent with material in the public domain, the course of the frozen funds investigation and the lack of any apparent motive for the Chinese authorities to provide false information to the NCA in relation to these matters, is such that I am satisfied that the relatively low threshold of reasonable grounds to suspect is met by the material summarised in Ms McClintock's statement. In particular, Ms Hau [sic] and Mr Tian do not have any apparent political profile, they have not sought asylum in this country, nothing in the open source material or elsewhere remotely suggests a motive for the Chinese authorities to provide false information in respect of them.
>
> 34 That being the case, and on the basis of the information that has been provided, Ms McClintock says that the NCA suspects that the property is believed to be or include the proceeds of the unlawful conduct that has occurred in China and that that conduct, if it had occurred in the UK, would have been an offence triable under the criminal law of England and Wales. I consider that the NCA's suspicion is entirely reasonable, for the reasons I have already given and which are set out in detail in Mr Sutcliffe's skeleton argument."

48. In the Judgment at [35], Johnson J set out why he was satisfied that there were reasonable grounds for believing that the information sought through the Disclosure Order would be of substantial value to the civil recovery investigation. It was reasonably likely that the Disclosure Order would enable the NCA to ascertain when and how Ms Hao and Mr Tian brought money into the UK, the explanations they gave in relation to the money, where it went in the UK, and how it moved through the banking system. It would enable the NCA to identify the source of funds used for the purchases of the various properties and to identify further assets held by the respondents.

49. In the Judgment at [36], Johnson J set out why he concluded that there were reasonable grounds for believing that it was in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information were obtained. A considerable amount of money was allegedly obtained by Ms Hao and Mr Tian by fraud, enabling them to purchase assets in the UK of considerable value. The information sought could possibly enable civil recovery proceedings to be brought to recover such assets, which is self-evidently in the public interest. If it transpired that the respondents had obtained their assets legitimately, then it was also "in the public interest that that … be established [so that they could] enjoy their lawfully obtained property without further interference from law enforcement agencies".

50. Johnson J was therefore satisfied that the substantive requirements for the making of the Disclosure Order sought had been satisfied, but he noted that he retained a residual discretion. In exercising that residual discretion, he had regard to the rights of Ms Hao

and Mr Tian under the European Convention on Human Rights (ECHR), in particular their rights under Article 8 (right to respect for private and family life) and under Article 1 of Protocol 1 (peaceful possession of property). In this regard, at paragraph 37 of the Judgment, he noted:

> "… Any interference with those rights is entirely lawful in that it is justified and permitted by primary legislation, it pursues the legitimate aim of the prevention of crime and it is entirely proportionate to the legitimate aim that is pursued. Further, I will only make an order on terms that enables the respondents to apply to set it aside once they have been served with it and, on any such application, the court can be better informed as to the material on which the respondents rely, including any material on which the respondents rely to suggest that the interference is a disproportionate interference with their Article 8 and A1P1 rights."

51. Finally, in the Judgment at [38], Johnson J recorded that the NCA had acknowledged its obligation to make full and frank disclosure and that there were sections dealing with those matters in AM1 and in Mr Sutcliffe's skeleton argument. Johnson J then made the Disclosure Order.

Events following the Judgment and the making of the Disclosure Order

52. The procedural history of these proceedings since the making of the Disclosure Order is set out at [18]-[20] above.

53. According to the evidence of Ms McClintock in AM2, the following events have also occurred since the making of the Disclosure Order:

i) The NCA served disclosure notices under the Disclosure Order on various third parties. The NCA is reviewing the information and documentation generated by this process.

ii) Although the NCA sought to make arrangements to interview Ms Hao and Mr Tian pursuant to the Disclosure Order, once it became aware of the Set-aside Application in early January 2024, it has suspended its attempts to do so until the Set-aside Application is decided.

iii) On 20 October 2023, Ms McClintock travelled to Changzhi City, Shanxi Province, in China to meet with investigators from the Economic Crime Investigation Department of the MPS, which conducted the investigation of criminal and financial matters relating to Ms Hao and Mr Tian. Ms McClintock spent five days there reviewing a range of materials alleged to support the case of the Chinese authorities against Ms Hao and Mr Tian. During that time, she identified and listed evidential material that she required for purposes of the civil recovery investigation. This material would then be sought by means of an international letter of request ("ILOR") to be prepared upon her return to the UK.

iv) As of 9 January 2024, the ILOR was with the United Kingdom Central Authority for review prior to being transmitted to the Economic Crime Investigation Department of the MPS for processing.

v) On 22 May 2023, the NCA received information that it considered to be reliable that Ms Hao was seeking to transfer £3,175,382.42 in funds held in her bank accounts with Lloyds Banking Group. It therefore commenced a second frozen funds investigation ("the Second FFI") in relation to funds totalling £5.7 million in bank accounts held by Ms Hao and Mr Tian.

vi) On 29 June 2023, Mr Peter Ward, another accredited financial investigator working for the NCA, made an application without notice to Westminster Magistrates' Court for eight AFOs, each for a period of 12 months, to protect the funds totalling £5.7 million from dissipation while he conducted the Second FFI. The AFOs related to six accounts held by Ms Hao and two accounts held by Mr Tian with National Westminster Bank PLC, Santander UK PLC, Coutts & Company, Lloyds Bank PLC and Bank of Scotland PLC (Halifax).

vii) On 21 August 2023, the NCA invited Ms Hao and Mr Tian to attend a voluntary interview at the NCA's office in London on 14 September 2023 for the purposes of confirming the original source of the funds in the bank accounts subject to the AFOs.

viii) On 5 September 2023, Gherson LLP ("Gherson"), solicitors for Ms Hao and Mr Tian, wrote to the NCA to say that Ms Hao and Mr Tian would welcome the opportunity of an interview and intended to co-operate with the investigation, but that they were unable to attend on the date proposed as there were matters that needed to be resolved prior to such an interview, which Gherson were not then at liberty to divulge.

Legal principles relevant to the Set-aside Application

54. There appears to be no dispute as to the proper approach to be taken to the Set-aside Application. Relevant principles were set out by Edis J (as he then was) in *National Crime Agency v Simkus* [2016] EWHC 255 (Admin), [2016] 1 WLR 3481 (QBD).

55. I am not bound by the reasons given by Johnson J for making the Disclosure Order, although it is appropriate for me to have regard to them. I review the matter afresh in light of the statutory conditions set out in sections 357 and 358 of the 2002 Act: *Simkus* at [48].

56. I must exercise my own discretion to ensure that the appropriate order is made. The rights of Mr Tian and Ms Hao under the ECHR are plainly engaged by the making of a Disclosure Order against them, in particular, their rights under Article 8 of the ECHR and under Article 1 of the First Protocol to the ECHR. I must bear those rights in mind as I consider the appropriate order to be made. I bear in mind the comments of Edis J in *Simkus* at [17] that a disclosure order:

> "… is a powerful weapon to further the legitimate public interest in deterring and preventing organised crime. … [It] is an order which confers a significant power on the executive and which is

> capable of leading to serious adverse consequences both as to liberty and as to property rights of those who are affected."

57. In considering whether the Disclosure Order should be discharged due to non-disclosure of a material fact, I particularly bear in mind the guidance given by Edis J in *Simkus* at [27]-[35]. I must decide whether the non-disclosure was so grave that the Disclosure Order should be discharged. In taking this decision, I should attach substantial weight to the public interest in the continuation of the Disclosure Order, since such an order is only made if (i) the relevant statutory conditions are satisfied and therefore (ii) it is in the public interest to make it (section 358(4)). I bear in mind the following passage from *Jennings v Crown Prosecution Service* [2005] EWCA Civ 746, [2006] 1 WLR 182 (CA) at [64] (Longmore LJ) (quoted by Edis J in *Simkus* at [29]):

> "The fact that the Crown acts in the public interest does, in my view, militate against the sanction of discharging an order if, after consideration of all the evidence, the court thinks that an order is appropriate. That is not to say that there could never be a case where the Crown's failure might be so *appalling* that the ultimate sanction of discharge would be justified." (emphasis added)

58. As contemplated by section 362(1) of the 2002 Act and the CRP Practice Direction (paragraph 8.2), an application for a disclosure order may be made without notice. However, as noted by Edis J in *Simkus* at [47], this does not have to be the case and, in some circumstances, should not be the case. The court will need to be satisfied that it is proper to do so, having regard to the open justice principle and fairness to the person affected by the order. "Almost invariably" a disclosure order application will be heard without notice. If there is no immediate risk of dissipation of assets, then normally notice should be given to the respondent(s). Whether there is an immediate risk of dissipation of assets at the time of hearing the application is a matter for evaluation by the judge hearing the application on the basis of the evidence presented, and a judge on a subsequent occasion hearing an application by a respondent to set aside or vary the disclosure order should give appropriate deference to the original evaluation and be cautious in questioning such an evaluation with the benefit of hindsight, especially when discharge of the order is sought in whole or part on the basis that the application should not have been heard without notice.

59. Section 362(1) of the 2002 Act also contemplates that an application for a disclosure order may be made in private, and paragraph 11.1 of the CRP Practice Direction states that the application will be heard in private "unless the judge hearing it directs otherwise". As in the case of an application without notice, whether it is appropriate to hear an application in private will depend on whether the purpose of the application will be frustrated if it is not heard in private (*Simkus* at [24]), and, of course, there may be other specific circumstances justifying the application's being heard in private, as contemplated by CPR r 39.2(3).

60. As to the test for "reasonable grounds to suspect", the test is subjective, in that it must be based on what was actually in the relevant official's mind, and objective, in that it must be reasonable on an objective basis: *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286 (HL) at 298A-B (Lord Hope of Craighead). Although *O'Hara* was decided in the context of whether a constable had reasonable grounds for

suspicion so as to justify arrest, it is uncontroversial that the test should be understood in the same way in the context of 2002 Act proceedings: *Re Assets Recovery Agency (Jamaica)* [2015] UKPC 1 at [19].

61. The threshold for reasonable suspicion is not a high one: *Hussien v Chong Fook Kam* [1970] AC 942 (PC) at 948B. The test is concerned with the existence of grounds for believing that unlawful conduct has occurred and with the reasonableness of those grounds: *Re ARA (Jamaica)* at [19].

Submissions of the first and second respondents

62. Mr Yeo and Mr Puthuppally, on behalf of the respondents, have mounted a robust challenge to the Disclosure Order. In summary, they submitted that:

    i) there was no adequate justification for the NCA to have applied for the Disclosure Application to be heard without notice;

    ii) the court should not have reached the conclusion that there were reasonable grounds for suspicion that Ms Hao and Mr Tian had engaged in unlawful conduct in China and then used the proceeds of that unlawful conduct to acquire property in the UK, which was therefore recoverable property, given that:

        a) the evidence before the court was not sufficient to overcome the vast material to the detriment of China in relation to its human rights record and documenting its history of transnational repression of its citizens overseas;

        b) the allegations made by the PSB against Ms Hao and Mr Tian are politically motivated and that political context raises a serious doubt about the credibility of all of the PSB's evidence;

        c) all of the evidence adverse to Ms Hao and Mr Tian and presented to Johnson J by the NCA ultimately derives from China and the MPS via the PSB in Changzhi, and the NCA has failed to corroborate the allegations, to check that the allegations were accurate, and to verify that China is not acting maliciously against Ms Hao and Mr Tian for political reasons;

        d) all of the open-source research relied on by Ms McClintock purportedly to corroborate the allegations ultimately derives from Chinese sources, is subject to the control of the Chinese government, and is therefore incapable of providing corroboration of the allegations; and

        e) the evidence is inherently incredible, and should not have been relied on by the court, particularly given the hyperbolic size of the alleged fraud and the political context of the allegations against Ms Hao and Mr Tian; and

    iii) the NCA committed serious failings in its duty of full and frank disclosure.

63. In relation to proceeding without notice, Mr Yeo submitted that there was no adequate justification for the NCA to do so for the following reasons:

i) the wide scope of the NCA's investigation would have been obvious to the respondents from the investigation to date, including the First FFI;

ii) there was nothing urgent requiring the Disclosure Application at that time, just two days before the NCA's application for further AFOs, pursuant to the Second FFI, was due to be heard;

iii) in the seven months after the making of the first AFO against the Sundry Account, there was no evidence of dissipation from the various other bank accounts of the first and second respondents that were not frozen;

iv) there was no prospect of dissipation from the assets that are the subject of the civil recovery investigation as distinct from the First FFI and the Second FFI, as they were illiquid and there was no intention to freeze them in any event;

v) the bodies to be approached in the civil recovery investigation were all professionals or financial organisations that could be trusted not to tamper with evidence; and

vi) Ms Hao and Mr Tian were aware that various financial organisations had provided disclosure to the NCA, and yet there was no evidence of interference with the civil recovery investigation.

64. Mr Yeo submitted that Johnson J was wrong to conclude that there were reasonable grounds for suspicion that Ms Hao and Mr Tian had engaged in unlawful conduct in China for the following reasons:

i) China, via its MPS, approached the NCA informally, prompting the NCA to consider opening a civil recovery investigation against Ms Hao and Mr Tian. This is not a case where the NCA had independent grounds for suspicion and approached China for assistance. The fact that China did not make its approach at intergovernmental level through formal channels means that various aspects that would otherwise have been expected to attract proper scrutiny by UK officials, including the credibility of the evidence giving rise to suspicion against Ms Hao and Mr Tian, China's possible political motivation in seeking assistance from the UK, and the human rights implications of providing such assistance, were not properly scrutinised.

ii) Various Chinese media sources suggest that the case against Mr Tian (and by extension his wife) arises in the political context of a purge of local government officials in Shanxi province.

iii) In AM1 at paragraph 39, Ms McClintock asserted that the PSB alleged that seven Chinese financial institutions had "been defrauded of monies totalling 267.47 billion CNY (circa £1.2 billion)". This was misleading because in context it appears that the bracketed language was meant to indicate the value in Sterling of the amount immediately preceding it. However, CNY 267.47 billion is worth approximately £29 billion, which the respondents note is a sum equivalent to 1.2% of China's gross domestic product in 2006, a sum so large that it raises a legitimate question mark regarding the credibility of the PSB's allegations against Mr Tian and Ms Hao. Even if the court accepts that the figure

of £1.2 billion was not intended to represent the conversion of CNY 267.47 billion into Sterling but simply to represent the portion of the benefit of the fraud accruing to Mr Tian and Ms Hao (as asserted by Ms McClintock in AM2), the court's attention was not properly drawn to the implausibility of the scale of the fraud.

iv) Ms McClintock's evidence in AM1 is inconsistent in relation to the number of financial institutions said by the PSB to have been defrauded by Mr Tian, with the assistance of a criminal group including Ms Hao. Ms McClintock lists 11 defrauded financial institutions in AM1 at paragraph 36 but refers, inconsistently, to there being seven defrauded institutions in AM1 at paragraph 39.

v) Since the MPS first approached the NCA regarding Ms Hao and Mr Tian, 33 months have elapsed during which the MPS has provided no evidence to the NCA supporting its case against Ms Hao and Mr Tian beyond the materials initially provided.

vi) There is a substantial international consensus amongst democratic states that China is notorious for transnational repression. There is detailed material from the US State Department, various non-governmental organisations concerned with human rights, and other bodies that documents these concerns. The Chinese criminal justice system is biased towards a presumption of guilt, especially in high-profile or politically sensitive cases. The judiciary is dominated by the Chinese Communist Party, so there are no effective judicial safeguards. There is no free press in China, and the Chinese government under President Xi Jinping has significantly expanded China's efforts to shape the global information environment. The NCA should have drawn Johnson J's attention to this large body of material detrimental to China, referred to in the grounds supporting the Set-aside Application. If it had done so, Johnson J would have had serious grounds for doubting the veracity of the accusations against Ms Hao and Mr Tian and therefore whether there were reasonable grounds for suspicion against them.

vii) Particularly bearing in mind that there is no free press in China, it is notable that, in conducting its open-source research to corroborate the accusations of the MPS against Ms Hao and Mr Tian, the NCA has relied primarily on sources such as the China News Service and other Chinese news sources that are not effectively independent of the Chinese state.

viii) The only non-Chinese source relied on by the NCA was a US news source referring to a filing by Mr Tian with the US Securities and Exchange Commission, which was presented to Johnson J as further evidence of unlawful conduct by Mr Tian, but, in fact, shows no misconduct at all.

65. Mr Yeo submitted that given that there are no reasonable grounds for suspicion that Ms Hao and Mr Tian were engaged in the unlawful conduct alleged by the MPS, namely, loan fraud and related activities, there are no reasonable grounds for suspicion that there is related recoverable property in the UK.

66. Mr Yeo submitted that, in addition to the foregoing, the NCA is guilty of the following failures of disclosure and misrepresentation:

i) The NCA gave untrue information "to the courts" about the progress of its ILOR and did not disclose to Johnson J that it had done so. Another NCA investigator, in connection with the First FFI, had informed the Magistrates' Court that the ILOR had been dispatched to China, whereas, according to AM2, this was wrong. The NCA should have mentioned to Johnson J that another of its investigators had "seriously misled" the Magistrates' Court.

ii) The NCA gave a "wholly one-sided, partisan and misleading account of the evidence from" the First FFI to Johnson J. It did not make sufficiently clear to Johnson J that the letter provided by Genting Casinos was genuine and that Mr Tian is a member of the Crockfords Club, which is owned by Genting Casinos. Ms Hao's first explanation that the cash had come from a previous trip to China was consistent with honest mistake. The NCA did not provide Johnson J with a copy of the letter from Genting Casinos, which had been verified by the Crockfords Club when contacted by the NCA, nor the NCA's attendance note relating to its visit to the Crockfords Club, even though these had been in the bundle given to the magistrates in connection with the First FFI six days before Ms McClintock made AM1. The NCA also failed to provide Johnson J with a copy of the Bank of England notice on 29 March 2022 announcing the withdrawal of £20 and £50 notes, which corroborated Ms Hao's stated reason for wanting to lodge the cash at issue in the First FFI in May 2022. Finally, the NCA did not make clear to Johnson J that Ms Hao's "no comment" replies to further questions put to her during the interview followed her having provided an answer, with supporting evidence, as to the "source of cash deposited into Barclays Bank on the 23rd of May 2022", which was the declared purpose of the interview. This is also relevant to Mr Tian's declining to be interviewed. This is important given the NCA's reliance before Johnson J on the contradictory accounts given by Ms Hao, her refusal to answer further questions, and Mr Tian's declining to be interviewed (see the Judgment at [11]-[14]).

iii) The NCA relied upon the fact that Interpol had issued red notices at China's request in relation to Mr Tian and Ms Hao, but there is no evidence that such red notices exist. The Interpol website shows no such red notices as having been published. This was not brought to Johnson J's attention. The NCA should have disclosed information (for example, from a December 2023 report by the US China Economic and Security Review Commission) that shows that China frequently uses Interpol red notices for the unlawful repatriation of its citizens.

iv) The NCA relied upon tax figures from China that were obviously misleading.

v) The NCA relied upon allegations against Dolfin without revealing that the evidence suggested that Ms Hao's application was genuine.

vi) The NCA falsely suggested to Johnson J that Companies House information contradicted information regarding Spring Capita Limited that had been given on behalf of the fifth and sixth respondents in its credit application to Gatehouse (see [37] above).

vii) The NCA failed to disclose its financial interest in the proceedings under the Asset Recovery Incentivisation Scheme (ARIS) run by the Home Office. The courts have recognised that "ARIS is capable of giving rise to a serious conflict of interest on the part of a prosecuting authority, or to the appearance of such a conflict": *R (Kombou) v Wood Green Crown Court* [2020] EWHC 1529 (Admin), 2 Cr App R 28.

67. Mr Yeo submitted that this is not a case of a public authority anxiously seeking to comply with its obligations when proceeding without notice and carelessly making isolated errors along the way. Instead, he submitted, the non-disclosure and misrepresentation by the NCA was profound, affecting many aspects of the case. This is a case where the non-disclosures, individually and cumulatively, are so "appalling" that the Disclosure Order should be discharged and not made afresh.

68. Mr Yeo submitted that in order for there to be reasonable grounds for suspicion, there must be objective grounds for suspicion. The evidence before Johnson J was not sufficient to overcome the vast material to the detriment of China. Accordingly, he should not have found that there were objective grounds for suspicion that Ms Hao and Mr Tian held recoverable property in the UK, and therefore he should not have made the Disclosure Order.

69. Finally, Mr Yeo submitted that the court should discharge the Disclosure Order and refuse to make another in the exercise of its discretion, for essentially two reasons. The first reason is that there is too high a risk that the NCA's civil recovery investigation has been instigated by China as part of its transnational repression of its citizens, Ms Hao and Mr Tian. The second reason is discussed in the closed judgment.

Submissions of the NCA

70. For the NCA, Mr Sutcliffe and Mr Emmanuel Sheppard submitted that the Set-aside Application should be refused for two principal reasons:

i) there were, and remain, reasonable grounds for suspicion that Ms Hao and Mr Tian hold, or have held, recoverable property and/or the property specified in the Disclosure Application is recoverable property; and

ii) the respondents' allegations of non-disclosure at the hearing before Johnson J are either entirely misconceived or obviously not material and, in any event, would not justify discharging the Disclosure Order, even if material.

71. In relation to reasonable grounds for suspicion, Mr Sutcliffe submitted that the evidence provided to the NCA by the Changzhi PSB and presented to Johnson J showed then, and continues to show, that there are reasonable grounds for suspicion that Ms Hao and Mr Tian were engaged in unlawful conduct in China and that the proceeds of that unlawful conduct have been used to acquire recoverable property in the UK. Leaving aside the alleged non-disclosures, the respondents' grounds for setting aside the Disclosure Order are extremely limited, relying on:

i) the wider political context in China and the reliability of Chinese sources (the PSB and Chinese media sources);

ii) the scale of the alleged fraud; and

iii) material from the First FFI.

72. In relation to the wider political context in China and material detrimental to China, Mr Sutcliffe submitted that it is clear that Johnson J was aware of the wider political context and the need for caution in assessing the evidence provided by China, as can be seen in the Judgment at [32]-[33], which I have quoted at [47] above. Furthermore, the NCA relied on other material, including the First FFI, also as noted in the Judgment at [33].

73. In relation to the treatment of Chinese media sources, Mr Sutcliffe submitted that Johnson J was aware of the need for caution, as can be seen in the Judgment at [32]-[33] and from the transcript of the full hearing before him. It was not necessary for the NCA to engage in further more exhaustive research regarding the reliability of Chinese media sources as these issues were obvious, were addressed at the hearing before Johnson J, and are referred to in the Judgment. In AM2, Ms McClintock has explained her approach to the open-source material she obtained. Also, the open-source material was relied on partly because it supported the NCA case that the PSB were not pursuing a political agenda against Mr Tian and Ms Hao.

74. In relation to the scale of the alleged fraud, Mr Sutcliffe submitted that Johnson J understood clearly that the alleged benefit of the fraud for Mr Tian and Ms Hao was £1.2 billion, rather than the larger figure of CNY 267.57 billion (approximately, £29 billion). This amount is not implausible in relation to a 14-year fraud between July 2006 and April 2020 during which the Chinese economy grew nearly fivefold. It does not undermine there being reasonable grounds for suspicion.

75. In relation to the material from the First FFI, Mr Sutcliffe submitted that the NCA relied as part of its case that there are reasonable grounds for suspicion on the inconsistency of Ms Hao's two explanations of the source of the funds in the Sundry Account. It was not necessary for this purpose for the letter from Genting Casinos or the transcript of her interview to have been exhibited to AM1. The failure to exhibit those documents was not a non-disclosure, much less a material one. The explanations were inconsistent, even on the respondents' case.

76. In relation to the alleged material non-disclosures on other matters, Mr Sutcliffe made the following submissions:

i) The NCA accepted that it had mistakenly misrepresented Mr Tian's US SEC filing to Johnson J as evidence of wrongdoing, but this error was not material, given the other evidence presented by the NCA.

ii) In relation to the respondents' complaint that the NCA had not disclosed to Johnson J that another NCA investigator had erroneously said to the Magistrates' Court in separate proceedings for an AFO that an ILOR had already been sent to the Chinese authorities when that was not the case, the key point is that the information about the ILOR given to Johnson J was correct. There was no material non-disclosure.

iii) In relation to the respondents' point that the NCA should have drawn Johnson J's attention to the absence of red notices from the Interpol website, the

red notices were alluded to only in passing in oral argument, were not relied on in the body of AM1 or the NCA's skeleton argument for the hearing before Johnson J, nor were they referred to in the Judgment. In that context, it was not necessary as part of full and frank disclosure to draw the court's attention to their absence from the Interpol website.

iv) In relation to the respondents' argument that the NCA's case on the tax payments of Mr Tian and Ms Hao in China was misleading because the figures related only to the Haidian District rather than another district where Mr Tian and Ms Hao lived, this was simply the extent of the information that the NCA had at the time, and Ms McClintock in AM1 had acknowledged that it was not known if the tax payment figures it presented included taxes paid on income generated by Ms Hao and Mr Tian's associated companies.

v) In relation to Dolfin, there were reasonable grounds to believe that Ms Hao and Mr Tian benefited from Dolfin's illegal activities for the reasons given in AM1 at [108]-[122]. There was no material non-disclosure to Johnson J in this regard.

vi) In relation to ARIS, this was not a matter requiring disclosure. The NCA's role in civil recovery proceedings is well known to the court.

77. In summary, Mr Sutcliffe submitted that there were no material non-disclosures to Johnson J or, if there was any non-disclosure that was material, it was not so "appalling" as to require the Disclosure Order to be discharged.

Discussion

78. I hope that I have done justice to the detail of the respondents' many criticisms of the NCA's Disclosure Application and of the way the NCA presented that application to Johnson J. I have necessarily summarised and have not set out every criticism. Nor will I attempt to deal with each criticism individually. I have, however, intended to deal with each of the areas of criticism, and I hope that I have done so in a way that indicates sufficiently clearly why I have reached my decision on the Set-aside Application.

79. The NCA estimate that the respondents have made 13 or 14 allegations of non-disclosure against them. Mr Sutcliffe drew my attention to the decision of Males J in *National Bank Trust v Yurov* [2016] EWHC 1913 (Comm), a case concerning an application by defendants to set aside a freezing order on the grounds that there were multiple material non-disclosures by the claimant when it applied for the freezing order as well as no real risk of dissipation of assets. In *Yurov* at [15], commenting on the defendants' numerous allegations of material non-disclosure, Males J observed that:

> "A defendant who is unable to make good such a case by reference to his six best points is unlikely to do so by piling up a longer list."

80. The respondents rely, however, on the cumulative effect of all of the alleged instances of material non-disclosure as well as on each instance individually.

81. Dealing first with the objection that there was no adequate justification for the NCA to have applied for the Disclosure Application to be heard without notice, I note that

Johnson J dealt with this point in the Judgment at [20]-[21]. His decision that it was appropriate to proceed without notice for the reasons he gave cannot realistically be impeached. The gravamen of the respondents' objections to the Disclosure Order lies elsewhere.

82. The gravamen lies in the respondents' criticisms of the NCA for relying on the evidence provided by China for the reasons I have already summarised, principally, its human rights record and history of transnational repression, and for failing to emphasise these issues, and to provide evidence about them, to Johnson J. However, it is clear that Johnson J was aware of that aspect of the case. No amount of "piling on" of evidence of those matters was necessary.

83. It is going too far to say, as the respondents appear to do, that it is impossible for the relatively low threshold of "reasonable grounds to suspect" to be surmounted when the source of the information is China, simply on the basis of its human rights record and US and international reports, however credible, that it is engaged in transnational repression. Crime must occur in China, as it does everywhere else. China has outlined allegations of conduct, namely, loan fraud, that would also be criminal in this country. It has provided *prima facie* evidence of that conduct to the NCA, which the NCA presented to Johnson J.

84. Absent any further relevant factor, Johnson J was entitled, for the reasons he gave, to accept that *prima facie* evidence and reach the conclusion that the low bar of "reasonable grounds to suspect" was surmounted so that the Disclosure Order could be made in aid of the NCA's civil recovery investigation.

85. The key further relevant factor that might have led Johnson J to the opposite conclusion would be a finding that China's allegations against Ms Hao and Mr Tian were politically motivated. That is clearly the respondents' case, but the evidence for it is thin. It certainly does not follow simply from the fact that Ms Hao and Mr Tian are now overseas citizens of China. The highest that the respondents are able to put it in their skeleton argument for this hearing is to refer to "the political context" of the allegations against Ms Hao and Mr Tian. This, in turn, is based on Chinese media articles that allege a political purge of local government officials in Shanxi province, which do not appear to have been targeted principally against Mr Tian although some related allegations of corruption have been made against him. Those allegations, however, are, if anything, consistent with the NCA's case.

86. There is no evidence that Mr Tian himself has any form of political profile in China, as a government official or as a political dissident. Nor is there any such evidence in relation to Ms Hao. None was before Johnson J, and none was provided for the hearing before me. No other motive for China to pursue these proceedings against Ms Hao and Mr Tian has been evidenced.

87. There is a further aspect of this point that I deal with in the closed judgment, but, in short, there was nothing before Johnson J, nor is there before me now, anything that would lead me to conclude that Johnson J was wrong to reach the conclusion he did in the final sentence of the Judgment at [33].

88. Accordingly, unless there was any other material non-disclosure by the NCA before Johnson J that was sufficiently "appalling" so as to require discharge of the Disclosure Order, his conclusion in the Judgment at [34] must stand.

89. Before turning to other alleged points of material non-disclosure by the NCA before Johnson J, I address some other points raised by the respondents:

i) Regarding the submission that Johnson J's attention should have been brought to the "hyperbolic" size of the alleged fraud, it was clear to Johnson J that the size of the alleged benefit of the fraud to Mr Tian and Ms Hao was £1.2 billion. That remains the case. This is, of course, an extremely high level of fraudulent benefit, but not so much as to be incapable of belief in relation to a 14-year fraud between July 2006 and April 2020, given the nature and circumstances of the fraud. I agree that the natural reading of the phrase "been defrauded of monies totalling 267.47 billion CNY (circa £1.2 billion)", which appears in AM1 at paragraph 39, is that "(£1.2 billion)" is intended to represent the Sterling equivalent of 267.47 billion CNY, which, in fact, is worth roughly £29 billion. Ms McClintock has clarified in AM2 at paragraph 6 that 267.47 CNY was the total amount allegedly defrauded "from a number of financial institutions", but as the fraud involved using new loans to pay off previous loans the actual "profit" or fraudulent benefit to Mr Tian and Ms Hao would have been less. In other words, the larger figure is the gross value of the fraud, and the smaller number is the net value of the fraud. This point goes no further.

ii) Regarding the submission that Ms McClintock had referred in AM1 at paragraph 36 to 11 defrauded institutions and at paragraph 39 to seven defrauded institutions, while this is clearly an inconsistency, it is not one of such importance that it raises a doubt as to whether the Disclosure Order should have been made. The key point is that "a number of" financial institutions were allegedly defrauded of a net value of £1.2 billion.

iii) In relation to the open-source research conducted by the NCA, it is clear that Johnson J bore in mind that the source of the information on which the NCA relied was the PSB in China. He took a "circumspect" approach. While he found that the information from the PSB was "consistent with material in the public domain", he would have been aware that all but one of the sources was Chinese. There is no indication in the Judgment that he laid particular emphasis on that point.

iv) It seems to me that the principal point for Johnson J was "the lack of any apparent motive for the Chinese authorities to provide false information to the NCA in relation to these matters", given the lack of any apparent political profile of Mr Tian and Ms Hao. The Chinese open-source material could have revealed such a political profile, if they had one. It did not.

v) The one open-source reference relied on by the NCA that was not Chinese involved a reference in a US source to Mr Tian's US SEC filing. The NCA accepts that it misrepresented that to Johnson J as evidence of wrongdoing, but I accept that this was based on a misunderstanding by the NCA of that material, and that it was not a deliberate misrepresentation. I do not consider that this materially misled Johnson J. It was a small part of the overall picture put before

him by the NCA at the without notice hearing, and he does not seem to have given it particular weight.

vi) There is no particular force, in my view, in the point that China brought the proceedings to the NCA, and this fact alone should have raised a material doubt about the reliability of the information put forward by China. Although this case was brought to the attention of the NCA by China, the NCA has initiated a civil recovery investigation which could lead to further proceedings and consequences in this country. The fact that China initiated this train of events would have more force if there were any evidence of a political motivation for the PSB's criminal investigation of Mr Tian and Ms Hao, which so far there has not been.

vii) The fact that 23 months elapsed between the first approach of the Changzhi PSB to the NCA and the hearing before Johnson J without further evidence having been forthcoming was something that would have been apparent to Johnson J. He had it in mind, therefore, when he made the Disclosure Order. It does not mean that the relatively low threshold of reasonable grounds to suspect was not surmounted by the evidence that had been initially provided. Since the hearing before Johnson J, Ms McClintock has been to China and reviewed further evidence. The NCA remains of the view that there are reasonable grounds to suspect that there is recoverable property in England and Wales arising out of unlawful conduct by Mr Tian and Ms Hao in China, as is clear from the evidence of Ms McClintock in AM2.

90. Turning, then, to the other areas of alleged material non-disclosure, having reviewed all of the materials that were before Johnson J, as well as the additional materials provided for the hearing before me, my conclusions are as follows:

i) In relation to the respondents' submission that another NCA investigator, on an earlier occasion, gave incorrect information to the Magistrates' Court about the progress of the ILOR when seeking an AFO and this was not disclosed to Johnson J, my view is that it is a non-disclosure and that it would have been better if this fact had been stated to Johnson J, but it was not a material non-disclosure and certainly not an "appalling" one. I have no reason to suppose that the other NCA investigator was anything other than mistaken about the progress of the ILOR, and Ms McClintock gave the correct information about the progress of the ILOR to Johnson J. This point goes no further.

ii) In relation to the respondents' submission that the NCA's presentation of the facts relating to the First FFI was "wholly one-sided, partisan and misleading", I consider this to be exaggerated. With the benefit of hindsight, an account of the facts relating to the First FFI could have been given to Johnson J that better reflected the respondents' views, but the essential point remains that Ms Hao gave inconsistent explanations of the source of the funds. I have had the benefit of the respondents' views on the First FFI, and sight of the Genting Casinos letter and of the transcript of Ms Hao's interview. I consider that the fact of Ms Hao's inconsistent explanations for the source of these funds continues to provide some, albeit limited, support for the conclusion that there are reasonable grounds to suspect that the source of the monies is the alleged unlawful conduct of Mr Tian and Ms Hao. The fact that the letter from Genting Casinos supports

the latter of Ms Hao's two explanations raises the question why the first explanation was given. It seems an odd explanation to have given mistakenly. In any event, the fact that the monies came from Genting Casinos does not address the suspicion that the monies used by Mr Tian at Genting Casinos derived in whole or in part from his unlawful conduct in China. This was not a material non-disclosure by the NCA, or, if I am wrong about that, it was not an "appalling" one requiring discharge of the Disclosure Order.

iii) The respondents' submission about the absence of Interpol red notices raises a minor point. As noted by Mr Sutcliffe, the NCA did not rely on the Interpol red notices in their submissions to Johnson J, and it is not referred to in the Judgment. This point goes no further.

iv) The respondents' submission about the NCA relying on tax figures from China that were "obviously misleading" is, in my view, overstated. The point is that it is difficult to account for the wealth of Mr Tian and Ms Hao by reference to any source of legitimate income, but it is clear from AM1 that the NCA acknowledged that it was not known if the tax payment figures it presented to the court included taxes paid on income generated by Ms Hao and Mr Tian's associated companies. In other words, the NCA acknowledged that it was not necessarily presenting the complete picture to Johnson J but merely the extent of the information that it had. He therefore would have had that in mind when he made the Disclosure Order.

v) In relation to the respondents' submission that the NCA relied upon allegations against Dolfin without revealing that "the evidence suggested that Ms Hao's application was genuine", the submission begs the question. First, it was fair for the NCA to include in their submissions, information about Dolfin in the public domain that raised questions about its legitimacy and about a scheme it operated in which Ms Hao participated. Secondly, the apparent source of the monies used by Ms Hao to invest in order to obtain her Tier 1 Investor visa through Dolfin was the sale of shares in one of Mr Tian's companies that was, on the Changzhi PSB's case, associated with the alleged fraudulent conduct of Mr Tian and Ms Hao. I am not persuaded that there was anything materially misleading about the way that the information relating to Dolfin was presented by the NCA to Johnson J.

vi) In relation to the respondents' submission that the NCA had falsely suggested to Johnson J that Companies House information contradicted information regarding Spring Capita Limited that had been given on behalf of the fifth and sixth respondents in its credit application to Gatehouse, it is not clear to me that the NCA's suggestion was false. I have not seen anything to suggest it was. If it was false, I have no reason to believe that it was deliberately so. This is a minor point that goes no further.

vii) Finally, in relation to the respondents' submission that it failed to disclose a conflict of interest as a result of ARIS, I accept that there is, formally, a conflict of interest, but it is not one that required specific disclosure to Johnson J as the NCA's role in civil recovery proceedings is well-known to the court, as Mr Sutcliffe submitted. If I am wrong about that, it seems to me highly unlikely that

> the disclosure of ARIS to Johnson J would have made any difference to his decision to make the Disclosure Order.

91. As can be seen, I have not found there to be any material non-disclosures by the NCA in relation to its without notice application to Johnson J. There is certainly no non-disclosure that individually is "appalling" or otherwise sufficiently material and grave so as to justify discharging the Disclosure Order. Standing back, and considering matters cumulatively, my view is unaltered.

92. Reviewing the matters afresh according to the statutory criteria, I am satisfied that the procedural and substantive requirements for the Disclosure Order remain satisfied, essentially for the reasons given by Johnson J, subject to the foregoing discussion.

93. In relation to the exercise of discretion, I am not persuaded that I should discharge the Disclosure Order or fail to continue it on the basis that there is too high a risk that the NCA's civil recovery investigation was instigated by China as part of its transnational repression of its citizens. I accept that there appears to be substantial evidence, amounting to a consensus amongst public and private commentators based in Western democratic states, that China does carry on transnational repression of its citizens. But, in my view, there is little or no evidence that China has a motive to do so in relation to Mr Tian and Ms Hao given the apparent absence in the evidence before Johnson J and before me of any significant political profile for either Mr Tian or Ms Hao.

94. I deal with the other reason put forward by the respondents why I should exercise my discretion to discharge the Disclosure Order in the closed judgment.

Conclusion

95. As the closed judgment makes clear, the issue dealt within the closed judgment is not decisive. Therefore, my reasons for the decision to refuse to set aside the Disclosure Order are those set out in this open judgment. For the reasons given in this judgment, I dismiss the Set-aside Application and continue the Disclosure Order.

96. By way of final comment, I reiterate that the test for the making of a Disclosure Order includes that there are reasonable grounds for believing that it is in the public interest for the information sought by the Disclosure Order to be provided. As noted by Johnson J in the Judgment at [36], if, as alleged, substantial amounts of money have been obtained by Ms Hao and Mr Tian by reason of fraudulent conduct in China and used to purchase assets in this country, it is in the public interest for civil recovery proceedings to be brought to recover such assets. Johnson J goes on to observe:

> "Conversely, if it transpires that assets have been purchased entirely legitimately, then it is in the public interest that that can be established and the respondents can enjoy their lawfully obtained property without interference from law enforcement agencies."

97. If the NCA's civil recovery investigation leads to civil recovery proceedings, Ms Hao and Mr Tian will benefit from all the safeguards that such proceedings in this country enjoy.