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POWER BRIEFS | CENTRAL ASIA

CRIMINALITY NOTWITHSTANDING

THE USE OF UNEXPLAINED WEALTH ORDERS IN ANTI-CORRUPTION CASES

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JOHN HEATHERSHAW

POWER BRIEFS | CENTRAL ASIA

ABOUT THE SERIES

Drawing on the systematic methodologies behind investigative journalism, open source intelligence gathering, big-data, criminology, and political science, this series maps the transnational corporate, legal and governmental structures employed by organisations and figures in Central Asia to accumulate wealth, influence and political power. The findings will be analysed from a good governance, human rights, and democratic perspective, to draw out the big picture lessons.

Each instalment will feature a digestible, analytical snapshot centring on a particular thematic, individual, or organisation, delivered in a format that is designed to be accessible to the public, useful to policy makers, and valuable to civil society.

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EXECUTIVE SUMMARY

When Unexplained Wealth Orders (UWOs) were introduced in the United Kingdom in 2017,¹ they were framed as a way to tackle two problems: organised crime and grand corruption emanating from kleptocracies. Although a global problem, the latter is often associated with Russia and the post-Soviet states. When the then security minister Ben Wallace made the case for UWOs he referred to a scandal that saw over \$20 billion funnelled out of Russia, saying that “we are not going to let it happen anymore.”²

However, despite much tub-thumping by politicians and promises of up to twenty UWO investigations per year, only four UWO investigations have been reported since 2018, no UWO has been issued since July 2019, none have been issued against Russian nationals, and only one UWO investigation has been successful against property held by a foreign political figure. This investigation featured UWOs issued against properties owned by a former Azerbaijani banker, Jahangir Hajiyev, and his wife. Even though the UWO was upheld, the properties are yet to be recovered and legal proceedings are still ongoing, as of end 2021.

Another UWO investigation was launched in 2019, with three orders issued on properties later revealed to be owned by Dariga Nazarbayeva and Nurali Aliyev, the daughter and grandson of Kazakhstan’s autocratic first president, Nursultan Nazarbayev, whose rule ran from 1991 to 2019. Other properties that were owned by Nazarbayeva and her son, including a block of flats and offices on Baker

Street worth £137 million, were not issued with UWOs, although it is unclear why. The orders were dismissed by the High Court in 2020, which saw the National Crime Agency (NCA), the unit that led the investigation, landed with a £1.5 million bill in costs, a major setback in the development of this new piece of legislation.

This report analyses the key reasons why this case, known as *NCA v Baker*, failed. A large part of the blame falls on the NCA, which failed to adequately investigate and rebut the material supplied by Nazarbayeva’s law firm, Mishcon de Reya. The NCA did not focus to any great extent on the kleptocracy centred on the Nazarbayev family that forms the basis of Kazakhstan’s political economy, and missed key evidence already in the public domain which would have helped the judge dismiss certain aspects of Nazarbayeva’s claims as unreliable.

The requirement for issuing a UWO is that the recipient is believed to be involved in serious crime or is a state official from outside Europe. This report highlights problems with the legislation and concludes that it is better suited to tackle organised criminals, rather than corrupt officials from overseas. This is because the state official will employ a series of professional “enablers” who will be capable of legitimising the origins of funds in a way that the organised criminal will find harder to do. The blurred line regarding the legality of financial flows from kleptocracies can be utilised to construct a plausible narrative that will count as purported compliance

of the order. It is noteworthy just how effective the team of lawyers assembled by the respondents in *NCA v Baker* were in realising their clients’ objectives, and shows how enablers from the legal sector can help elites from kleptocratic states defend themselves against anti-corruption investigations.

The report also views the judgment made by the judge who heard the case, Ms Justice Lang, to be flawed, as she accepted evidence from the Kazakh authorities that was likely tainted by political bias, given the Nazarbayev family’s control over Kazakhstan at the time the UWOs were issued. Lang also expressed the need for caution in treating the complexity of corporate structures as grounds for suspicion, yet did not question the possible reasons why Nazarbayeva and her son were using such complex structures. The NCA attempted to appeal the ruling, but this was rejected, with the Court of Appeal appearing to act as a rubber stamp on Lang’s judgment.

The beginning of 2022 saw Boris Johnson’s government sideline plans to reform legislation via the Economic Crime Bill in this session of parliament, which would address issues with the UWO legislation.³ After Russia’s attack on Ukraine, the bill was rushed through parliament in little over two weeks. The Economic Crime (Transparency and Enforcement) Act 2022 rectifies some of the issues with the original legislation identified in this report. However, for UWOs to work on incumbent officials there will need to be further changes, and a major rethink of

¹ Unexplained Wealth Orders were introduced as part of the Criminal Finances Act 2017, which gained Royal Assent on 27 April 2017. UWOs came into force on 31 January 2018. See <https://www.gov.uk/government/collections/criminal-finance-act-2017>. Accessed 10 February 2022.

the UK's fight against kleptocracy. The recent invasion of Ukraine and events in Kazakhstan – where over 225 people were killed in violent unrest and protests in January 2022 – serve as stark representations of what happens when kleptocratic monies are allowed to flow unchecked.⁴

What may have been key in the successful outcome of *NCA v Hajiyevea* and the lack of success in *NCA v Baker* is the fact that at the time the orders were issued Jahangir Hajiyeve was in jail in Azerbaijan and had no support from the country's ruling powers, yet Dariga Nazarbayeva, the daughter of the then president of Kazakhstan, retained favour in her home country. Thus, there is the possibility that instead of counteracting kleptocracy, UWOs may reinforce it. Extra efforts must be made to better tackle those who remain in power and not just the "fled and politically dead".⁵

There is the danger that UWOs, even in a revised form after the revisions made in the Economic Crime Act of March 2022, will only have an impact in the most clear-cut anti-corruption cases, where the state official has no possibility of answering the requirements of the order, likely

because they are no longer part of the political elite of their home country. Unless there is further reform or new legal precedent to establish that wealth accrued by such political means is not in fact "lawfully obtained"⁶, then UWOs will remain a weak tool against kleptocracy. This is a problem which is particularly acute in the case of UWOs but is potentially a general problem across other civil recovery tools and powers under the foundational Proceeds of Crime Act of 2002.

This story of the failure of UWOs – and the heightened awareness of the security risks from kleptocracy in the wake of the Kazakhstan and Ukraine crises – should prompt a revolution in UK thinking and policy. A proper anti-kleptocracy strategy requires not only strong legislation, but strong enforcement. To do this requires not only political will, but increased funding and mandate for the UK enforcement agencies so that they can properly investigate, freeze, and eventually confiscate assets. Only with a more substantial reform of the UK's anti-corruption efforts will kleptocrats no longer view the UK as a safe haven for their dubious wealth.

² <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>. Accessed 10 February 2022. Wallace's full comment was: "What we know from the Laundromat exposé is that certainly there have been links to the [Russian] state ... The government's view is that we know what they are up to and we are not going to let it happen anymore." See <https://www.independent.co.uk/news/uk/politics/oligarchs-corruption-unexplained-wealth-order-money-laundring-russia-ben-wallace-london-a8192401.html>. Accessed 10 February 2022.

³ <https://www.transparency.org.uk/uk-economic-crime-bill-latest-lord-agnew-resignation>. Accessed 2 March 2022.

⁴ <https://www.reuters.com/world/asia-pacific/kazakhstan-says-225-bodies-delivered-morgues-during-unrest-2022-01-15/>. Accessed 2 March 2022. Many articles cited corruption as major driving force behind the protests. See <https://www.transparency.org/en/press/kazakhstan-protests-almaty-events-corruption-inequality-lack-of-accountability-responsible>, <https://www.theguardian.com/world/2022/jan/05/old-man-out-kazakhstan-discontent-to-change-leaders-legacy>, both accessed 2 March 2022.

⁵ A phrase used by Dr Peter Sproat in his 2018 paper, "Unexplained Wealth Orders: An Explanation, Assessment and Set of Predictions". See <https://journals.sagepub.com/doi/abs/10.1177/0022018318773210?journalCode=clja>. Accessed 10 February 2022.

⁶ As written in section 326B(3) of the Criminal Finances Act of 2017.

FINDINGS & RECOMMENDATIONS

THIS REPORT IDENTIFIES FIVE WEAKNESSES IN THE ORIGINAL UNEXPLAINED WEALTH ORDER LEGISLATION. THESE ARE:

- I. its acceptance that wealth is “lawfully obtained” if it is generated legally under the laws of the country from where the income arises
- II. that respondents can point to public statements of wealth as legitimate and sufficient evidence in and of themselves without corroborating evidence
- III. the fact that respondents can avoid the presumption that their property was criminally obtained by “purporting to comply” rather than complying fully with the order

- IV. the fact that enforcement bodies can issue UWOs against trustees and other nominees, yet the other requirements refer more clearly to the property’s beneficial owner. This creates an awkward mismatch, where the enforcement body must demonstrate that, for example, a trustee is a politically exposed person
- V. the fact that costs in unsuccessful cases are not capped, meaning that the UK body that has brought the investigation is liable to pay the legal costs of the other side, leading to bills in the millions of pounds.

The recent reform with the Economic Crime Act⁷ addresses the final issue by capping costs of the investigative body. It also attempts to address the fourth issue by allowing UWOs to be issued against “responsible officers” of the respondent in cases where the respondent is not an individual, thus widening the scope of who can receive such orders. However, the first three issues remain, and pose a threat to the future use of UWOs against corrupt incumbent officials. The addition of an alternative test for the issuance of an UWO (where there are “reasonable grounds for suspecting that the property has been obtained through unlawful conduct”⁸) repeats the mistake of the first issue, as it is likely to fail in cases where the original sources of wealth were gained wholly or partly due to membership of and/or connection to a kleptocratic regime that remains in power.

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057822/DRAFT_Economic_Crime_Transparency_and_Enforcement_Bill.pdf. Accessed 2 March 2022.

⁸ <https://commonslibrary.parliament.uk/research-briefings/cbp-9486/>, Accessed 7 March 2022.

THESE ISSUES CAN BE MITIGATED TO A CERTAIN EXTENT BY THE FOLLOWING FIVE STEPS:

1. *NCA v Baker* suggests the NCA lacks specialised local knowledge needed to investigate a complex case featuring the unravelling of corporate structures of a political figure from abroad. Investigators that specialise in this kind of case should be utilised by the NCA, along with **experts that can provide witness testimony** on the political economy and points of law of the country in question.
2. The NCA should review *NCA v Baker* in light of the evidence and arguments presented in this report and should examine the possibilities of issuing further UWOs. In particular, **the ownership of the £137 million Baker Street property discussed on page 26 should be examined** in light of the new information revealed in this report.
3. The UK government should consider the possibility of **creating an economic crime court** which hires specialised judges who are better able to assess the facts of complex cases involving financial transactions from overseas.
4. Ultimately, UWOs are only an investigative tool, not one of asset seizure, which is a separate legal process. Reform of this legislation needs to be accompanied by **a shift of the narrative towards the prosecution of individuals** and the forfeiture of assets for the UK's fight against kleptocracy to truly gain ground.
5. For this to happen, the UK government needs to **increase the funding for the NCA** in order for it to better investigate and seize corruptly acquired assets hidden in the UK. The announcement in February 2022 of a new kleptocracy unit within the NCA is a welcome step forward, but the unit will only be effective if it is backed by greater resources and reform.

INTRODUCTION

When Unexplained Wealth Orders (UWOs) were introduced in the UK's Criminal Finances Act of 2017, they were framed as a way to tackle two problems: organised crime and grand corruption. The linking of the two problems in the UWO legislation reflects an underlying reality that in kleptocratic states, political elites and their security services are linked to big business, and serious and organised crime, a point popularised in journalist Misha Glenny's book *McMafia*, and Catherine Belton's *Putin's People*.⁹ These works have also demonstrated that there is a public interest in identifying the UK's connections to kleptocratic states and exploring them for their political, economic and legal implications.

Kleptocracy is "a system in which public institutions are used to enable a network of ruling elites to steal public funds for their own private gain".¹⁰ This is an ancient idea, although the UK's legislative efforts to tackle kleptocracy date back arguably only to 2007, when new money laundering regulations noted the high risk posed by foreign politicians and their families. Fifteen years on, UK enforcement agencies still face considerable difficulties in bringing cases against officials from countries where the rule of law is lacking and cooperation with foreign enforcement bodies not possible. Without any information on the sources of wealth used to buy property, it is extremely difficult for the UK authorities to mount a successful legal case.

The introduction of the UWO legislation attempted to address this: when certain conditions are met, a UWO can be issued on any property in the UK, forcing its owner to provide evidence to show that the funds used were legitimate. Should the person fail to respond, the property is then presumed to have been obtained through illegal activity and can possibly be seized through separate civil recovery proceedings. The legislation was heralded as potentially game-changing in tackling career politicians from kleptocracies who have small salaries but own multi-million-pound houses in the UK.

However, since the legislation came into force in 2018, there have only been four known UWO investigations, one of which, known as *NCA v Baker* and analysed in detail in this report, ended in a dismissal of the orders. An appeal by the UK's National Crime Agency (NCA), the body that launched the investigation, was refused, landing it with a £1.5 million bill to cover the legal costs of the other party.

The owners of the property in *NCA v Baker* were Dariga Nazarbayeva, and her son Nurali Aliyev, the daughter and grandson respectively of the first president of Kazakhstan. Research by social scientists and experts in Kazakhstan's political economy has demonstrated that the wealth of the Nazarbayev family has been accumulated through kleptocratic practices – nepotism, cronyism, control of the judicial

process, unfair privatisations, and so on. Therefore, the question we are addressing is not whether the UWO was justified – as the evidence relating to Kazakhstan suggests it may have been, especially given the low threshold of the requirements – but why it failed.

This report first analyses why UWOs were introduced and examines the first successful case which featured a state official from abroad, *NCA v Hajiyeveva* (Chapter 1). The next chapter analyses the potential difficulties with the current legislation when dealing with grand corruption cases, particularly when dealing with state officials who – unlike Hajiyevev – retain political favour in their home country. This is best exemplified by a subsequent investigation, *NCA v Baker*, the background to which is explored in Chapter 3.

An examination of this case is warranted on both policy and academic grounds. The case has established legal precedent that appears to affirm the National Crime Agency's own prediction, as reported by the Intelligence and Security Committee that, "it is highly probable that the oligarchy will have the financial means to ensure their lawyers – a key group of professional enablers – find ways to circumvent this legislation."¹¹

⁹ Glenny, Misha, *McMafia: A Journey Through the Global Criminal Underworld*, Vintage, 2008; Belton, Catherine, *Putin's People: How the KGB Took Back Russia and then Took on the West*, William Collins, 2021.

¹⁰ Walker, C., & Aten, M. "The Rise of Kleptocracy: A Challenge For Democracy". *Journal of Democracy*, 29(1), 2018, p.20. <https://doi.org/10.1353/JOD.2018.0001>

¹¹ Intelligence and Security Committee of Parliament, Russia, p16. https://isc.independent.gov.uk/wp-content/uploads/2021/03/CCS207_CCS0221966010-001_Russia-Report-v02-Web_Accessible.pdf. Accessed 10 February 2022.

In policy terms, this case indicates that as they stand UWOs have been a failure in terms of the ambitions initially set by the UK government. Their lack of use in the last two and a half years appears to be tacit acknowledgement from UK law enforcement that they are not fit for purpose, as are the efforts now underway to improve the legislation. It is also of note that the UK's 2021 Integrated Review¹² fails to mention kleptocracy and shifts the focus to tackling organised crime, which could be interpreted as an admission of failure rather than a new set of priorities.

However, *NCA v Baker* appears to be a particularly flawed investigation, with the NCA not establishing the proper context of the kleptocratic underpinnings of Kazakhstan's political economy, which has allowed the president's family, including Dariga Nazarbayeva, to accrue billions of dollars in opaque and questionable circumstances. A second reason why the *NCA v Baker* UWOs were dismissed was that the NCA issued them against Andrew Baker, a solicitor and wealth manager, who was not the ultimate owner of the properties, but the president of private foundations that owned two of them. It is unclear why the NCA did not, on learning that the beneficial owners were Dariga Nazarbayeva and her son, reissue the UWOs in their name, research the material supplied by Nazarbayeva's law firm, Mishcon de Reya, and amend its arguments accordingly to a greater extent than it did. This is explored in Chapter 4.

In academic terms, the relative wealth of information afforded by legal documents pertaining to *NCA v Baker* allows us to analyse an exemplary test case of the alleged enabling of kleptocracy by British professional services. The information that was voluntarily provided by the respondents' lawyers was carefully crafted to present a false narrative – that of a separation of assets between Dariga Nazarbayeva and her criminal ex-husband Rakhat Aliyev. Unfortunately, the NCA did a poor job at interrogating this material. However, although the NCA's case failed in part because some aspects of its central argument – tying Nazarbayeva's property to Aliyev – were flawed, its central tenet – that there is little separation between Nazarbayeva and Rakhat Aliyev's wealth – is predominantly true.

For example, Nazarbayeva claimed that her shareholding in a Kazakh bank, Nurbank, was separate from that of her husband's, but this does not appear to be accurate, based on Nurbank's own financial reports. Furthermore, Nazarbayeva may have misled the court in the submitted evidence by stating she generated capital through a share sale of a sugar company to a third party. There are grounds to investigate that this may have been a transfer of capital to another company that she controlled. (This allegation of misleading the court is strongly denied by Nazarbayeva, see page 47). In addition, Nurali Aliyev funded the majority of his property purchase through a \$65 million loan he got from a bank that he chaired, and

in which his mother was the largest shareholder. There is no evidence to suggest the loan was repaid in full. Although this loan cannot be linked to Rakhat Aliyev, one must question the *NCA v Baker* judgment that stated that this was a legitimate transaction. This analysis is the subject of Chapter 5.

A final reason for the dismissal of the UWOs in *NCA v Baker* was a failure of judgment – the subject of the Chapter 6. Ms Justice Lang did not effectively question the evidence presented by Mishcon de Reya, especially that which relied on judgments from the Kazakh authorities, which are likely to be biased in favour of the Nazarbayev family, given Kazakhstan's kleptocracy and its disregard of the rule of law. Her characterisation of Rakhat Aliyev as a "successful businessman" betrayed a woeful lack of knowledge of the realities of business in a kleptocracy, and a lack of knowledge of Kazakhstan, with the judgment at one point erroneously referring to the leader of the country as "President Nazarbayeva".¹³

The report concludes by stressing the need, along with legislative changes, for increased funding for UK enforcement bodies so that new and existing laws are properly enforced.

¹² <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>. Accessed 10 February 2022.

¹³ *NCA V Baker Judgment*, para 72. Nazarbayeva is the female version of the name Nazarbayev.

U
W O

UNEXPLAINED WEALTH ORDERS

W H Y
W E R E

U W O S
I N T R O D U C E D
?

This chapter analyses why Unexplained Wealth Orders (UWOs) were introduced, and examines the investigations that have been launched to date. It provides more detail on the one successful UWO investigation to date that features property held by a foreign political figure (a former Azerbaijani banker) and explains why this UWO was upheld.

1. WHY WERE UWOs INTRODUCED?

Campaigns by Transparency International and other organisations have highlighted the difficulty that law enforcement agencies have in investigating suspicious wealth brought into the UK by business people and public officials from overseas, especially in regard to real estate.¹⁴ According to Transparency International and investigative journalist group OCCRP, such investigations only had the possibility of success if the person “had been convicted in their home country.”¹⁵ This problem may have fed into the thinking of an April 2016 Home Office and Treasury anti-money laundering action plan which stated that: “in many cases the country in which the offences took place lacks either the will, the capability, or the human rights record that would allow effective cooperation to take place.”¹⁶ This led to new legislation being introduced regarding UWOs as part of the Criminal Finances Act 2017.¹⁷

Although UWOs can be used to fight organized crime, a major part of the messaging surrounding this new investigative tool centred around the idea that they would be used to tackle ‘grand corruption’ – the subversion of political office for personal enrichment and advantage.¹⁸ For example, the then Home Secretary Amber Rudd said in 2016 that: “[UWOs] send a powerful message that the UK is serious about rooting out the proceeds of overseas grand corruption”. Rudd also quoted from Transparency International, who said that UWOs may be “the most important anti-corruption legislation to be passed in the UK in the past 30 years”, legislation that will “make sure that the UK is no longer seen as a safe haven for corrupt wealth.”¹⁹

This message was reinforced by the then Security Minister Ben Wallace, who said in an interview with *The Times*

in 2018 that the “full force of government” would be brought to bear on foreign criminals and corrupt politicians: “When we get to you, we will come for you, for your assets and we will make the environment that you live in difficult.”²⁰ He continued: “If they are an MP in a country where they don’t receive a big salary but suddenly they have a nice Knightsbridge townhouse worth millions and they can’t prove how they paid for it, we will seize that asset, we will dispose of it and we will use the proceeds to fund our law enforcement.”²¹

¹⁴ See for example TI’s reports <https://www.transparency.org.uk/publications/corruption-on-your-doorstep> from February 2015, and <https://www.transparency.org.uk/publications/empowering-uk-recover-corrupt-assets-unexplained-wealth-orders-and-other-new-approaches> from March 2016, <https://www.transparency.org.uk/publications/hiding-in-plain-sight> from November 2017 and <https://www.transparency.org.uk/publications/faulty-towers-understanding-the-impact-of-overseas-corruption-on-the-london-property-market> from March 2017. All accessed 10 February 2022.

¹⁵ <https://www.ft.com/content/8eaf63e4-43e2-11e8-93cf-67ac3a6482fd>. Accessed 10 February 2022.

¹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf, Para 2.32.

¹⁷ The original impetus for UWOs thus came from civil society, rather than the UK government itself. Helena Wood, now an Associate Fellow at RUSI but formerly of the National Crime Agency said: “this wasn’t a kind of government push to go for the legislation. It was borne out of a coalition of civil society organizations, pro bono lawyers and other interested parties forming a grouping basically on the basis of frustration – from my personal view, frustration at the lack of progress against tackling illicit wealth in the UK.” See <https://cullencommission.ca/data/transcripts/Transcript%20December%202015,%202020.pdf>, p16. Accessed 10 February 2022.

¹⁸ This is corruption that is manifested at the highest levels of a government and which requires significant subversion of the political, legal, and economic systems. A political system based on profiting from this kind of corruption is often referred to as a ‘kleptocracy’.

¹⁹ <https://www.gov.uk/government/speeches/home-secretarys-speech-to-the-fcas-financial-crime-conference>. Accessed 10 February 2022.

²⁰ <https://www.businessinsider.com/oligarch-corruption-source-of-wealth-unexplained-wealth-orders-ben-wallace-mcmafia-2018-2?r=DE&IR=T>. Accessed 10 February 2022.

²¹ <https://www.independent.co.uk/news/uk/politics/oligarchs-corruption-unexplained-wealth-order-money-laundering-russia-ben-wallace-london-a8192401.html>. Accessed 10 February 2022.

2. HOW SUCCESSFUL HAVE UWOs BEEN SO FAR?

Like Rudd, Wallace stressed that new legislation was not solely introduced to tackle organized crime, but also would be used to target nefarious governments who use money to subvert due process. He referenced a scandal that saw over \$20 billion funnelled out of Russia:²² “What we know from the Laundromat exposé is that certainly there have been links to the [Russian] state... The government’s view is that we know what they are up to and we are not going to let it happen anymore.”²³

The ‘fighting talk’ from government ministers regarding grand corruption put considerable expectation on UK law enforcement. It was therefore important that bodies such as the NCA selected the initial UWO cases carefully, as the Director General of the UK National Economic Crime Centre, Graeme Biggar, commented after one UWO High Court hearing: “These hearings will establish the case law on which future judgements will be based, so it’s absolutely vital that we get this right.”²⁴ As Matthew Cowie, a former prosecutor at the UK’s Serious Fraud Office, commented: “It would be bad political PR and bad for [UWOs as an instrument] if they fail.”²⁵

The Criminal Finances Act, which contains the Unexplained Wealth Order legislation, came into force on 31 January 2018. A 2017 impact assessment from the Home Office forecasted that there would be 20 UWOs per year.²⁶ In April 2018, Donald Toon, Director for Economic Crime at the NCA, told the media that his officers were working on around 100 cases and that he expected about five more UWOs to be secured in the next three months.²⁷ However, as of December 2021, only four investigations are known to have taken place that led to the issuance of a UWO (a total of 15 UWOs were issued across the four cases).²⁸ In September 2021, a Home Office report said that not a single UWO had been obtained since July 2019.²⁹

This report concentrates on the first and third investigations because they are the only known UWO cases involving ‘politically exposed people’, as of March 2022. The second investigation, with UWOs issued in May 2019,³⁰ involved a British businessman with suspected links to serious criminality. This investigation was successful, although, rather than face civil recovery proceedings, the man in question agreed to hand over 45 properties,

four parcels of land, as well as other assets and £583,950 in cash, with a combined value of over £9.8 million.³¹ The fourth investigation, with UWOs issued in July 2019,³² involved a Northern Irish woman with suspected links to serious organised crime.³³ It is unclear what the status of this investigation is as there is no mention in the public domain of any litigation that may have followed.

²² <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>. Accessed 10 February 2022.

²³ <https://www.independent.co.uk/news/uk/politics/oligarchs-corruption-unexplained-wealth-order-money-laundering-russia-ben-wallace-london-a8192401.html>. Accessed 10 February 2022.

²⁴ <https://www.natlawreview.com/article/not-so-fast-uk-court-appeal-denies-nca-shot-redemption-following-first-uwo-defeat>. Accessed 10 February 2022.

²⁵ <https://www.ft.com/content/8eaf63e4-43e2-11e8-93cf-67ac3a6482fd>. Accessed 10 February 2022.

²⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621205/Impact_Assessment_-_UWOs.pdf. Accessed 10 February 2022.

²⁷ <https://www.reuters.com/article/britain-crime-moneylaundering/british-police-say-were-coming-after-dirty-money-but-it-might-take-time-idINKBN1HH2WT?edition-redirect=in>. Accessed 10 February 2022.

²⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902020/6.6451_Anti-Corruption_Strategy_Year_2_Update.pdf, p16; <https://researchbriefings.files.parliament.uk/documents/CBP-9098/CBP-9098.pdf>. Accessed 10 February 2022.

²⁹ <https://www.chathamhouse.org/2021/12/uks-kleptocracy-problem/04-how-explain-ones-wealth>, p29. Accessed 10 February 2022.

³⁰ https://ag-pssg-sharedservices-ex.objectstore.gov.bc.ca/ag-pssg-cc-exh-prod-bkt-ex/382%20-%20Unexplained%20Wealth%20Orders%20-%20UK%20Experience%20and%20Lessons%20for%20BC%20October%202020%20-002-_Redacted.pdf. Accessed 11 February 2022.

³¹ <https://web.archive.org/web/20210124041320/https://www.nationalcrimeagency.gov.uk/news/businessman-with-links-to-serious-criminals-loses-property-empire-after-settling-10m-unexplained-wealth-order-case>. Accessed 11 February 2022. The original link was active until at least January 2021.

³² https://ag-pssg-sharedservices-ex.objectstore.gov.bc.ca/ag-pssg-cc-exh-prod-bkt-ex/382%20-%20Unexplained%20Wealth%20Orders%20-%20UK%20Experience%20and%20Lessons%20for%20BC%20October%202020%20-002-_Redacted.pdf. Accessed 11 February 2022.

³³ <https://www.nationalcrimeagency.gov.uk/news/nca-secures-unexplained-wealth-order-against-properties-owned-by-a-northern-irish-woman>. Accessed 10 February 2022.

The two cases involving politically exposed people feature individuals from the former Soviet republics of Azerbaijan and Kazakhstan. The first investigation featured two UWOs issued on separate properties in February 2018. These were owned by an individual from Azerbaijan, Jahangir Hajiyeu, and his wife Zamira Hajiyeu.³⁴ The third investigation, known as *NCA v Baker*, with UWOs issued in May 2019, involved three different properties in London,³⁵ and involved members of the family of the first president of Kazakhstan, Nursultan Nazarbayev. The NCA believed the properties were bought with wealth acquired by Rakhat Aliyev, who was Nursultan Nazarbayev's former son-in-law. However, court proceedings revealed that they were actually owned by Rakhat's ex-wife, Dariga Nazarbayeva, and their son, Nurali Aliyev. At the time of the issuance of the UWOs, Nazarbayeva was the chair of the Kazakh Senate.³⁶ Nurali Aliyev is an entrepreneur and a former deputy mayor of Astana,³⁷ Kazakhstan's capital city, which has since been renamed Nur-Sultan, after the country's first president.

The relatively few UWO investigations when compared with the initial assessment was noted in a House of Commons briefing paper, issued in January 2021, which said that their "patchy" success "has caused concern that the measure is not enough to counter money laundering in the UK."³⁸



³⁴ <https://web.archive.org/web/20210621080719/https://www.nationalcrimeagency.gov.uk/news/supreme-court-refuses-appeal-against-unexplained-wealth-order>. Accessed 11 February 2022. The original link was active until June 2021.

³⁵ <https://www.nationalcrimeagency.gov.uk/news/nca-secures-unexplained-wealth-orders-for-prime-london-property-worth-tens-of-millions>. Accessed 10 February 2022.

³⁶ <https://thediomat.com/2021/01/dariga-nazarbayeva-headed-back-to-parliament/>. Accessed 10 February 2022.

³⁷ <https://eurasianet.org/kazakhstan-nazarbayev-grandson-assumes-astana-power-post>, <https://kz.linkedin.com/in/nurali-aliyev-54247a71>, both accessed 13 February 2022.

³⁸ <https://researchbriefings.files.parliament.uk/documents/CBP-9098/CBP-9098.pdf>, p13, accessed 10 February 2022. This stands in contrast to another new tool introduced as part of Criminal Finances Act 2017 – Account Freezing Orders. Although receiving far less press coverage than UWOs, their legislative 'sister', AFOs have been comparatively more successful and are emerging as the preferred tool for law enforcement to freeze and recover corrupt assets. See <https://usercontent.one/wp/www.spotlightcorruption.org/wp-content/uploads/2021/05/AFO.docx.pdf>. Accessed 10 February 2022.

3. NCA V HAJIYEVA: INITIAL SUCCESS

The NCA approached *NCA v Baker* on the back of a successful use of UWOs in what appeared to be a similar case. This investigation related to two properties with a combined value of over £22 million that the NCA believed belonged to Jahangir Hajiyeve, a former banker from Azerbaijan, and his wife Zamira.³⁹ The properties in question were a townhouse in Knightsbridge⁴⁰ and a golf club in Ascot.⁴¹ Jahangir Hajiyeve was sentenced to 15 years in prison on financial crime charges in Baku in October 2016. These charges related to the alleged misappropriation of money and abuse of powers while he was chairman of International Bank of Azerbaijan (IBA).⁴²

The UWO case against the Hajiyeves is documented in several witness statements that have been made publicly available by the High Court. The NCA argued that the conditions for a UWO were met because, as well as Jahangir being a politically exposed person by virtue of his role at IBA, his conviction in Azerbaijan was a strong indication that he was involved in serious crime. The witness statements also outlined some material from OCCRP about Hajiyeve's alleged involvement

in a scandal known as the "Azerbaijan Laundromat", and quotes from *Georgia Daily* and other media about his conviction in Azerbaijan.⁴³

The crux of why a UWO was appropriate in these circumstances was summed up by an NCA investigator in one of her witness statements. She argued that Hajiyeve's "known employment history and income is very difficult to reconcile with a property purchase of over £10 million" as his highest salary, including bonuses, was only around \$70,600 with modest share dividends of just under \$89,000 in 2008.⁴⁴

In response, Zamira Hajiyeve's lawyer argued that Jahangir could not give adequate answer to the order, as he was in prison as a result of an unfair and politically motivated trial.⁴⁵ Hajiyeve presented at least one document to the court: a statement of wealth that was submitted to a private bank in London in 2011 by her husband's wealth management company. This showed that her husband had since 1991 made millions of dollars from various businesses in Azerbaijan. The first entry in this list was a Baku-based company established in 1991 that, according to

this document, made \$20 million off a \$1000 investment. However, a three-judge appellate panel rejected Hajiyeve's request for the UWOs to be dismissed, noting at a hearing in February 2020 that this document "posed more questions as to the source of his wealth than it answered"⁴⁶ as they were "vague", with the document indicating that Hajiyeve had earned the \$20 million supposedly while studying for a doctoral degree in the USA and Russia.⁴⁷

In February 2020, the Court of Appeal dismissed the appeal by Hajiyeve.⁴⁸ Her application to appeal to the Supreme Court was dismissed in December 2020.⁴⁹ This now forced Hajiyeve to reveal the sources through which she and her husband used to buy the two properties. If she failed to do this, the NCA can launch separate civil recovery proceedings as, according to the UWO legislation, the properties would then be presumed to be 'recoverable' – in other words, obtained through unlawful conduct.⁵⁰ The properties, as of May 2021, are still frozen by the NCA, presumably with the intention of launching civil proceedings in the future.

³⁹ <https://www.nationalcrimeagency.gov.uk/news/court-dismisses-uwo-appeal-by-zamira-hajiyeva>. Accessed 10 February 2022.

⁴⁰ <https://www.bloomberg.com/news/features/2019-07-30/dirty-money-spotlights-role-of-family-offices-as-enablers>. Accessed 10 February 2022.

⁴¹ <https://www.propertyweek.com/news/owner-of-mill-ride-golf-club-may-have-property-seized-under-unexplained-wealth-order/5106303.article>. Accessed 10 February 2022.

⁴² <https://www.irfs.org/news-feed/former-head-of-international-bank-jahangir-hajiyev-sentenced-to-15-years-in-jail/>. Accessed 10 February 2022.

⁴³ *NCA v Zamira Hajiyeve and Vicksburg Global Inc. First Witness Statement of Nicola Bartlett*, para 18.3. Ultimately it was Hajiyeve's position as a political exposed person, and not alleged involvement in serious crime, that was key in the UWOs being upheld. In his judgment, Mr Justice Supperstone, commented: "I am satisfied that the income requirement is satisfied, irrespective of any reliance on the conviction." (*NCA V Hajiyeve Judgment*, para 88)

⁴⁴ *NCA v AAG Trusteeship Ltd and Natura Ltd*, Fifth Witness Statement of Nicola Bartlett, para 3.12(2).

⁴⁵ *NCA v Zamira Hajiyeve*, Witness statement of Zamira Hajiyeve. <https://www.bbc.co.uk/news/uk-50763204> Accessed 10 February 2022.

⁴⁶ <https://www.willkie.com/-/media/pwa/articles/latest-attachments/2-2020/02-february/20200205-court-of-appeal-judgment--hajiyeva.pdf>. Accessed 10 February 2022.

⁴⁷ <https://web.archive.org/web/20201222152835/https://www.swissinfo.ch/eng/crooked-banker-tapped-professionals-to-manage-web-of-dirty-money/45597304>. Accessed 11 February 2022. The original link was active until December 2020.

⁴⁸ <https://www.nationalcrimeagency.gov.uk/news/court-dismisses-uwo-appeal-by-zamira-hajiyeva>. Accessed 10 February 2022.

⁴⁹ <https://web.archive.org/web/20201223141546/https://www.nationalcrimeagency.gov.uk/news/supreme-court-refuses-appeal-against-unexplained-wealth-order>. Accessed 11 February 2022. The original link was active until June 2021.

⁵⁰ For clarity, the aim of the UWO legislation is simply to obtain information. As stated in Code Of Practice Issued Under Section 377 Of The Proceeds Of Crime Act 2002 issued in June 2021: "A fundamental aim of the power, therefore, is to access evidence that would otherwise not be available." (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/996540/June_21_-_Code_of_Practice_377_Investigations_.pdf, para 175). However, if an individual fails to respond to a UWO to the satisfaction of the High Court, "the property concerned is presumed to be 'recoverable property' (para 184). Recoverable property is "property obtained through unlawful conduct" (footnote 54). Accessed 10 February 2022.



FIT FOR PURPOSE? ISSUES WITH UWO LEGISLATION



This chapter examines what UWOs are, when they can be used, and discusses problems with the legislation in its current form, based on analysis of the legislation itself, and on the two known UWO investigations featuring political figures from overseas. The recent reform of the Economic Crime Bill addresses some of these issues, yet does not go far enough in ensuring that UWOs issued against property held by foreign officials will be successful. The chapter argues for the creation of an economic crime court to deal with cases that feature complex financial structures. It also argues that the NCA should also consider using expert witness testimony to counteract the evidence presented by respondents' lawyers, which will likely rely on evidence obtained from kleptocracies.

1. WHAT ARE UNEXPLAINED WEALTH ORDERS?

Unexplained Wealth Orders (UWOs) were introduced in the United Kingdom as part of the Criminal Finances Act 2017.⁵¹ They are an investigative tool, a form of disclosure that in effect reverses the usual burden of proof regarding the source of funds used to buy property in the UK. Instead of law enforcement officials having to prove that a property was purchased with illegally obtained capital, the owner has to demonstrate that the funds were legitimately earned.

The beginning of the UWO process will be an investigation by a particular UK enforcement agency. If the agency believes that there is evidence that unexplained wealth has been invested into a certain property, such as a piece of real estate, it can apply for a UWO from the court. This hearing takes place *ex parte* – without the owner of the property, the ‘respondent’, present. A UWO is usually accompanied by an interim freezing order that prevents the property from being sold while the investigation is ongoing.

In order for a UWO to be granted by the High Court, four conditions have to be met:

1. The respondent holds the property,
2. The value of the property is greater than £50,000,
3. The respondent’s known income is insufficient to obtain the property,
4. The respondent is either (a) a Politically Exposed Person (PEP)⁵² outside of the European Economic Area; or (b) there have to be reasonable grounds to suspect that the respondent, or a person connected with the respondent is, or has been, involved in serious crime.

The reform via the Economic Crime Act in March 2022 added the following alternative test for granting a UWO: that “there are reasonable grounds for suspecting that the property has been obtained through unlawful conduct”.⁵³ This would address instances where someone’s known income is sufficient to obtain the property, but that income

is likely to have been obtained illegally. Various UK authorities can issue UWOs, but as of the end of 2021, the National Crime Agency (NCA) is the only body that has been known to use them.⁵⁴

Unless the requirements have not been met, the orders will be made after the *ex parte* hearing. The respondent is notified and then has an opportunity to challenge the order in a further High Court hearing. If this challenge fails, they must comply with the order by explaining the sources of wealth used to purchase the property. If the respondent does not comply with the order, then the law presumes that the property is the proceeds of unlawful conduct and is thus deemed “recoverable property” under Part 5 of the Proceeds of Crime Act 2002 (POCA).⁵⁵ It can then be seized through separate civil recovery proceedings.⁵⁶ During these proceedings, the respondent has a final opportunity to satisfy the court that on the balance of probabilities (i.e. more likely than not) the property has not been purchased with the proceeds of crime.

⁵¹ <https://www.legislation.gov.uk/ukpga/2017/22/part/1/chapter/1/crossheading/unexplained-wealth-orders-england-and-wales-and-northern-ireland/enacted>. Accessed 10 February 2022.

⁵² A politically exposed person (PEP) is an individual who currently holds political office. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>. A PEP’s spouse, siblings, parents, children, and business partners are also captured via this legislation. Accessed 10 February 2022.

⁵³ <https://commonslibrary.parliament.uk/research-briefings/cbp-9486/>, Accessed 7 March 2022.

⁵⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902020/6.6451_Anti-Corruption_Strategy_Year_2_Update.pdf, p16. Accessed 10 February 2022.

⁵⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/996540/June_21_-_Code_of_Practice_377_Investigations_.pdf, para 184. Accessed 10 February 2022.

⁵⁶ Civil recovery orders (CROs) were also introduced in POCA 2002. These reduced the burden of proof from a criminal to a civil level. CROs still require evidence to show that the property was, on the balance of probabilities, obtained through unlawful conduct. Therefore, UWOs were introduced to address cases where there was no or little evidence.

2. UWOS: FIVE ISSUES WITH THE LEGISLATION

Writing in August 2019, one British solicitor expressed dismay about the disparity between the combative talk regarding the legislation and the reality on the ground, describing UWOs as “a gimmick: an attempt by the government to come up with a plan to tackle money laundering or, perhaps more accurately, be seen to be doing something about it.”⁵⁷ This is far from the only criticism of UWOs. The House of Commons briefing paper report cites criticism that the UWOs have “so far have not sought to tread into the so-called ‘difficult’ cases, where the recipient of the UWO may be on good terms with, or part of, the foreign regime that is the source of their wealth, and so enforcement agencies cannot rely on foreign cooperation... This is perhaps surprising, given that one of the reasons the Government wanted to introduce UWOs is to help with cases where evidence is hard to come by because they could not rely on international cooperation.”⁵⁸

The NCA’s failure in *NCA v Baker* may have caused the agency to be more circumspect in bringing cases against politically exposed people. *The Mail on Sunday* reported that NCA financial investigators had told it in private that “they believe targeting corrupt businessmen with access to ‘expensive QCs and claims of private

wealth’ is a ‘waste of time’” and that one investigator suggested that more success would result from targeting “‘mid to high level organised criminals’ with assets but no legitimate income.”⁵⁹

This was refuted by both NCA unit chief Andy Lewis⁶⁰ and Graeme Biggar, Director-General at the National Economic Crime Centre.⁶¹

It is noticeable that the first UWOs were issued against Hajiyeve, an individual who had fallen from political favour and been jailed by the Azerbaijani authorities. Similarly, the original argument made in *NCA v Baker* was that the properties were tied to Rakhat Aliyev, not only someone who had also fallen foul of his country’s authorities, but someone no longer even alive (Aliyev committed suicide while awaiting trial in Austria for kidnapping and murder). The fact that the case failed when it was revealed the owners were his ex-wife, Dariga Nazarbayeva, and their son – people still very much part of the political and business scene of their home country at the time the orders were issued – poses the question whether UWOs can be used to target the people it was intended to address. There may even be a danger that UWOs simply reinforce the status quo of corrupt regimes.

An analysis of the legislation itself, coupled with an examination of the existing cases, highlights five potential issues with UWOs.

a. Problem with accepting the law of home country

In *NCA v Baker*, the judge was happy to accept statements on the legality of Dariga Nazarbayeva’s assets based on information from the Prosecutor General’s Office of Kazakhstan, a body which has no independence from the executive branch, can be compromised by political interference, and would almost certainly show bias in favour of Kazakhstan’s senior political leaders (see Chapter 5).⁶²

Clearly Ms Justice Lang should have displayed more scepticism when assessing such statements; however, there is an issue here with the wording of the UWO legislation itself, the Criminal Finances Act 2017. Section 362B.6(c) states that income is “lawfully obtained” if it is obtained lawfully under the laws of the country from where the income arises. This means that those that retain favour in their home countries can simply appeal to their law enforcement authorities to confirm that the income is lawful for a UWO to be dismissed. As Spotlight on Corruption argues this “imposes potential hurdles for law enforcement to challenge assertions of lawfulness of income made by those who owing to their position of power in effect control how laws are implemented within their countries.”⁶³

⁵⁷ <https://www.lawyer-monthly.com/2019/07/unexplained-wealth-orders-will-the-trickle-ever-become-a-flood/>. Accessed 10 February 2022.

⁵⁸ <https://researchbriefings.files.parliament.uk/documents/CBP-9098/CBP-9098.pdf>, p15. Accessed 10 February 2022.

⁵⁹ <https://www.dailymail.co.uk/news/article-6141275/Russian-oligarchs-living-mansions-Britain-face-crackdown-dirty-money.html>. Accessed 10 February 2022.

⁶⁰ *Ibid.*

⁶¹ <https://committees.parliament.uk/oralevidence/1571/pdf/>, p13. Accessed 10 February 2022.

⁶² See Ms Justice Lang’s comments in her Judgment, para 77. Available at <https://www.judiciary.uk/wp-content/uploads/2020/04/Approved-Judgment-NCA-v-Baker-Ors.pdf>, accessed 10 February 2022. See page 45 and footnote 215 for information on the lack of independence of the Kazakh Prosecutor’s office.

⁶³ <https://committees.parliament.uk/writtenevidence/18564/pdf/>, para 1.15. Accessed 10 February 2022.

This issue plays into a wider problem of UK courts assessing the lawfulness or otherwise of behaviour and business dealings outside of the United Kingdom.⁶⁴ Presumably, it is at the court's discretion whether it finds compelling the testimony of foreign law enforcement, although the precedent set in *NCA v Baker* does not bode well for the future. The wording of the Criminal Finances Act 2017 in this regard stands in contrast to the Bribery Act 2010 which criminalises bribery by a British citizen or someone with a close connection to the United Kingdom even if the entire offence takes place outside the United Kingdom in a jurisdiction which does not criminalise bribery.⁶⁵

To mitigate against this language, expert witness testimony could be used to highlight the lack of independence of authorities located in kleptocracies, and also to scrutinise instances where the generated income may not have been in compliance with the law of the overseas country, but where the law was not enforced. Such experts could also be used to highlight corruption concerns in instances where the income was generated in accordance with the law of the overseas country.

b. Problem with purported compliance

A second issue is that of purported compliance. Although this problem has yet to be a known issue in the UWO investigations to date, section 362D is likely to prevent UWOs from leading to successful civil recovery proceedings in all but the most egregious cases. This section relates to cases where "the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made."⁶⁶ In these cases, the property would not be assessed to be likely acquired by criminal proceeds in civil recovery order (CRO) hearings. Instead, the evidentiary standard would be higher: the NCA would have to prove on the balance of probabilities that the property was acquired by criminal proceeds.

The issue with the UWO legislation lies with the phrase "purports to comply." According to Baroness Williams, then Minister of State at the Home Office, this phrase was included because "the severe consequences of not complying [means] it is right that this rebuttable presumption should not apply to a person who purports to provide a response."⁶⁷ This reduces the power of

the NCA, and the order itself: the NCA may not be satisfied with the response to the order, but a court may still deem it to be 'purported compliance'. What counts as 'purported compliance' is yet to be tested in a UK court: in *NCA v Baker*, the London law firm representing Dariga Nazarbayeva, Mishcon de Reya (from here "Mishcon"), disputed the basis upon which the UWO was issued in the first place, and voluntarily released information to the NCA. However, had the High Court upheld the orders and such information was presented by Mishcon as an explanation of the source of funds, it is likely that, despite the fact that the NCA had issues with the account, it would have counted as purported compliance, thus forcing the NCA in a civil recovery hearing to prove on the balance of probabilities that the property was acquired by criminal proceeds.

Clearly a poor or limited response would likely amount to non-compliance with the order,⁶⁸ and making false or misleading statements in response to an upheld UWO is a criminal offence. However, as RUSI argue, this leaves the door open for an ostensibly spurious but well-constructed explanation to count as 'purported compliance': "It stands to reason that a respondent wishing to

⁶⁴ <https://www.nytimes.com/2021/06/18/world/europe/uk-courts-russia-kazakhstan.html>. Accessed 10 February 2022.

⁶⁵ <https://www.legislation.gov.uk/ukpga/2010/23/contents>. Accessed 10 February 2022.

⁶⁶ <https://www.legislation.gov.uk/ukpga/2017/22/part/1/chapter/1/crossheading/unexplained-wealth-orders-england-and-wales-and-northern-ireland/enacted>. Accessed 10 February 2022.

⁶⁷ <https://ag-pssg-sharedservices-ex.objectstore.gov.bc.ca/ag-pssg-cc-exh-prod-bkt-ex/382%20-%20Unexplained%20Wealth%20Orders%20-%20UK%20Experience%20and%20Lessons%20for%20BC%20October%202020%20-002-Redacted.pdf>, pp11-12. Accessed 13 February 2022.

⁶⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/677997/CCS207_CCS0118810944-1_HO__Investigation_Code_Web_Access.pdf, p 44, para. 190. Accessed 13 February 2022.

retain the property is likely to provide an ostensibly legitimate explanation that the enforcement agency would then have to disprove to succeed in civil recovery. That, in turn, is reliant on overcoming the challenges in civil recovery that the introduction of UWOs was supposed to alleviate in the first place.”⁶⁹ This provision combined with the issue of 362B.6(c) described above makes it extremely unlikely that a UWO can ever be successful against a political figure who retains favour in their home country.

This can be best demonstrated by examining the “fictional clear cut case” used in the House of Commons briefing paper published in 2021. In this example: “Jon is the son of the authoritarian President of Corruptinia. He has no professional qualifications and doesn’t work. Some months ago he moved to London and Land Registry records show he bought a Central London penthouse for £20 million. [...] the NCA applies to the court for a UWO. [...] Jon receives it and doesn’t respond, creating a legal presumption in favour of the NCA that the property is recoverable.”⁷⁰

However, such a scenario is very unlikely to occur in an actual kleptocracy; here “Jon” would likely have professional qualifications obtained from his home country or abroad, and almost certainly would be occupying a position of power either in politics or in business. With the ability to employ an expensive legal team, there is little chance that he would fail to respond to the order, and would submit at least something amounting to purported compliance. In this scenario, there would be no legal presumption that the property is recoverable, and the NCA would have to show that on the balance of probabilities the origin of the money was criminally obtained. As the son of an authoritarian president with a plethora of professional enablers in tow, “Jon” would have no problem obtaining a document from Corruptinia’s general prosecutor stating that his funds were legally obtained. In real life, the NCA has no case against “Jon”.

c. Problem with assessing sources of wealth

The legislation states that there must be “reasonable grounds for suspecting” that the person’s known sources of lawfully obtained income are not sufficient to enable them to obtain the relevant property, or – as added in the March 2022 Economic Crime Act – there are reasonable grounds for suspecting that the property has been obtained through unlawful conduct. “Known” sources of the respondent’s income are the “sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order.”⁷¹ The House of Commons briefing paper suggests that “This might include for example information available from internet searches and company registry records.”⁷²

⁶⁹ https://ag-pssg-sharedservices-ex.objectstore.gov.bc.ca/ag-pssg-cc-exh-prod-bkt-ex/382%20-%20Unexplained%20Wealth%20Orders%20-%20UK%20Experience%20and%20Lessons%20for%20BC%20October%202020%20-002-_Redacted.pdf, pp-19-20.

⁷⁰ <https://researchbriefings.files.parliament.uk/documents/CBP-9098/CBP-9098.pdf>, p11. Accessed 10 February 2022.

⁷¹ <https://www.legislation.gov.uk/ukpga/2017/22/part/1/chapter/1/crossheading/unexplained-wealth-orders-england-and-wales-and-northern-ireland/enacted>, Section 362.b(6). Accessed 10 February 2022.

⁷² <https://researchbriefings.files.parliament.uk/documents/CBP-9098/CBP-9098.pdf>, p9. Accessed 10 February 2022.

However, this is problematic as it seems to suggest that a mere presence of information about wealth could prevent a UWO from being upheld, irrespective of the legitimacy of the claim or the nature of the wealth. It is therefore not surprising that, in the initial response to the order in *NCA v Baker*, Mishcon cited *Forbes* who claimed that “in 2013 [Nazarbayeva’s] net worth was estimated... to be US\$595m”, a claim that was repeated by Ms Justice Lang in her judgment.⁷³ Lang concluded that the NCA could therefore have identified Nazarbayeva’s wealth “from material in the public domain.”⁷⁴ The same issue was apparent in the judge’s ruling on Nurali Aliyev, who owned one of the properties in *NCA v Baker*. Lang quotes from Aliyev’s LinkedIn profile, concluding: “In my view, this information demonstrates that NA [Nurali Aliyev] was sufficiently independent of his parents by 2008 to purchase Property 2 for himself.”⁷⁵

Though such internet profiles do go some way to ‘explaining’ wealth, they say nothing to the legitimacy of the wealth – which is the true aim of the UWO legislation. Again, expert witness testimony could be used to counteract claims of ‘legitimacy’.

d. Problem with trustees, company officials and ultimate beneficial ownership

Section 362H of the Criminal Finances Act 2017 suggests that UWOs can be issued against those that have ‘effective control’ over a property.⁷⁶ This is potentially useful because it allows, as happened in *NCA v Baker*, for the NCA to issue UWOs against trustees, company officials and legal owners in cases where the beneficial owner is not known. However, as RUSI and others have pointed out, this unfortunately reveals defects in the drafting of the legislation as the conditions needed to satisfy a UWO (see page 18) must be applied to the respondents of the order, and not the beneficial owner of the property.⁷⁷

As RUSI comments: “This leads to the paradoxical situation that, if a UWO is directed at a nominee or trustee, the enforcement authority must demonstrate that he or she – rather than the property’s beneficial owner – is a PEP or that reasonable grounds exist for suspecting him or her of involvement in serious crime, as well as showing a mismatch between the respondent’s lawful income and the value of the property.”⁷⁸

This is something that Ms Justice Lang noted both during the court hearing (where she referred to trying to reconcile the two strands of the legislation as “mental gymnastics”⁷⁹) and in her written judgement in *NCA v Baker*: “It is clear that section 362H POCA 2002 is targeted at trusts and corporate structures which hold unexplained wealth. It is less clear how the income requirement is to be applied in such cases.”⁸⁰

This issue was partially addressed through amendments made in the Economic Crime (Transparency and Enforcement) Bill⁸¹ which allows UWOs to be issued against “responsible officers” of the respondent in cases where the respondent is not an individual. In the case of *NCA v Baker*, this would have prevented Mishcon from arguing that Andrew Baker was not ‘holding’ the property.

⁷³ It is striking how similar the two sections are: Mishcon: “DN [Dariga Nazarbayeva] is a successful and accomplished businesswoman. [...] in 2013... her net worth was estimated by Forbes Kazakhstan to be US\$595m.” <https://www.judiciary.uk/wp-content/uploads/2020/04/Approved-Judgment-NCA-v-Baker-Ors.pdf>, para 71 Subpara 3.13. Ms Justice Lang: “She [Dariga Nazarbayeva] is a successful businesswoman who was named in Forbes list of richest people in Kazakhstan in 2013, and so her wealth could have been identified by Ms Kelly from material in the public domain,” para 68. Accessed 10 February 2022.

⁷⁴ *Ibid.*, para 68.

⁷⁵ *Ibid.*, para 178.

⁷⁶ <https://www.legislation.gov.uk/ukpga/2017/22/part/1/chapter/1/crossheading/unexplained-wealth-orders-england-and-wales-and-northern-ireland/enacted>, section 362H. Accessed 10 February 2022.

⁷⁷ https://ag-pssg-sharedservices-ex.objectstore.gov.bc.ca/ag-pssg-cc-exh-prod-bkt-ex/382%20-%20Unexplained%20Wealth%20Orders%20-%20UK%20Experience%20and%20Lessons%20for%20BC%20October%202020%20-002-_Redacted.pdf, p17.

⁷⁸ *Ibid.* The legislation appears to rely on the fact that it also applies to “a person connected with the respondent is, or has been, involved in serious crime”. A trustee, nominee, offshore company official or property manager may therefore be judged to have a connection with the property’s beneficial owner (the one suspected of being involved with serious crime). However, there is no guarantee that such a connection exists, given the separation that often accompanies the proxy and beneficial owner. In *NCA v Baker*, a lawyer for the respondents argued that there was no evidence that Andrew Baker had ever met Rakhat Aliyev (whom the NCA suspected of being involved in serious crime), and that Baker was only brought into the foundations that owned the properties after Aliyev had died. (See Court Transcript, 10 March 2020, p24, [full reference at 79]).

⁷⁹ *Transcript of Royal Courts Of Justice, Tuesday, 10 March 2020, Before Mrs Justice Lang Between: National Crime Agency (Applicant) And (1) Andrew J Baker, (2) Villa Magna Foundation (3) Manrick Private Foundation, (4) Alderton Investments Limited (5) Tropicana Assets Foundation (Respondents) And (1) Aida Aliyeva (2) Nurali Aliyev (Non-Party Applicants)*, [from here “Court Transcript, 10 March 2020”], p50.

⁸⁰ <https://www.judiciary.uk/wp-content/uploads/2020/04/Approved-Judgment-NCA-v-Baker-Ors.pdf>, (from here “NCA V Baker Judgment”) para 131. Accessed 10 February 2022.

⁸¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057822/DRAFT_Economic_Crime_Transparency_and_Enforcement_Bill.pdf

e. Problem of liability of costs for investigative body

In the original legislation, the NCA was liable for the costs in unsuccessful cases – unlike in unsuccessful forfeiture proceedings. This likely acted as a deterrent for bringing UWOs against certain properties, where the legal costs would be high because of the wealth of the individuals involved.⁸² It is therefore unsurprising that, after the NCA lost its case against Andrew Baker and had to pay £1.5 million in costs, no further UWOs are known to have been issued.

Spotlight on Corruption, a NGO that works on improving UK's anti-corruption laws, called for this to be reviewed, suggesting an amendment to the Criminal Finances Bill that states that costs can only be awarded against a public authority that acts unreasonably or improperly in bringing an application.⁸³

Along with the issue above (the problem with trustees, company officials and ultimate beneficial ownership), this was addressed in the reform of UWOs in the Economic Crime Act. As reported by the *Financial Times*, the government proposed to cap the cost of pursuing an unsuccessful UWO, by either letting courts assess appropriate costs, setting pre-determined rates or by awarding no costs at all.⁸⁴



⁸² <https://www.ft.com/content/d9d69031-9159-4a45-a9e3-1eedd92af97d>. Accessed 2 March 2022.

⁸³ <https://www.spotlightcorruption.org/the-ncas-kazakh-unexplained-wealth-order-uwo-a-costly-decision/>, <https://committees.parliament.uk/writtenevidence/18564/pdf/>. Both accessed 10 February 2022.

⁸⁴ <https://www.ft.com/content/d9d69031-9159-4a45-a9e3-1eedd92af97d>. Accessed 2 March 2022.

THE BACKGROUND TO NCA v BAKER

After the success of the NCA's UWO investigation into the Hajiyevs, a second set of UWOs were issued against properties owned by members of the then ruling family of Kazakhstan, Dariga Nazarbayeva and Nurali Aliyev. This investigation by the NCA appears to be built in large part on a report by UK NGO Global Witness. However, the largest property mentioned in this NGO report – a block of flats and offices on London's Baker Street worth £137 million – was not subject to a UWO, despite it being owned by Dariga Nazarbayeva and Nurali Aliyev in 2015, and likely at least to 2019. Its current ownership remains unclear. This chapter looks at the background to the NCA investigation, and sketches out the NCA's main arguments in *NCA v Baker*, and the response from Mishcon de Reya, the law firm representing the respondents. It questions the approach the NCA took by filing the orders against Andrew Baker, a solicitor and wealth manager, who was not the ultimate owner of the properties. The chapter also contains statements from the NCA in response to our findings.

1. THE BACKGROUND TO NCA v BAKER: THE £147 MILLION PROPERTY EMPIRE

Investigative reporting has shown how Dariga Nazarbayeva and Nurali Aliyev own, or have owned, at least £217.5 million of property in the UK.⁸⁵ This includes not only the three UWO properties, but a sizeable block of luxury flats and offices located at 215-237 Baker Street (thus encompassing the fictional address of Sherlock Holmes⁸⁶) worth at least £137 million in 2010. However, Nazarbayeva and Aliyev's ownership of this property (at least circa 2015) was only established in recent years.

The first reporting on this property was a paper entitled *Mystery on Baker Street*, published in July 2015 by anti-corruption NGO Global Witness.⁸⁷ This highlighted how the Baker Street property formed part of a £147 million London property empire whose ultimate owners were at that time unknown but whose web of ownership indicated links to Rakhat Aliyev, a former state official from Kazakhstan known to be involved in serious crime.

The report documented denials from the directors of the companies that Rakhat Aliyev had ever been the ultimate beneficial owner of the companies that owned the buildings. An April 2018 article by *Quartz* followed up on this investigation and detailed further links that suggested the owners may be Rakhat's former wife Dariga Nazarbayeva and their son Nurali Aliyev, the daughter and grandson respectively of Nursultan Nazarbayev, who was the President of Kazakhstan from 1991 until he stepped down in March 2019.⁸⁸ It was in the public interest for the owners of the Baker Street property to be revealed: even the then Prime Minister David Cameron referred to "links between a former Kazakh secret police chief [Rakhat Aliyev] and a London property portfolio worth nearly £150 million" in a speech from 2015 in which he announced a crackdown on people from overseas bringing "dodgy" cash into the UK.⁸⁹ Yet the property's managers refused to identify the actual owner, citing reasons of confidentiality, when asked by Global Witness in 2015.⁹⁰ According to investigative journalist group SourceMaterial, Nazarbayeva

via Mischon also declined to answer detailed questions about her ownership of the Baker Street property when approached in 2020.⁹¹

However, SourceMaterial's investigations from 2020 (after the conclusion of *NCA v Baker*) established that in 2015 the Baker Street property was indeed owned by Dariga Nazarbayeva and Nurali Aliyev in a 90%/10% split.⁹² There is evidence to suggest that they continued to own this property after 2015, despite the fact that in October 2015 – three months after the publication of the Global Witness report – the ultimate ownership structure of the Baker Street property changed.

Evidence for this claim is provided by the fact that during Dariga and Nurali's known ownership of the property, one of the directors (from August 2014) of the UK company that directly owned the property was a man named Massimiliano Dall'Osso.⁹³ According to Rakhat Aliyev, testifying under oath in 2012, Dall'Osso was Dariga Nazarbayeva's personal assistant.⁹⁴

⁸⁵ This is made up of the £147 million property described in the Global Witness report *Mystery on Baker Street* (which includes the £9.3 million Highgate mansion later subject to a UWO), plus Nurali's £39.5 million mansion on The Bishops Avenue and Dariga's £31 million Manresa Road apartment.

⁸⁶ The Sherlock Holmes Museum located at 221b Baker Street does not form part of this property. Royal Mail granted the museum this address, even though its actual street address should be 239 Baker Street.

⁸⁷ https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf. Accessed 11 February 2022.

⁸⁸ <https://qz.com/1245110/the-unsolved-mystery-of-who-owns-sherlock-holmes-130-million-home/>. Accessed 11 February 2022.

⁸⁹ <https://www.gov.uk/government/speeches/tackling-corruption-pm-speech-in-singapore>. Accessed 11 February 2022.

⁹⁰ https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf, p1. Accessed 11 February 2022.

⁹¹ <https://www.source-material.org/blog/sherlock-holmes-and-the-mystery-of-the-kazakh-millions>. Accessed 11 February 2022.

⁹² *Ibid.*, plus additional material supplied by SourceMaterial.

⁹³ <https://find-and-update.company-information.service.gov.uk/officers/Y2WqJGcbvSaFeq-q-nzESufihes/appointments>. Accessed 11 February 2022.

⁹⁴ In 2012, Rakhat Aliyev was questioned by Austrian prosecutor Bettina Wallner in Malta in regard to the allegations that he had murdered two bankers in Kazakhstan. When Aliyev was asked about Dall'Osso, Rakhat replied that he was: "an Italian citizen who my wife [Elnara Shorazova] and I installed as the General Director of Metallwerke Bender [a factory in Krefeld, Germany]. I think he worked there for 1 or 2 years. Now he works as a personal assistant of my ex-wife [Dariga Nazarbayeva]."

Dall'Osso still occupied this role as director in the UK company until the end of September 2019, almost four years after the ultimate legal owner had been changed to a company registered in Abu Dhabi.⁹⁵ SourceMaterial discovered other information suggesting continuing ties after 2015 between Nazarbayeva and the Baker Street property.⁹⁶

It is clear that the NCA drew a lot on the Global Witness report when launching the UWO investigation that became *NCA v Baker*, leading the judge to say that an NCA investigator had “heavily relied” upon it.⁹⁷ However, the three properties against which UWOs were eventually issued included only one of the properties mentioned in the Global Witness report, and did not include 215-237 Baker Street. Instead, UWOs were issued on two other properties not mentioned in the report by the NGO.

It is unclear why the Baker Street property was not subject to a UWO, but testimony heard during the UWO hearing suggested that the NCA could not unravel its ownership structure. The NCA's lawyer commented that at least two of the properties issued with UWOs appear to be part of a much larger scheme which included the Baker Street property: “That evidence has not been

addressed by the respondents and we are still none the wiser as to whether their case is this was money that they had independently earned or, in the case of Mr Nurali [Aliyev], borrowed. The NCA's suspicion at the time of applying, and remains a suspicion, is that the amount of money coming out of Kazakhstan into London was much greater than the three properties that have been identified.”⁹⁸

The ultimate legal owner of the Baker Street property from October 2015 was a company called Landmark Network Real Estate Ltd which had been registered in Abu Dhabi. As SourceMaterial note, the fact that Landmark Network Real Estate Ltd had five owners, each holding 20%, allows it to avoid beneficial ownership disclosure for related entities in the UK: in early 2016, the UK government introduced a new company register requiring all companies to publish details of anyone who controlled more than 25% of company shares. As the UK company involved in the ownership structure of the Baker Street property is ultimately owned by Landmark, it ensured that the Baker Street building's owners were kept secret. SourceMaterial theorised that this “perhaps explains why it never featured in the 2019 McMafia [UWO] order.”

It thus appears that the NCA may have missed information which may have allowed them to issue a UWO against the Baker Street property: the NCA issued UWOs on other property held by Dariga Nazarbayeva and Nurali Aliyev in May 2019, yet Dall'Osso continued to act as director in the UK company that directly owned the Baker Street property until the end of September 2019. Most notably, according to SourceMaterial's investigation, advisers involved in the management of the Baker Street property claimed that Nazarbayeva's sale of shares in a Kazakh bank, Nurbank, funded the purchase of the Baker Street property,⁹⁹ but this does not appear to have been known by the NCA at the time of the UWO investigation. The fact that the share sale was also given as a source of funds by Mishcon for one of the properties issued with a UWO (the most expensive of the three, located on Manresa Road) is an indication that the purchase of the Baker Street property is very much tied in with the UWO properties.

In response to correspondence with the authors of this report, Mishcon replied that statements regarding the Baker Street property “raise issues entirely unconnected to the UWO proceedings... As such, our client will not be responding to them.”¹⁰⁰

⁹⁵ <https://find-and-update.company-information.service.gov.uk/company/05453405/officers>. Accessed 11 February 2022.

⁹⁶ Firstly, Andrew Baker, the British solicitor subject to the UWO, was appointed to oversee one of the British Virgin Islands companies involved in the ownership chain of the Baker Street property while he was acting as president of the foundations that controlled two of the UWO properties owned by Dariga. Secondly, there are ties between Nazarbayeva and the Abu Dhabi company through one of its shareholders, Mohamed Saeed Mohamed Al Ariqi, a director of Al Hilal Bank's branch in Kazakhstan. According to SourceMaterial, a few months before Landmark was created, Al Ariqi registered another business, SpaceEdge International Real Estate, at the same address of Landmark and his business partner in this company was Massimiliano Dall'Osso. See <https://www.source-material.org/blog/herlock-holmes-and-the-mystery-of-the-kazakh-millions>. Accessed 11 February 2022.

⁹⁷ *NCA v Baker* Judgment, para 87.

⁹⁸ Transcript of Royal Courts Of Justice, Tuesday, 11 March 2020, Before Mrs Justice Lang Between: National Crime Agency (Applicant) And (1) Andrew J Baker, (2) Villa Magna Foundation (3) Manrick Private Foundation, (4) Alderton Investments Limited (5) Tropicana Assets Foundation (Respondents) And (1) Aida Aliyeva (2) Nurali Aliyev (Non-Party Applicants), [from here “Court Transcript, 11 March 2020”], p52.

⁹⁹ Emails between advisers involved in the management of the property, seen by SourceMaterial and authors of this report.

¹⁰⁰ Correspondence from Mishcon de Reya to Prof. John Heathershaw, 29 September 2021.

2. THE NCA BRINGS A CASE

In May 2019, a set of UWOs and accompanying freezing orders were issued by the NCA in relation to three properties in London worth £80 million. Documents from the High Court indicate that the UWOs were issued against a man named Andrew Baker and four legal entities – three private foundations and a company – all of which were involved in the legal ownership of the properties. The case is thus referred to as *NCA v Baker*. When the exact beneficial ownership of a property is not known, the legislation allows agencies to issue UWOs against the legal owners or company officials (although this causes some legal difficulties, as discussed in Chapter 2). Baker, a British solicitor based in Liechtenstein,¹⁰¹ was the president of two of the foundations.

In February 2020, the locations of the three properties were identified in media articles, as were the identities of the two individuals who beneficially owned them: Dariga Nazarbayeva and Nurali Aliyev.¹⁰² The NCA's case for issuing the UWOs was that it suspected that Rakhat Aliyev, Dariga's husband until 2007, had been involved in criminal conduct and that both he and members of his family may thus have laundered proceeds derived from these crimes, into the three properties.¹⁰³ At the time of his death by suicide in 2015 Rakhat Aliyev was

awaiting trial in Austria for two murders allegedly perpetrated in Kazakhstan, and was being investigated for money laundering in various European jurisdictions.¹⁰⁴

This UWO investigation was likely chosen because of the clear ties Rakhat Aliyev had to criminal activity, and because of links to certain properties uncovered by the 2015 Global Witness report. However, it must have been obvious to the NCA that, even if this premise was correct, given Rakhat's death in 2015, there would likely be questions over the current ownership of the properties that may involve his ex-wife Dariga Nazarbayeva and their son, Nurali, especially seeing that lawyers representing Rakhat Aliyev's second wife, Elnara Shorazova, had made explicit denials, as stated in the Global Witness report, that she was or ever had been the ultimate owner of one of the properties that was later subject to a UWO (a mansion on Denewood Road in Highgate, London).¹⁰⁵

The *Quartz* article published in 2018 does not mention the Highgate property but goes further than the Global Witness report in indicating close links between the overarching company ownership structure and, not only Nurali Aliyev, but also Dariga Nazarbayeva.¹⁰⁶ This article

should have indicated to the NCA the possibility that the Highgate mansion, and any other properties that could be linked to it via ownership structures and company officials, may not have been owned by Rakhat Aliyev, but by his son and/or ex-wife. The NCA must have also predicted a robust response from the respondents' lawyers, given the amount of money invested in the properties and the likely links to well-connected wealthy individuals. Given that the NCA knew these risks, and that the case would set precedent, it presumably considered the case to be eminently winnable.

As discussed above, the main property discussed in the Global Witness and *Quartz* reports – a large apartment and office block on Baker Street – was not subject to a UWO, despite the fact that evidence has since emerged suggesting the source of funds may be the same as one of the UWO properties.¹⁰⁷ The NCA are not precluded from bringing a further UWO in respect of the Baker Street property in the future.

¹⁰¹ <https://www.linkedin.com/in/andrewbakertrustee>, <https://about.me/andrewbakertrustee>, accessed 13 February 2022.

¹⁰² In *The High Court Of Justice Queen's Bench Division Administrative Court Between National Crime Agency (NCA) And Andrew Baker, Villa Magna Foundation, Manrick Private Foundation, Alderton Investments Limited, Tropicana Assets Foundation: Respondents' Skeleton Argument*, para 4 (from here in footnotes "*NCA v Baker Respondents' Skeleton Argument*").

¹⁰³ Summed up by Mishcon in *NCA v Baker Respondents' Skeleton Argument*, paras 16 and 18.

¹⁰⁴ <https://www.maltatoday.com.mt/news/national/28709/investigators-told-of-rakhat-aliyev-s-alleged-money-laundering-network-20130729#XpcxdNQrKHs>. Accessed 11 February 2022.

¹⁰⁵ https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf, p14. Accessed 11 February 2022.

¹⁰⁶ <https://qz.com/1245110/the-unsolved-mystery-of-who-owns-sherlock-holmes-130-million-home/>. Accessed 11 February 2022.

¹⁰⁷ As stated above, according to documents seen by SourceMaterial, Dariga's sale of shares in Nurbank was given as a source of funds for the Baker Street property by an adviser involved in the management of the property. From what the lawyer representing the NCA said during the UWO hearing, it is likely that this was not known by the NCA at the time it issued the UWOs.

3. RESPONSE FROM MISHCON DE REYA LEADS TO DISMISSAL OF UWOS

In response to the UWOS, the respondents through Mishcon voluntarily revealed that Dariga Nazarbayeva and Nurali Aliyev were the ultimate owners of the three properties. It backed up its argument by submitting 268 pages of documentation. This was not submitted as part of a witness statement, which meant that certain provisions of the UWO legislation were not in effect. According to Jonathan Fisher QC, a leading barrister with expertise in financial crime: “Whilst the National Crime Agency sees advantages to consensual receipt of information, safeguards for both the National Crime Agency and the information provider are lost if the provision of information falls outside of the statutory framework.”¹⁰⁸

In correspondence between the authors of this report and the NCA in relation to this point, the NCA commented: “The NCA did not allow the respondents to file information voluntarily. To the contrary, the NCA argued before Mrs Justice Lang that the material was inadmissible or that no weight should be attached to it, highlighting that it was not supported by witness evidence or verified by a statement of truth, its provenance was unclear, and there were grounds to believe that documents were forged. This was not accepted by the judge who accepted the truth of the documents.”¹⁰⁹

The documentation attempted to establish that the funds used by Dariga Nazarbayeva and her son to purchase the properties were not linked to Rakhat Aliyev’s criminally obtained capital, and thus the UWOS had been issued in error. The copious pages of explanation regarding the sources of wealth provided by Mishcon should have given the NCA an excellent opportunity to research these claims in the six months it had between Mishcon’s response and the court hearing, and present new evidence responding to them. Adapting the argument in response to information provided by a respondent was a feature of the second UWO case brought by the NCA, featuring a British businessman suspected of involvement in serious crime. According to the NCA, the businessman in response to the UWO, “submitted 127 lever arch folders and a 76-page statement to explain where his money came from for the properties – but he inadvertently gave NCA investigators clues to make a bigger case against him.”¹¹⁰

Yet although the NCA questioned certain aspects of the information provided by Nurali Aliyev and Dariga Nazarbayeva, what is noticeable is how much further critical analysis of the evidence could have been made (see Chapters 4 and 5).

In response to this point, the NCA said that it “filed a detailed witness statement setting out why the voluntary disclosure strengthened rather than undermined the NCA’s suspicions regarding the sources of income used to obtain the properties.”¹¹¹

The NCA, however, did not draw on expert witness testimony to aid the court’s understanding of kleptocracy in Kazakhstan, or the nature of Rakhat Aliyev’s criminal business network, and how Dariga Nazarbayeva may have profited from it. In response to this point, the NCA said: “UWOS are investigative tools which are intended to assist law enforcement agencies in the embryonic stages of an investigation. They are a starting point, rather than an end point, for building a case for civil recovery. This is reflected by the statutory thresholds which, unlike typical civil litigation, require reasons and not proof.”¹¹²

Ultimately, the UWOS were dismissed by the presiding judge, Ms Justice Lang, who ruled that the NCA had not demonstrated the link between the properties and Rakhat Aliyev. Ms Justice Lang commented that the NCA’s underlying assumptions and reasoning were “unreliable” and “flawed.”¹¹³

¹⁰⁸ Correspondence between Jonathan Fisher QC and Thomas Mayne, 13 January 2022.

¹⁰⁹ Correspondence between the National Crime Agency and Prof. John Heathershaw, 28 January 2022.

¹¹⁰ <https://web.archive.org/web/20210124041320/https://www.nationalcrimeagency.gov.uk/news/businessman-with-links-to-serious-criminals-loses-property-empire-after-settling-10m-unexplained-wealth-order-case>. Accessed 13 February 2022. The original link was active until January 2021.

¹¹¹ Correspondence between the National Crime Agency and Prof. John Heathershaw, 28 January 2022.

¹¹² *Ibid.*

¹¹³ *NCA v Baker* Judgment 58, 100, 130, 138, 152, 167, 197, 209, 215, 217.

This was a disastrous ruling for the NCA. Not only had the orders been rejected, the NCA had been criticised by the judge for making unreliable assumptions. The case had also blown a hole in its budget. As noted by Spotlight in Corruption, the NCA's anti-corruption work budget has been just over £4 million annually since 2015,¹¹⁴ with a 2017 Home Office impact assessment predicting that the legal costs per UWO case would be between £5,000 and £10,000.¹¹⁵ When the UWO legislation was being proposed, an amendment that would have meant that costs relating to investigations would not be awarded on an indemnity basis was rejected,¹¹⁶ meaning that as it had lost the case, the NCA was now potentially liable for the £1.5 million in costs accrued by Nurali Aliyev, Dariga Nazarbayeva and the respondents. In other words, this single UWO investigation had cost the NCA at least 150 times more than the Home Office's per case estimate, which does not even include the NCA's own legal costs or the cost of the investigation. It was reported in June 2020 that that Aliyev and Nazarbayeva pursued the costs claims.¹¹⁷

The NCA's failure also allowed the owners of the properties, Nurali Aliyev and Dariga Nazarbayeva, to frame the narrative along the lines that the investigation had no basis. At the time of the initial dismissal of the UWOs, a spokesperson for Nazarbayeva commented that she was: "deeply disappointed that the NCA thought it appropriate to use the cloak of these court proceedings to make damaging attacks on her reputation and her country, unfairly insulting Dr Nazarbayeva and her 18 million compatriots."¹¹⁸ Nurali Aliyev said via a spokesperson that the NCA had: "deliberately ignored the relevant information I voluntarily provided and pursued a groundless and vicious legal action, including making shocking slurs against me, my family and my country."¹¹⁹

As the Director General of the UK National Economic Crime Centre, Graeme Biggar, commented that he disagreed with the High Court's decision to discharge the UWOs: "The NCA is tenacious. We have been very clear that we will use all the legislation at our disposal to pursue suspected illicit finance and, indeed, we will continue to do so."¹²⁰ However, the NCA's appeal was refused.¹²¹

¹¹⁴ <https://www.spotlightcorruption.org/the-ncas-kazakh-unexplained-wealth-order-uwo-a-costly-decision/>. Accessed 11 February 2022.

¹¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621205/Impact_Assessment_-_UWOs.pdf, para 18. Accessed 11 February 2022.

¹¹⁶ <https://www.spotlightcorruption.org/the-ncas-kazakh-unexplained-wealth-order-uwo-a-costly-decision/>. Accessed 11 February 2022.

¹¹⁷ <https://www.reuters.com/article/uk-britain-kazakhstan-idUKKBN24012X>. Accessed 11 February 2022.

¹¹⁸ <https://eurasianet.org/kazakhstan-nazarbayev-wealth-ruling-dismays-transparency-campaigners>. Accessed 11 February 2022.

¹¹⁹ *Ibid.*

¹²⁰ <https://www.fsmatters.com/National-Crime-Agency-appeals-UWOs-decision>. Accessed 11 February 2022.

¹²¹ <https://www.natlawreview.com/article/not-so-fast-uk-court-appeal-denies-nca-shot-redemption-following-first-uwo-defeat>. Accessed 11 February 2022.

TIMELINE OF A FAILURE



24 February 2015

Rakhat Aliyev, a former Kazakh police chief and son-in-law of the President of Kazakhstan, Nursultan Nazarbayev is found hanged in his cell in Austria, where he was awaiting trial for the alleged murder of two bank officials in Kazakhstan.¹²²



22 July 2015

Global Witness release *Mystery on Baker Street* which details a £147 million London property empire “owned by a mysterious figure with close ties to a former Kazakh secret police chief” Rakhat Aliyev. This includes a large office block on London’s Baker Street, home of the famous fictional character Sherlock Holmes.¹²³



28 July 2015

In a speech regarding corruption, Prime Minister David Cameron refers to “allegations of links between a former Kazakh secret police chief and a London property portfolio worth nearly £150 million.”¹²⁴



4 April 2016

OCGRP reports that Nurali Aliyev “hid assets offshore”, based on information provided by the Panama Paper link.¹²⁵



5 April 2018

Quartz publishes a story suggesting that “the properties [mentioned in the Global Witness report] have belonged at least in part to one or more family members of Kazakhstan’s president, Nursultan Nazarbayev... among others, Nazarbayev’s grandson Nurali Aliyev is tied to the property and his daughter, Daria Nazarbayeva, also may be linked.”



22 May 2019

An *ex parte* hearing was held at the High Court, and three UWOs were made, the applications of which were issued one week earlier by the National Crime Agency (NCA). The orders were against property worth £80 million. The suspected owner of the properties was not named by the NCA, but its press release said it was a “politically exposed person believed to be involved in serious crime.”¹²⁶



22 July 2019

The respondents’ lawyers, Mishcon de Reya, inform the NCA that they wished to volunteer information and request an extension.¹²⁷



9 August 2019

Mishcon de Reya send a 19-page letter to the NCA, accompanied by 268 pages of documents, identifying the owners of the properties as Dariga Nazarbayeva and Nurali Aliyev. Mishcon’s aim is to demonstrate why the UWOs had, in its opinion, been obtained on an “inaccurate basis” and should therefore be discharged.¹²⁸ The NCA respond 11 days later to say that it will not be discharging the orders.



10/11 March 2020

The hearing regarding whether the UWOs should be discharged is heard in the High Court. Various outlets report that the UWOs were issued against two properties owned by Dariga Nazarbayeva, and one by Nurali Aliyev. The NCA “suspects all three of the mega properties in London were bought with riches embezzled by Mr [Nurali] Aliyev’s notorious and now dead father [Rakhat Aliyev].”¹²⁹ One of the properties,

a mansion in Highgate, featured in the Global Witness report is subject to the UWO, yet the office/apartment block on Baker Street is not.



8 April 2020

The High Court rules against the NCA, discharging the UWOs. The judge finds that the NCA’s assumption that Rakhat Aliyev was the source of the money used to buy the three properties was “unreliable”. The NCA says it plans to appeal.¹³⁰



17 June 2020

The Court of Appeal rejects the NCA’s attempt to have the High Court’s discharge of the UWOs reviewed, saying the appeal had “no real prospects of success”.¹³¹



29 June 2020

It is reported that Nurali Aliyev and others submitted a demand for £1.5 million in costs from the NCA in relation to the NCA case.¹³²



10 November 2020

Citing leaked documents, investigative website SourceMaterial confirms that the owner of the Baker Street property in 2015 was Dariga Nazarbayeva. It also alleges that Dariga may have misled the High Court in the evidence she submitted concerning one of the properties subject to an UWO. This allegation is strongly denied by Nazarbayeva (see page 47).¹³³

¹²² <https://www.theguardian.com/world/2015/feb/24/kazakh-leaders-ex-son-in-law-rakhat-aliyev-found-dead-in-austrian-jail>. Accessed 11 February 2022.

¹²³ <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/mystery-baker-street/>. Accessed 11 February 2022.

¹²⁴ <https://www.gov.uk/government/speeches/tackling-corruption-pm-speech-in-singapore>. Accessed 11 February 2022.

¹²⁵ <https://www.ocgrp.org/en/panamapapers/kazakh-presidents-grandson-offshores/>. Accessed 11 February 2022.

¹²⁶ <https://www.bbc.com/news/uk-48438014>, <https://www.nationalcrimeagency.gov.uk/news/nca-secures-unexplained-wealth-orders-for-prime-london-property-worth-tens-of-millions>. Both accessed 11 February 2022.

¹²⁷ NCA v Baker Judgment, paras 5–6.

¹²⁸ Ibid.

¹²⁹ <https://www.financeuncovered.org/uncategorized/unexplained-wealth-order-focuses-on-london-mansion/>, <https://www.bbc.com/news/uk-51809718>. Both accessed 11 February 2022.

¹³⁰ <https://www.bbc.com/news/uk-52216011>. Accessed 11 February 2022.

¹³¹ <https://www.pinsentmasons.com/out-law/news/court-appeal-attempt-review-rejection-unexplained-wealth-orders>. Accessed 11 February 2022.

¹³² <https://www.reuters.com/article/uk-britain-kazakhstan-idUKKBN24012X>. Accessed 11 February 2022.

¹³³ <https://www.source-material.org/blog/sherlock-holmes-and-the-mystery-of-the-kazakh-millions>. Accessed 11 February 2022.

THE NCA: KLEPTOCRACY IGNORED?



This chapter delves deeper into some of the main issues that led to the dismissal of the UWOs in *NCA v Baker*. It highlights how the NCA paid little attention to the corrupt underpinnings of the political economy of Kazakhstan, a kleptocracy built around the family of the country's first president, Nursultan Nazarbayev, which allowed members of this family to accrue billions of dollars in opaque and questionable circumstances. The NCA's case failed as it attempted to tie the properties to Dariga Nazarbayeva's criminal ex-husband, Rakhat Aliyev, even after it was revealed that the beneficial owners of the properties were Dariga Nazarbayeva and Nurali Aliyev. However, despite parts of the NCA's case being faulty, its central tenet – that there is little separation between Dariga and Rakhat's wealth – is predominantly true, based on other publicly available information and further research.

1. KAZAKHSTAN: THE PERFECT KLEPTOCRACY?

Academic literature on Kazakhstan has repeatedly highlighted the inextricable connections between business and politics.¹³⁴ According to the political scientist Eric McGlinchey, Kazakhstan has a "dynastic" model of rule,¹³⁵ while Dinissa Duvanova remarks that the country is "notorious for its administrative and political corruption".¹³⁶ The line between public and private in Kazakhstan is virtually non-existent, and is open to abuse by powerful politicians, their family members and their associates. According to KPMG, by 2019, the year

Nursultan Nazarbayev stepped down as president (but retained his position as chair of the Security Council, a position he held until January 2022), Kazakhstan's richest 162 people own 55 per cent of the country's wealth.¹³⁷ Many of these individuals are members of the Nazarbayev family, or have close connections to this family or other senior Kazakh politicians.¹³⁸ The country is an autocracy, with little room for political and civil freedoms: in 2021, Freedom House gave Kazakhstan 23 out of 100 for political rights and civil liberties, ranking the country as 'not free'.¹³⁹



¹³⁴ Nazpary, Joma. *Post-soviet chaos: Violence and dispossession in Kazakhstan*. Pluto Press (UK), 2002; Schatz, Edward. *Modern clan politics: the power of "blood" in Kazakhstan and beyond*. University of Washington Press, 2004; Ostrowski, Wojciech. *Politics and Oil in Kazakhstan*, Routledge, 2009; Yessenova, Saulesh. "Chapter 14. The Political Economy Of Oil Privatization In Post-Soviet Kazakhstan". *Subterranean Estates: Life Worlds of Oil and Gas*, edited by Hannah Appel, Arthur Mason and Michael Watts, Ithaca, NY: Cornell University Press, 2015, pp. 291-306.

¹³⁵ McGlinchey, Eric. *Chaos, violence, dynasty: politics and Islam in Central Asia*. University of Pittsburgh Press, 2011, p7.

¹³⁶ Duvanova, Dinissa. *Building business in post-communist Russia, Eastern Europe, and Eurasia: Collective goods, selective incentives, and predatory states*. Cambridge University Press, 2013, p81.

¹³⁷ <https://assets.kpmg/content/dam/kpmg/kz/pdf/2019/09/KPMG-Private-Equity-Market-in-KazakhstanENG-2019.pdf>, p24.

¹³⁸ Forbes' list of the 50 richest people in Kazakhstan include Nursultan Nazarbayev's second daughter Dinara, his son-in-law Timur Kulibayev, his former chief-of-staff and adviser Bolat Utemuratov, Vladimir Kim (an associate of another former Nazarbayev chief-of-staff), the Sarsenov family (Rashit Sarsenov is a former partner of Rakhat Aliyev, Dariga Nazarbayeva sold her shares in Nurbank to Rashit's sister), Nurali Aliyev, and other people who are associates of these people (for example, Aidan Karabzhanov is an associate of Timur Kulibayev; Eduard Ogai and Oleg Novachuk are business partners of Vladimir Kim, and so on).

https://forbes.kz/leader/50_bogateyshihi_biznesmenov_kazahstana_-_2021_1621273818/. Accessed 11 February 2022.

¹³⁹ <https://freedomhouse.org/country/kazakhstan/freedom-world/2021>. Accessed 11 February 2022.

The generation of capital in such a system is based on nepotism, cronyism, conflicts of interest, and the abuse of the political, judicial and prosecutorial process – in one word, corruption. Over the last two decades, civil society organisations and media outlets have documented many corruption cases pertaining to Kazakhstan – including one that featured Nursultan Nazarbayev himself while president – that demonstrate how the Kazakh elite abuse their positions of power to enrich themselves and siphon the capital abroad.¹⁴⁰ As a former chief of Kazakhstan's tax police, and deputy chief of the KNB (Kazakhstan's state security service) Rakhat Aliyev was notorious for expropriating businesses and threatening would-be rivals.¹⁴¹ In such a system, the very idea of being wealthy independent of one's familial link to the country's leaders is questionable, and the balance of probability insists that we should

assume mutual dependence – that to be successful in business one needs a political patron – unless proven otherwise.

What is striking is how, given the above, little focus was placed by the NCA upon Dariga Nazarbayeva's position in Kazakh society as the eldest daughter of the country's then president, and how this likely allowed her to accrue capital. In the entire two days of court hearings, Dariga's relationship to the president was not alluded to, and the president himself, Nursultan Nazarbayev, was not mentioned by name.¹⁴² One could argue these essential facts of her background were not in dispute, and that the judge would have already been acquainted with pre-submissions – statements of case, evidence, and so forth – which have not been made available to the public. However, in the information that is publicly available, although the NCA did highlight the high

levels of corruption in Kazakhstan, it did so without emphasising the key element of "grand corruption" – where a country's leaders and their family members take advantage of their control of the economy to extract capital, a fundamental aspect of Kazakhstan's system of governance. Indeed, in its skeleton argument for the discharge hearing, the NCA only refers to Nazarbayeva's familial link to the president and the fact that Kazakhstan is a kleptocracy once, in the same sentence.¹⁴³

¹⁴⁰ This case featuring Nazarbayev, commonly referred to as "Kazakhgate", led to the indictment of an American businessman, James Giffen. According to the indictment, Giffen had arranged for a network of shell companies, registered in the British Virgin Islands and the Bahamas, to open accounts in Swiss banks. Investigators showed that several accounts were controlled by Nursultan Nazarbayev and contained over \$61.8 million, money that was related to oil deals struck by the Kazakh government. See Southern District of New York, United States Of America V James H. Giffen, Defendant. Sealed Complaint. (filed 28 May 2003), <http://www.justice.gov/sites/default/files/criminal-fraud/legacy/2011/02/16/03-28-03giffen-complaint.pdf>. The indictment does not refer to Nazarbayev by name, but as "KO-2". However, a document from an appeal court in relation to the case states that the bribes were made to "the President of Kazakhstan": United States Court of Appeals for the Second Circuit. United States of America V James H. Giffen, Defendant-Appellee. (8 December 2006 – decision), <http://www.justice.gov/sites/default/files/criminal-fraud/legacy/2011/02/16/12-08-06giffen-opinion.pdf>. Ultimately Giffen agreed to plead guilty to a FCPA bribery charge, which involved the giving of snowmobiles to President Nazarbayev and his wife. See <http://www.justice.gov/opa/pr/new-york-merchant-bank-pleads-guilty-fcpa-violation-bank-chairman-pleads-guilty-failing>. For other Kazakh corruption cases see *Risky Business* (Global Witness), *Bad Connection* (Freedom for Eurasia), *Kleptopia* (Tom Burgis), *Baker Hughes Subsidiary Pleads Guilty to Bribing Kazakh Official and Agrees to Pay \$11 Million Criminal Fine as Part of Largest Combined Sanction Ever Imposed in FCPA Case* (US Department of Justice), *Tax authorities catch up with hidden 'Kazakhgate' commission* (Intelligence Online) amongst others. All accessed 11 February 2022.

¹⁴¹ https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf, p11, 12. Accessed 11 February 2022.

¹⁴² Court Transcript, 10 March 2020, p39. Ms Justice Lang refers to Rakhat's claim that the divorce "occurred under pressure from his father-in-law" without explicit mention as to who this is. Clearly both sides acknowledged that Dariga was President Nazarbayev's daughter, and of course it would not have been in Mishcon's interest to focus too much on this relationship as its argument was that Dariga's wealth is independent of her position. However, it is surprising that the NCA did not develop the argument seemingly at all.

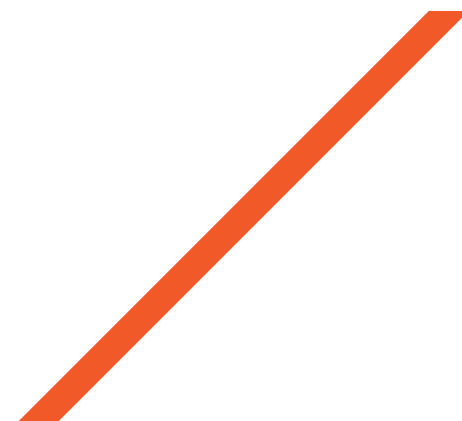
¹⁴³ The NCA questions the reliability of certain documents: "in a country which is widely regarded as a kleptocracy, at a time when RA's former father-in-law, DN's father, and NA's grandfather was the President." See *In The High Court Of Justice Queen's Bench Division Administrative Court between:- (1) Mr Andrew Baker, (2) Villa Magna Foundation, (3) Manrick Private Foundation, (4) Alderton Investments Limited, (5) Tropicana Assets Foundation (Applicants) V National Crime Agency. NCA's Skeleton Argument For The Discharge Hearing On 10 And 11 March 2020*, (from here "NCA v Baker NCA's Skeleton Argument for the Discharge Hearing"), para 45.4. As discussed on page 38, the NCA maintains that it took this approach because the majority of the respondents' grounds for dismissal were related to the respondents not meeting the requirements of the UWO legislation in their opinion.

This allowed the respondents' lawyers to reframe Kazakhstan as hardly affected by grand corruption. At one point during the court hearing, one lawyer appeared to suggest that Kazakhstan is on a par with Australia and Japan when it comes to money laundering risk. She cited the fact that Kazakhstan is not on the EU's list of high-risk countries, and was only included, along with Australia and Japan, as one of 132 countries that required more assessment.¹⁴⁴ However, relying on such lists is problematic. According to academic research on this topic: "Jurisdictions end up on these lists for failing to implement a set of international standards, not necessarily because they pose actual money laundering or tax evasion/avoidance threats. As a result, there is a tenuous relationship between actual risk and the propensity to end up on such lists."¹⁴⁵

The lawyer concluded this point by saying, "when one is dealing with PEPs and with countries... you do not just make sweeping generalisations, which seems to be the case in the submissions that were made."¹⁴⁶ This is a gross misrepresentation of the research that has been done on kleptocracies, and on Kazakhstan and its ruling family in particular. It fails to take into account the obvious disparity between the risk of money laundering posed by PEPs from a democracy and those from an autocracy, such as Kazakhstan.

However, the UWOs were not dismissed because of failings in the evidence concerning whether the wealth of Dariga Nazarbayeva and her son was legitimate or not. As Mishcon itself stated in correspondence with the authors: "The NCA did not obtain the UWO, nor seek to maintain it, on the basis that the source of funds to purchase 33 Bishops Avenue [Nurali Aliyev's mansion] were derived in whole or in part from unspecified unlawful conduct arising from the operation of an alleged kleptocracy involving the Nazarbayeva-Aliyev family."¹⁴⁷

The UWOs were dismissed, amongst other reasons, because of the supposed flawed nature of the NCA's argument that the properties derived from wealth acquired by Rakhat Aliyev, and because it failed to properly assess the information supplied by Mishcon. It is interesting to speculate what would have been the result had the NCA chosen to focus on Nazarbayeva's sources of wealth as a politically exposed person. It could have drawn on ample material in the public domain concerning her business dealings.



¹⁴⁴ See https://ec.europa.eu/info/sites/default/files/list_of_scoping-priority-hrtc_aml-cft-14112018.pdf. Accessed 11 February 2022.

¹⁴⁵ https://assets-global.website-files.com/5e0bd9edab846816e263d633/5f15bdfd2d5bdd2c58a76854_FACTI%20BP5%20-%20Anti%20corruption%20measures.pdf, p14. Accessed 11 February 2022.

¹⁴⁶ Court Transcript, 11 March 2020, p92.

¹⁴⁷ Correspondence between Mishcon de Reya and Prof. John Heathershaw, 29 September 2021.

2. WHY DID THE NCA CONTINUE TO CONCENTRATE ON LINKS WITH RAKHAT ALIYEV?

It is clear from court testimony and submissions made to the judge that the NCA disputed the veracity of what Mishcon and the respondents disclosed,¹⁴⁸ and felt that there were certain omissions that could be used to support its original theory. Yet despite the fact that the respondents via Mishcon revealed that the beneficial owners of the properties were Dariga Nazarbayeva and Nurali Aliyev, the NCA did not significantly alter its case.

The NCA had various options: if it believed that the fundamental information upon which it obtained the UWOs was incorrect, but still had issues with the factual basis of the respondents' reply, it could have agreed to the discharge of the UWOs and applied for new ones. These new UWOs could have been issued with the same respondents and an amended argument, or the NCA could also have issued UWOs with Dariga Nazarbayeva and Nurali Aliyev as the respondents, as the conditions needed for a UWO to be upheld would still arguably be met: they owned the property, the properties' value was over £50,000, and Nazarbayeva, as the then chair of the Kazakh Senate, was a politically exposed person (PEP).¹⁴⁹ As the child

of an incumbent member of a political body outside the UK and European Economic Area, Nurali Aliyev would also have met this requirement.¹⁵⁰ According to the legislation, if the respondent is a PEP, there is no need to also show an involvement in serious crime. There would have likely been considerable legal debate over the fourth condition – whether the known sources of wealth of Dariga Nazarbayeva and Nurali Aliyev were sufficient to purchase the properties – but the NCA clearly believed, judging by court testimony, that Dariga Nazarbayeva's known sources of wealth were not legitimate.¹⁵¹

A discharge of the existing UWOs may not have been necessary; it is possible that the case could have continued pending what was essentially an amendment of the case regarding the identities of correct respondents. In the end, the NCA did not resile from the UWOs which had been obtained, and confirmed its position to Mishcon eleven days after it received the documentation from the law firm. In essence it continued to pursue the line of argument regarding possible links the properties possessed to Rakhat Aliyev, which was in hindsight an error, given the dismissal of the UWOs. In response to this point, the

NCA commented that only one of the grounds given in Mishcon's discharge application related to the voluntary material which had been provided by it after the *ex parte* hearing.¹⁵² In other words, Mishcon's main argument for the dismissal of the UWOs centred around its opinion that the UWOs did not meet the requirements set out in the legislation, arguing, for example, that the solicitor Andrew Baker was not a PEP nor was linked to a person involved in serious crime.

However, in discharging the orders Ms Justice Lang concentrated much of her judgment on Mishcon's supplementary information, citing the NCA's "inadequate investigation into some obvious lines of enquiry" and stating that the "the NCA failed to carry out a fair-minded evaluation of the new information provided by the UBOs and Respondents".¹⁵³ The NCA's primary position was that this material could not be relied upon, yet clearly it did not do enough to explain exactly why it could not be relied upon. It is one of this report's main arguments that a large part of this failure was not explaining to the court the kleptocratic underpinnings of Kazakhstan's political economy.

¹⁴⁸ Mr Hall [instructed by NCA Legal Department]: "The NCA are sceptical about the documents that have been provided in the letter. Of course, we can see what they say, but whether they are accurate, whether they are genuine documents, whether they have been invented in order to try and meet this case or not." Court Transcript, 11 March 2020, p59.

¹⁴⁹ This aspect was discussed in court: "Mr Hall [instructed by NCA Legal Department]: [...] if one is looking at the case now and one is taking the documents at face value and one is asking whether or not the statutory test is made out, it is made out because DN is a PEP. Ms Justice Lang: But that is not the basis on which you put your case." (Court Transcript, 11 March 2020, p75).

¹⁵⁰ Section 326B of the Criminal Finances Act 2017 states that a politically exposed person is "(a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State, (b) a family member of a person within paragraph (a)." <https://www.legislation.gov.uk/ukpga/2017/22/section/1/enacted>. Accessed 11 February 2022.

¹⁵¹ Mr Hall [instructed by NCA Legal Department]: "There is no reason to believe that Rakhat Aliyev was a legitimate businessman any more than there is to believe that Dariga Nazarbayeva was or is a legitimate business woman." (Court Transcript, 11 March 2020, p42).

¹⁵² Correspondence between the National Crime Agency and Prof. John Heathershaw, 28 January 2022. The discharge application referred to by the NCA in its response is not a publicly available document, and an application for permission to view this document would have to be made to the enforcement authority, with an administrative fee to be paid. The authors did not pursue an application, given time constraints. However, the grounds for dismissal are referred to in the NCA's Skeleton Argument for the Discharge Hearing, and in the judgment, and the general thrust of these grounds can be inferred as a result.

¹⁵³ NCA v Baker Judgment, para 217.

3. WERE RAKHAT AND DARIGA'S BUSINESSES SEPARATE?

After the UWOs were dismissed, Clare Montgomery QC, representing Dariga Nazarbayeva, told the court that the NCA's case was "tissue thin", and accused the NCA of "an absurdly patriarchal view of the world... [that] there is a woman who is economically active throughout the period who might just have conceivably earned her own money through her own wits in support of the family rather than simply sitting back and taking what might be produced by her husband or son."¹⁵⁴

However, this was not the story Nazarbayeva was presenting when she was still married to Rakhat, when she was reported by Russian newspaper *Moskovskiy komsomolets* as saying: "The last time my dad [Nursultan Nazarbayev] gave me money was when I was in university. As soon as I got married, he said: 'Your family is Rakhat, so let him feed you'. Rakhat started, like many others – he took goods for sale, guarded the cargo, carried it through customs, earned start-up capital with his own hands."¹⁵⁵

This appears to be a reference to the couple's life prior to the collapse of the Soviet Union, but this comment, made in 2004, paints a picture of Rakhat being the main 'bread winner' in the family. Yet in its initial response to the UWO, Mishcon attempted to paint Nazarbayeva as someone independently

creating her own wealth, without any involvement from her husband: "Since 1992, she has developed a portfolio of business interests predominantly in the areas of food (including sugar), cars, media, banking and real estate development."¹⁵⁶ Clearly, the aim is to separate Nazarbayeva's businesses from those of her ex-husband, who has been linked to serious crime and formed the basis of the NCA's UWO investigation.

Mishcon gave more details of the first business created by Nazarbayeva in 1992:

*Through this first business, DN [i.e. Dariga Nazarbayeva] traded sugar, confectionary, beverages and cigarettes. DN began operating this business at a time when there was very little availability of such goods and demand was substantial. She was one of many entrepreneurial individuals who capitalised on the economic reforms in Kazakhstan at this time. The goods were acquired under the terms of a consignment agreement and accordingly no initial capital was required.*¹⁵⁷

However, anybody looking to verify these claims would be unable to do so, as, according to Mishcon, documents relating to this business "are no longer available", given the passage of time, despite "significant efforts" to locate them. Mishcon added that

Nazarbayeva herself estimates that she made possibly as much as US\$40-45 million during this three-year period.¹⁵⁸ There was no mention by the NCA in its argument of how Nazarbayeva could have abused her position as a member of the president's family to monopolise these trading businesses that she created, push out competitors, and generate capital. The claims of illegitimacy that the NCA does make are all rather non-specific: "The fact of estrangement [following Rakhat and Dariga's divorce in 2007], even if correct, says nothing about the legitimacy of assets retained or acquired by DN after the same."¹⁵⁹

Instead, in its rebuttal, the NCA points out the apparent joint nature of Rakhat and Dariga's business interests until their divorce in 2007: "The only supporting document in the 9 August letter [from Mishcon] is a Forbes Kazakhstan profile for DN... which identifies her involvement in a number of industries and companies which are known to have been linked to RA [Rakhat Aliyev]."¹⁶⁰ The NCA also references an interview with Rakhat in which he said: "My ex wife and I owned the companies [in the sugar, media and banking industries] jointly and we owned it in equal shares... For me it is hard to divide what was done by myself and what was done by my ex wife."¹⁶¹

¹⁵⁴ Court Transcript, 10 March 2020, p29. Also cited in <https://www.bbc.com/news/uk-51809718>. Accessed 11 February 2022.

¹⁵⁵ *Moskovskiy komsomolets*, 16 July 2008. Translated from the Russian by the authors. The original reads: "Папа в последний раз давал мне деньги, когда я училась в университете. Стоило мне выйти замуж, как он заявил: 'Твоя семья — Рахат, вот пусть он тебя и кормит'. Начинал Рахат, как многие — брал товар на реализацию, караулил груз, проводил его через таможню, собственными руками зарабатывал стартовый капитал.". The article was published in 2008, although one part of the article attributes another of Dariga's comments as being made "four years ago".

¹⁵⁶ *NCA v Baker* Judgment, para 71, subpara 3.13.

¹⁵⁷ *NCA v Baker Respondents' Skeleton Argument*, para 53, sub para 3.15.

¹⁵⁸ *Ibid.*

¹⁵⁹ *NCA v Baker Skeleton Argument for the Discharge Hearing*, para 45.1, note 35.

¹⁶⁰ *NCA v Baker Skeleton Argument for the Discharge Hearing*, para 45.3, footnotes 40-42.

¹⁶¹ *NCA v Baker Skeleton Argument for the Discharge Hearing*, footnotes 40-41.

Mishcon mentions that Nazarbayeva was involved in the sugar industry, and conceded in the court hearing that this was a family business.¹⁶² Yet the account underplays the fact that this was a business much more commonly associated with her former husband – to such a degree that Rakhat even acquired the nickname of “Sugar” in Kazakhstan in the 1990s.¹⁶³ In a statement to the UK High Court in an unrelated case, Rakhat Aliyev claimed that he founded several private companies in 1993 to 1996, including one called Sakharny Center JSC (Sugar Centre).¹⁶⁴ In his book entitled *The Godfather-In-Law*, Aliyev gives more information about this company, saying that both he and Dariga Nazarbayeva helped build it up.¹⁶⁵

Other evidence not presented by the NCA in this case suggests co-ownership of funds that even extended to their bank accounts: one investigative article indicates that Rakhat Aliyev and Dariga Nazarbayeva held three joint accounts, and a further three where the sole signatory is given as Nazarbayeva at Privatinvest Bank in Vienna, all of which were opened in June 2003. Three more Rakhat/Dariga joint accounts were opened the same month at Kathrein & Co, another private bank in Vienna.¹⁶⁶

Mishcon cites a *Forbes* article that estimated Nazarbayeva’s wealth in 2013 at \$595 million, a claim that was cited by Ms Justice Lang in her judgment.¹⁶⁷ Yet this says nothing as to the legitimacy or otherwise of that wealth, how it was earned, and whether her husband was involved, and if so, to what extent. Mishcon says that Nazarbayeva had a “portfolio of business interests” including the fact that in 1995 she founded the Khabar Agency CJSC, “which grew to become Kazakhstan’s largest broadcasting agency.”¹⁶⁸ Mishcon fails to mention that while he was still married to Dariga, Rakhat Aliyev admitted to being co-shareholders in the Khabar TV channel with his wife.¹⁶⁹ Mishcon gave no valuation on Khabar and gave few details regarding how, on supposed capital of \$45 million acquired by 1995, she accumulated \$595 million by 2013.

Tax records, information about dividends, pay slips and information from the Kazakh register of financial interests that Kazakh politicians are required to maintain would have been able to assist in these explanations – but such information does not seem to have been submitted as part of Mishcon’s case.

¹⁶² Miss C. Montgomery QC [instructed by Mishcon on behalf of three of the respondents]: “Everyone agrees that was the business that this family was in.” Court Transcript, 11 March 2020, p8.

¹⁶³ https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf, p11. Accessed 11 February 2022.

¹⁶⁴ *Ibid.* According to footnote 79, a draft version of Aliyev’s statement in Russian says that he founded various companies, including Sugar Centre, AlmaTV, Khabar, and NTK.

¹⁶⁵ Aliyev, R. (translated by White, J.A.), *The Godfather-in-Law: The Real Documentation*, Trafo Literaturverlag (Berlin), 2009, p74. “We built up the private company Sakharny Tsent with partners from the remains of the crumbling Soviet sugar industry. That was in the early 1990s...”

¹⁶⁶ <https://kiar.center/darigas-million-dollar-austrian-accounts-eurasia-democracy-initiative-releases-report-on-dariga-nazarbayevas-financial-shenanigans/>. Accessed 13 February 2022.

¹⁶⁷ *NCA v Baker Respondents’ Skeleton Argument*, para 130. *NCA v Baker Judgment*, para 68.

¹⁶⁸ *NCA v Baker Respondents’ Skeleton Argument*, para 53, sub para 3.17.

¹⁶⁹ <https://web.archive.org/web/20070223074240/https://www.rferl.org/newsline/2007/02/2-tca/tca-200207.asp>, https://www.peoples.ru/undertake/media/rahat_aliev/#!/back. Both accessed 11 February 2022. RFE/RL link was active until at least September 2007.

4. DID DARIGA NAZARBAYEVA USE KAZAKH ENFORCEMENT AGENCIES TO EXPROPRIATE BUSINESSES?

Mishcon argue that investigations in Kazakhstan concluded that Rakhat Aliyev “did not transfer illegally acquired funds or assets to DN or NA”¹⁷⁰ therefore it was deemed unnecessary by the Kazakh authorities to seize any of Dariga or Nurali’s assets: “the Kazakh prosecution authorities were asked to confirm their findings and have done so in clear terms.”¹⁷¹

However, an article by SourceMaterial suggests that Nazarbayeva may have benefitted from an unfair and politically motivated system of law enforcement, including her receipt of shares in JSC Kant, which Nazarbayeva claims she sold in order to fund one of the property purchases (See Chapter 5). Although the article was published after the conclusion of the UWO hearing, the information it drew from was in the public domain, but the NCA did not use it.

The article states that “a series of court cases and tribunals have suggested that a significant portion of her wealth was expropriated from her former husband’s allies,” most notably Rakhat’s brother-in-law and business partner, Issam Hourani, his brothers Devincci and Hussem, and their brother-in-law, Kaseem Omar. The Houranis alleged

that they and their associates were stripped of Kazakh businesses worth tens of millions of dollars, and though officially the assets were confiscated by the state, the Houranis alleged that in reality some ended up as the personal property of Dariga Nazarbayeva. According to legal documents related to the case, the Houranis told a U.S. court that “pressure from various authorities mounted” under the direction of Dariga Nazarbayeva.¹⁷²

Issam and Devincci Hourani claimed in the proceedings in the U.S. that that this harassment was due to the fallout between President Nazarbayev and Rakhat Aliyev and that they had been “deceived or coerced to assign shares in their various companies to Dariga Nazarbayeva.”¹⁷³ According to Devincci’s evidence, he met with Nazarbayeva in July 2007 (one month after she divorced from Rakhat) who then “offered to use her influence with the government to try to ‘protect’ his family’s businesses from further harassment if he would sign over his family’s shares in the mass media companies in which they held interests”. Under duress, Devincci says he signed over his family’s shares “to Dariga for her use”.¹⁷⁴

According to SourceMaterial, Kassem Omar owned a 24% stake in sugar company JSC Kant that was surrendered to Nazarbayeva.¹⁷⁵ Two other companies owned by Devincci and Omar were subject to litigation. The litigation concluded in 2017 and found the Kazakh state in breach of contract, with the tribunal awarding \$39.2 million to Hourani’s company. The tribunal “does not doubt that the claimants and their relatives have indeed been the subjects of harassment,” the arbitrators said.¹⁷⁶ In response to correspondence with the authors of this report in relation to these allegations, Mishcon commented that allegations that Dariga Nazarbayeva’s wealth derives from the proceeds of crimes committed by Rakhat Aliyev and/or the expropriation of wealth from Rakhat Aliyev’s allies at her direction were false, citing the fact that this was “confirmed by the Kazakh prosecuting authorities that carried out the confiscation proceedings.” Mishcon also commented that the alleged expropriation of wealth from Rakhat Aliyev’s allies “did not form part of the NCA’s case at any point in the proceedings”.¹⁷⁷

¹⁷⁰ NCA v Baker Respondents’ Skeleton Argument, para 53, sub para 3.12.1.

¹⁷¹ NCA v Baker Respondents’ Skeleton Argument, para 125.

¹⁷² <https://www.source-material.org/blog/herlock-holmes-and-the-mystery-of-the-kazakh-millions>. Accessed 11 February 2022.

¹⁷³ <https://jusmundi.com/fr/document/decision/en-caratube-international-oil-company-llp-v-republic-of-kazakhstan-i-award-tuesday-5th-june-2012>. Accessed 11 February 2022.

¹⁷⁴ <https://casetext.com/case/hourani-v-alexander-v-mirtchev-krull-corp>. Accessed 11 February 2022.

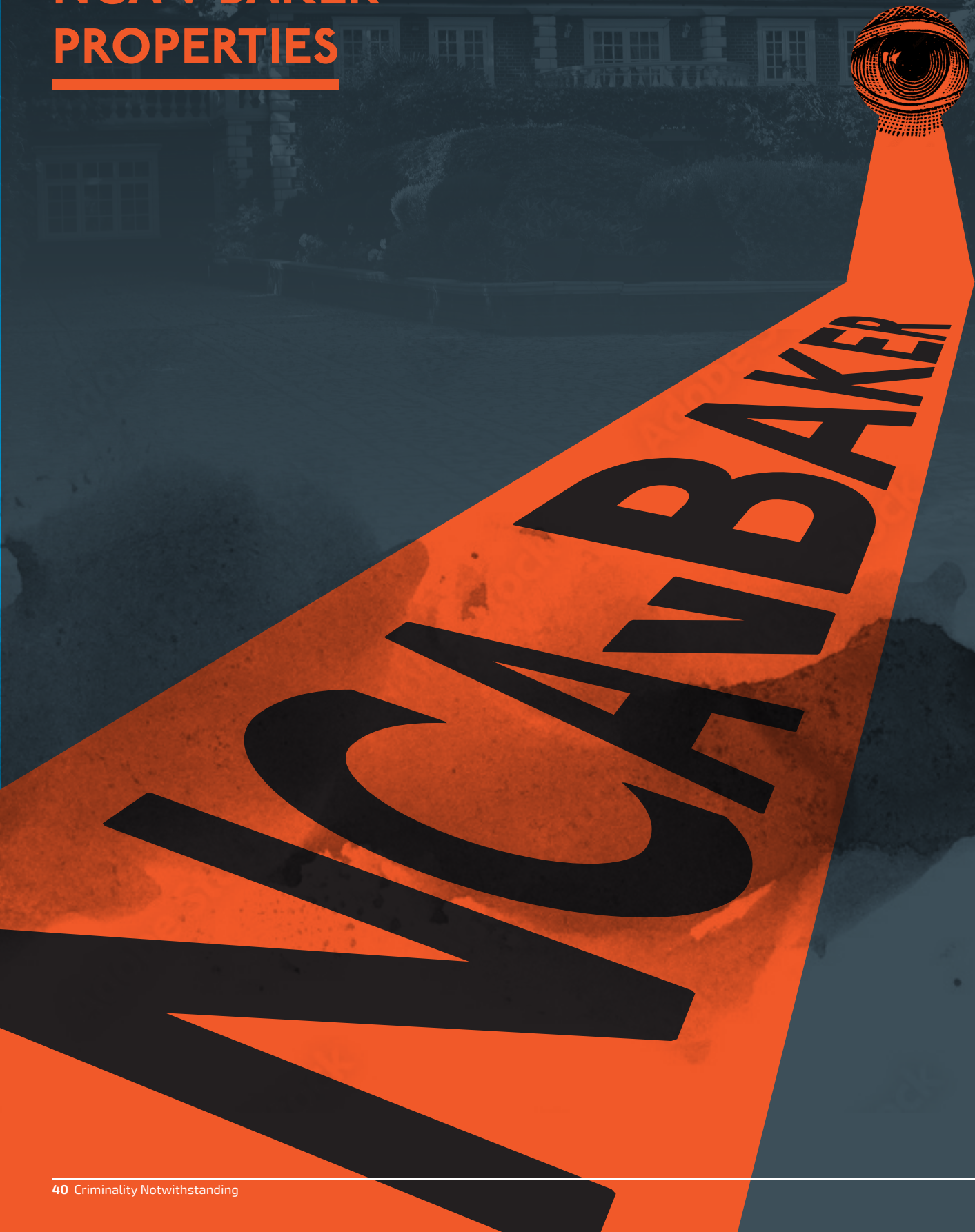
¹⁷⁵ <https://www.source-material.org/blog/herlock-holmes-and-the-mystery-of-the-kazakh-millions>. Accessed 11 February 2022.

¹⁷⁶ <https://kiar.center/darigas-million-dollar-austrian-accounts-eurasia-democracy-initiative-releases-report-on-dariga-nazarbayevas-financial-shenanigans/>, <https://www.source-material.org/blog/herlock-holmes-and-the-mystery-of-the-kazakh-millions>. Both accessed 13 February 2022.

¹⁷⁷ Correspondence from Mishcon de Reya to Prof. John Heathershaw, 29 September 2021.

CHAPTER 5

A CLOSER LOOK AT THE NCA v BAKER PROPERTIES



This chapter takes an in depth look at the information Dariga Nazarbayeva and Nurali Aliyev released to explain the source of funds used to buy the three properties that had been issued with UWOs. Not only does this section serve as the kind of investigation the NCA could have mounted based on the available evidence, but it provides points of further research, as questions remain regarding the purchase of all three properties, as documented below.

WHICH PROPERTIES WERE SUBJECT TO UWOS?

32 Denewood Road, Highgate

Purchased on 2 April 2008 for £9.3 million. A 2019 desktop appraisal valued the property in the region of £6 million.¹⁷⁸ The mansion sits next to the entrance of the exclusive Highgate golf club and contains seven bedrooms and an indoor swimming pool.¹⁷⁹ According to Mishcon, the property was held by Nurali on trust for his mother, through a company called Twingold Holding Ltd that was owned in turn by Dariga, Nurali and a company called Sagitta Business Corp. According to Mishcon, Nurali was the beneficial

owner of Sagitta, but it only provided to the court documents that indicated this as of 19 February 2008, two months before the property purchase.¹⁸⁰ The property was later transferred to a Panamanian private interest foundation, Villa Magna, which held the property for Dariga Nazarbayeva.¹⁸¹ A French lawyer was the original president of the foundation, but was replaced in 2015 by Andrew Baker, a British solicitor based in Liechtenstein.¹⁸² The house was put on sale in March 2021 for £9.5 million, later reduced to just under £9 million.¹⁸³

¹⁷⁸ *NCA v Baker* Respondents' Skeleton Argument, para 24.

¹⁷⁹ Google maps (32 Denewood Road, N6 4AH); https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf, p8. Accessed 11 February 2022.

¹⁸⁰ *NCA v Baker* Judgment para 73, sub para 4.4; *NCA v Baker* Respondents' Skeleton Argument, para 158 (i).

¹⁸¹ *NCA v Baker* Respondents' Skeleton Argument, para 158 (iv).

¹⁸² *NCA v Baker* NCA's Skeleton Argument for the Discharge Hearing, para 22.7 and footnote 32.

¹⁸³ https://www.zoopla.co.uk/for-sale/details/57992238/?search_identifier=94c7e9dc6c3d5dec775e2d16849a8c3b. Accessed 8 March 2022.

Apartments 9 & 14, 21 Manresa Road

Purchased on 20 September 2010 for £31 million. A desktop appraisal from 2019 valued the property in the region of £40 million.¹⁸⁴ The property combines two large flats in a 19th century Victorian building that was formerly part of King's College. Each flat has a private garden as well as access to an enclosed communal garden.¹⁸⁵ A similar property in the same building boasts of seven bedrooms, seven bathrooms, a formal dining room, a gourmet kitchen, breakfast room, family room, and a second floor loft.¹⁸⁶ A flat in the same block went for £27 million in 2004, a then record for the UK.¹⁸⁷ According to Mishcon, the property belonged to Nazarbayeva, having bought the property through a company called Dedomin International Ltd.¹⁸⁸ In March 2013, the legal title was transferred from Dedomin to Tropicana Assets, a Panamanian foundation.¹⁸⁹ Like with Villa Magna, the same French lawyer was the original president of the foundation, but was replaced in 2015 by Andrew Baker.¹⁹⁰

33 Bishops Avenue

This house – located on the so-called “Billionaires’ Row” – was purchased on 20 May 2008 for £39.5 million.¹⁹¹ The figure is surprising, seeing that the property’s previous owner, Hossein Ghandehari, bought it in July 2002 for just £4.21 million, almost ten times less.¹⁹² A Swiss bank, Julius Baer, valued the property in August 2008 at £37 million and the property was marketed at £45 million.¹⁹³ Barclays valued the property at £35 million in 2013,¹⁹⁴ yet in 2019 Savills considered the purchase price as well in excess of the property’s true value at the time, and valued it at a much lesser value – £15 million.¹⁹⁵ Ghandehari, an Iranian investor, is the son of Hourieh Peramam,¹⁹⁶ a businesswoman originally from Kazakhstan, who also owns a house on the same road, which she bought for £50 million in 2008.¹⁹⁷ In an article regarding this property purchase, Ghandehari said that his family has a personal relationship with Nursultan Nazarbayev, the then president of Kazakhstan.¹⁹⁸

33 Bishops Avenue has an underground pool, “tropical showers” (presumably an outdoor shower/garden area), a glass-domed roof, a dedicated cinema and separate quarters for staff.¹⁹⁹ The mansion belonged to Nurali Aliyev and was lived in by him and his wife and children. Nurali bought the house through an offshore company, Riviera Alliance Inc, which was wholly owned by Nurali’s company Greatex Trade and Invest Corp. In March 2013, Nurali’s Greatex transferred its shares in Riviera to Manrick Private Foundation, incorporated in Curaçao, and the legal title for the property was transferred from Riviera to Manrick.²⁰⁰

¹⁸⁴ *NCA v Baker Respondents’ Skeleton Argument*, para 39.

¹⁸⁵ <https://web.archive.org/web/20210126192314/https://www.multiplex.global/projects/21-manresa-road-london-uk/>. Accessed 13 February 2022, link was last active in January 2021.

¹⁸⁶ <https://homesoftherich.net/2017/03/29-5-million-apartment-in-london-england/>. Accessed 11 February 2022.

¹⁸⁷ <https://www.theguardian.com/money/2004/apr/05/property.homebuying>. Accessed 11 February 2022.

¹⁸⁸ *NCA v Baker Respondents’ Skeleton Argument*, para 170.

¹⁸⁹ *NCA v Baker Judgment*, para 156.

¹⁹⁰ *NCA v Baker NCA’s Skeleton Argument for the Discharge Hearing*, para 22.7 and footnote 32.

¹⁹¹ *NCA v Baker Respondents’ Skeleton Argument*, para 181.

¹⁹² HM Land Registry, title number NGL2671 (33 The Bishops Avenue London N2 0BN), May 2008.

¹⁹³ *NCA v Baker Judgment*, para 176, sub para 5.22.

¹⁹⁴ *NCA v Baker Judgment*, para 176, sub para 5.13.

¹⁹⁵ *NCA v Baker Judgment*, para 176, sub para 5.22.

¹⁹⁶ https://www.glentree.co.uk/binary_data/6635_es_a3.pdf. Accessed 11 February 2022.

¹⁹⁷ <https://www.standard.co.uk/hp/front/woman-owner-of-ps50m-home-was-once-a-penniless-refugee-6683381.html>. Accessed 11 February 2022.

¹⁹⁸ <https://www.insider.com/london-billionaires-row-toprak-mansion-gorbachev-party-2019-11>. <https://www.bbc.co.uk/news/uk-51809718>

¹⁹⁹ <https://www.bbc.co.uk/news/uk-51809718>. Accessed 11 February 2022.

²⁰⁰ *NCA v Baker Respondents’ Skeleton Argument*, para 185.

PROPERTY 1:
32 DENEWOOD ROAD

Property bought with proceeds from JSC Kant share sale



1. WAS RAKHAT AND DARIGA'S DIVORCE GENUINE AND LEGAL?

According to Mishcon, Nazarbayeva funded the £9.3 million purchase of one of the UWO properties – the mansion in Highgate – by selling the shares in a sugar company called JSC Kant. Mishcon argued that these shares were acquired by her on 29 June 2007 as part of the divorce settlement with Rakhat Aliyev, which meant that she received the shares for nothing.²⁰¹ As the NCA's lawyer pointed out in the court hearing, this appeared to contradict Nazarbayeva's argument that her wealth was independent from Rakhat: "Dariga Nazarbayeva has been riding sort of two horses. On the one hand, she has been saying, 'I am a really lucky divorcee, I received this money from my husband', on the other hand, she has been saying, 'I am a captain of industry. I am an independent economic actor'."²⁰²

Rakhat even disputed that the divorce was legal: he said that it was performed without his consent, and that his signature was forged,²⁰³ which would be fraud if true. The disputed

nature of the divorce was raised by the NCA who mentioned that according to Rakhat, Dariga herself said to him that: "My father pressured me. He threatened to take all our possessions and all our assets."²⁰⁴ It is unclear what research the NCA performed to attempt to verify Rakhat Aliyev's allegation of fraud regarding the divorce. Clearly, the Kazakh authorities would have provided no assistance in this matter. It is also unclear what primary evidence was presented to the court by Mishcon to establish that the divorce was genuine and legally executed.

A key reason behind the apparent divorce was the fact that Rakhat Aliyev had challenged his father-in-law, the then leader of the country, by saying that he was going to run for the Kazakh presidency.²⁰⁵ The date of the divorce – June 2007 – came only a few weeks after Rakhat was charged by the Kazakh authorities for a variety of crimes, including racketeering.²⁰⁶

In this context, regardless of the legality or otherwise of the divorce documentation itself, the divorce can be seen as a way for the ruling family of Kazakhstan – of which Rakhat was now no longer a member – to remove lucrative assets from a political rival and maintain its power. The NCA appeared to present no information about how in Kazakhstan enforcement bodies and law courts, including divorce courts, could be used in this fashion.

²⁰¹ NCA v Baker Respondents' Skeleton Argument, para 155. This is confirmed by JSC Kant's 2007 report which says that shares were transferred by Rakhat to Dariga as a 'gift' (*darenie*) on 29 June 2007, see https://kase.kz/files/emitters/KANT/kantp_2007.pdf, p3. Accessed 11 February 2022.

²⁰² Court Transcript, 11 March 2020, p48.

²⁰³ The Godfather-in-Law, pp.54–56.

²⁰⁴ NCA v Baker NCA's Skeleton Argument for the Discharge Hearing, para 45.1, footnote 35.

²⁰⁵ <https://www.reuters.com/article/idUSL26611608>. Accessed 11 February 2022.

²⁰⁶ <https://www.refworld.org/docid/46c58eed.html>. Accessed 11 February 2022.

2. IS THE KAZAKH PROSECUTOR'S OFFICE AN UNBIASED PARTY?

During the High Court hearing, the respondents' lawyers argued that Rakhat Aliyev's sugar business was "the one bit that has remained free from allegations of crime."²⁰⁷ In correspondence with the authors, Mishcon said that this was in reference to allegations of criminality by the NCA, and not allegations of wrongdoing in general.²⁰⁸

As JSC Kant was previously owned by Rakhat Aliyev, there is the possibility that the company was itself illegally acquired by him, or used for illegal purposes. Indeed, evidence from Germany suggests that Aliyev's sugar company may have been part of his money laundering network.²⁰⁹ Furthermore, in 2011, an investigator from Kazakhstan's National Security Committee heard testimony from a senior employee of Rakhat's sugar business that Rakhat created multiple companies to evade tax and monopolisation rules in Kazakhstan.²¹⁰

It is unclear why the NCA did not submit any evidence regarding possible illegal actions on behalf of JSC Kant, nor submit evidence that, as stated in Chapter 4, a relative of Rakhat Aliyev said he surrendered a 24% stake in JSC Kant to Dariga Nazarbayeva following their divorce.

To back up its claim of legitimacy, Mishcon says that the shares were "to be transferred as part of the divorce process since, unlike other assets then held by RA in Kazakhstan, they were not identified by the Government of Kazakhstan as being any part of his suspected proceeds of crime."²¹¹ This was "confirmed by the Kazakhstan Prosecutor General's Office."²¹²

Mischon thus argued that the NCA failed to take into consideration the outcome of Rakhat's criminal proceedings, including any applications for confiscation/forfeiture.²¹³ This produced one of the only statements from the

NCA in the available documentation that alluded to the absence of the rule of law in Kazakhstan. The NCA argued it was not reasonable:

to request details of RA's criminal proceedings from the Kazakh authorities. Such a request was likely to take a long time to elicit a response which, even if provided, may have been of limited relevance... and/or reliability (given that the convictions were secured in absentia, in a country which is widely regarded as a kleptocracy, at a time when RA's former father-in-law, DN's father, and NA's grandfather was the President).²¹⁴

²⁰⁷ Court Transcript, 11 March 2020, p90.

²⁰⁸ Correspondence between Mishcon de Reya and Prof. John Heathershaw, 29 September 2021.

²⁰⁹ For example, in January 2007, prior to JSC Kant's transfer to Dariga, JSC Kant was reported to be trading with a company called AV Maximus Trading SA in contracts worth \$36 million (<https://kase.kz/en/news/show/1015504/>, accessed 14 February 2022). The NCA identified AV Maximus as belonging to Rakhat Aliyev (Court Transcript, 11 March 2020, p81. NB: the company is wrongly transcribed as "AB Maximus"). According to the Global Witness Mystery on Baker Street report, a fax written by the German Federal Ministry of the Interior highlighted a 'suspicion of money laundering' and an ongoing investigation regarding Rakhat Aliyev, AV Maximus SA and other companies. (https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf, p12, accessed 14 February 2022).

See also https://kz.expert/en/news/analitika/2006_a_sugar_trust_that_went_bust, accessed 14 February 2022, which claims that Rakhat Aliyev's sugar business had already been deemed illegal at the time of the transfer to Dariga, and that Rakhat had built up the company using "business practices of the Rockefeller era".

²¹⁰ "Testimony of senior manager of Aliyev's sugar business, February 2011: Следует отметить, что АО "Сахарный Центр" и входящие неофициально в указанный холдинг сахарные заводы фактически занимали на рынке сахара монопольное положение... Для избежание этого была организована регистрация фирм, которые открывались на наших

сотрудников, на которые оформлялись доли участия в заводах. (It should be noted that "JSC Sugar Center" and the sugar factories unofficially included in the aforementioned holding company in effect occupied a monopoly position on the sugar market ... To avoid this, the registration of companies was organized, which were opened for our employees, in which shares in the factories were registered)... По распоряжению Алиева регистрируются несколько компаний с похожими названиями (Imperial Sugar Co, Maximus SA и т.д.), которые начинают использовать для получения дополнительной доходности, которую он не хочет показывает и пропускать через AV Maximus Trading SA и Imperial Sugar Company UK LLP, в том числе и потому, чтобы меньше платить вознаграждение директорам этих компаний. (By Aliyev's order several companies with similar names are registered (Imperial Sugar Co, Maximus SA, etc.), which he begins to use to obtain additional profit that he does not want to disclose and moves through AV Maximus Trading SA and Imperial Sugar Company UK LLP, in order to, among other things, pay less remuneration to the directors of these companies"). As stated below, evidence from the Kazakh authorities may be subject to political bias. However, this information could have formed the starting point of further investigation into JSC Kant and Rakhat Aliyev's sugar business by the NCA.

²¹¹ NCA v Baker Judgment, para 73, sub para 4.16.

²¹² NCA v Baker Respondents' Skeleton Argument, para 157.

²¹³ NCA v Baker Respondents' Skeleton Argument, para 119 (iii).

²¹⁴ NCA v Baker NCA's Skeleton Argument for the Discharge Hearing, para 45.5 [mislabelled as a second 45.4].

PROPERTY 1:
32 Denewood Road
continued

This is a crucial point that was unfortunately not developed further: that there is clearly an issue with citing the Kazakhstan Prosecutor General's Office, as this body is unlikely to be fair and impartial. According to the 2020 report on human rights practices in Kazakhstan published on the website of the U.S. Embassy in Kazakhstan, Kazakhstan's judiciary "remained heavily dependent upon the executive branch, judges were subject to political influence, and corruption was a problem throughout the judicial system. Prosecutors enjoyed a quasi-judicial role and had the authority to suspend court decisions."

Citing Freedom House, the report goes on to say that "corruption was evident at every stage of the judicial process", that "court decisions were often driven by political motives,"²¹⁵ and that there is impunity for senior officials, "especially where corruption was involved or personal relationships with government officials were established."²¹⁶ The fact that Rakhat was separating from the eldest daughter of Kazakhstan's then president, who was herself an important figure in Kazakhstan's political system, can only increase the likelihood of the political interference spoken about in the U.S. Embassy report, both at the time of the divorce in 2007 and the UWO investigation in 2019.

However, Nazarbayeva's lawyer attempted to argue that: "She has had an entirely active economic life, has herself pursued a career in commerce, well before any suggestion could be made she was benefitting from her position"²¹⁷ presumably referring to the fact that Nazarbayeva's involvement in Kazakhstan's politics only began in 2004. The fact that in a kleptocracy opportunities for self-enrichment exist outside of the political sphere for close members of the incumbent's family is self-evident, and appears to be evidenced in this particular case by Mishcon itself, when it admitted that Nazarbayeva made as much as \$45 million in three years with no start-up capital, at a time (1992-1995) when she did not hold political office. The high risk posed by family members of political leaders has been codified in anti-money laundering legislation that extends enhanced due diligence not just to those who hold political office, but also to their close relatives, irrespective of whether they themselves hold office.²¹⁸

²¹⁵ <https://kz.usembassy.gov/2020-country-reports-on-human-rights-practices-kazakhstan/>. Accessed 11 February 2022.

²¹⁶ *Ibid*.

²¹⁷ Court Transcript, 10 March 2020, p6. Also cited in <https://www.moneylaundering.com/news/loan-documents-link-barclays-to-kazakhstani-family-accused-of-corruption/>. Accessed 11 February 2022.

²¹⁸ <https://www.legislation.gov.uk/uksi/2017/692/regulation/35/made>. Accessed 11 February 2022. As of February 2022, Forbes states that there are 5 billionaires from Kazakhstan. These are Nazarbayev's daughter Dinara Nazarbayeva and her husband Timur Kulibayev, Nazarbayev's former chief-of-staff Bolat Utemuratov, KAZ Minerals director Vladimir Kim, and Vyacheslav Kim (no relation to Vladimir), chairman of Kaspi Bank. See <https://www.forbes.com/real-time-billionaires/#156872623d78> (accessed 11 February 2022). Global Witness' report 2010 alleged that Vladimir Kim was just a proxy owner of what was then named Kazakhmys, and that the Nazarbayev family was the true owner. It also detailed how Vladimir Kim gifted Nazarbayev's former chief-of-staff, Vladimir Ni, 2.5% of the company in 2006, worth £135 million. See <https://www.globalwitness.org/documents/17834/riskybusiness.pdf>, pp20-21. Accessed 11 February 2022.

3. DID DARIGA SELL JSC KANT TO HERSELF?

Dariga Nazarbayeva sold her JSC Kant shares during public auctions in January 2008, and then used them to buy the mansion in Highgate in April 2008. However, the sale of these shares was curious. Some were sold to a UK company called Beatrice Alliance, which UK Company House filings indicate Nazarbayeva herself part owned.²¹⁹ She sold other shares for £38 million to a company called Gas Development LLC. In the documentation publicly released by the High Court, Mishcon did not indicate who the beneficial owner of Gas Development LLC was at this time. Research indicates that this company was registered in Kazakhstan on 28 May 2007 (coincidentally, the same day that various criminal charges against Rakhat Aliyev were announced by the Kazakh authorities). The fact that the company was under a year old when it purchased the shares in January 2008 suggests it may not have been a company involved in any type of actual business, but was a single purpose vehicle to be used to acquire the shares.

Research by SourceMaterial indicate that Nazarbayeva may have controlled Gas Development LLC herself. That would have tremendous significance for the UWO hearing as it could mean that Nazarbayeva had not made a genuine

sale of these shares, but was simply moving funds from one of her assets to another in imitation of a sale. The information provided by Nazarbayeva and Mishcon would not, therefore, explain the real origin of the funds.

SourceMaterial presents evidence to support this allegation. It says that when it acquired the shares in January 2008, Kazakh records showed that Gas Development LLP was owned by a Kazakh company called Kompaniya Ardelis. However, this company was only registered around two months after the sale so could not have been the owner at this stage. But four days before Gas Development LLP was incorporated in Kazakhstan, a company called Ardelis Management was registered in the UK, which has many ties to Gas Development LLP and to Nazarbayeva herself. For example, Ardelis was set up on the same day and by the same people as Beatrice Alliance, a company in which Nazarbayeva acquired a shareholding in return for JSC Kant shares. Ardelis Management also shared a director with Gas Development LLC.²²⁰

Under the legislation, making a false and/or misleading statement in response to a UWO can result in up

to two years' imprisonment, a fine, or both. However, as the information provided by Mishcon was done on a voluntary basis, and not in response to an UWO that had been upheld, and not in the form of a witness statement by Nazarbayeva, this provision would not apply.

When contacted by SourceMaterial, Nazarbayeva's lawyers "denied that the Gas Development sale was designed to create a veneer of legitimacy to move money out of Kazakhstan. 'Our client was candid about the source of funds,' Mishcon de Reya wrote to SourceMaterial on 2 October 2020. 'Any suggestion that our client misled the Court in the recent UWO proceedings is entirely untrue.'"²²¹ In response to correspondence with this report's authors in relation to this allegation, Mishcon commented that any suggestion that "we and/or our clients' instructed Counsel in some way misled the Court in *NCA v Baker*... is categorically rejected."²²² There is no suggestion that Mishcon would have known about Dariga Nazarbayeva's alleged control of Gas Development LLP, and therefore no suggestion that the law firm itself attempted to mislead the court.

²¹⁹ A Companies House document signed 20 December 2007 and filed by Beatrice Alliance Ltd, company number 6258166, on 2 January 2008 states that "28 shares were allotted to Ms Dariga Nazarbayeva in return for the transfer of 2,388,250 shares of Joint Stock Company 'Kant'" A further 22 shares were allotted to Omar Kassem Abdullah, and 948 to Constel Industry Corp. "for the cash consideration." See document "Ad 12/12/07----- £ si 998@1=998 £ ic 2/1000" at <https://find-and-update.company-information.service.gov.uk/company/06258166/filing-history>. Accessed 11 February 2022.

²²⁰ <https://www.source-material.org/blog/sherlock-holmes-and-the-mystery-of-the-kazakh-millions>. Accessed 11 February 2022.

²²¹ *Ibid.*

²²² Correspondence from Mishcon de Reya to Prof. John Heathershaw, 29 September 2021.

PROPERTY 2: FLATS 9 & 14, 21 MANRESA RD

Property bought with proceeds from Nurbank share sale



1. NURBANK: A VERY TROUBLED HISTORY

The property on Manresa Road was purchased on 20 September 2010 for £31 million²²³ from an Italian businessman, Flavio Briatore.²²⁴ Flavio is a former boyfriend of Goga Ashkenazi,²²⁵ who has two children with Timur Kulibayev, Dariga Nazarbayeva's brother-in-law.

According to Mishcon, the monies used to purchase the Manresa property came from the proceeds of sale of Dariga Nazarbayeva's shares in a Kazakh bank, Nurbank, on the Kazakhstan Stock Exchange²²⁶ on 13 May 2010.²²⁷ Nazarbayeva first received these funds – totalling the Kazakh tenge equivalent of over £118 million – into her account at Nurbank on the same day.²²⁸ Nazarbayeva then transferred US\$120 million from this account to a U.S. dollar account held in her name at Julius Baer Bank.²²⁹

The story of Nurbank, a private bank in Kazakhstan, is central not only to the purchase of this and the third property, but to the story of the Aliyev family in general. In March 2006, Nurali Aliyev, aged then only 21, was appointed as deputy chairman of Nurbank,²³⁰ Kazakhstan's then seventh largest bank.²³¹ Its main shareholder at this time was Rakhat Aliyev, who held more

than 50% of the bank's shares,²³² and its chairman was a man called Abilmazhin Gilimov. According to Gilimov, after a board meeting in January 2007, Rakhat Aliyev threatened him with a gun after Gilimov refused to sign over to Rakhat the ownership of the building that Nurbank's main office was located in.²³³ Nurbank's deputy chairman, Zholdas Timraliyev, was then reported missing from January 31, along with an associate, Aidar Khasenov.²³⁴

In early February 2007, the Kazakh authorities began an investigation into suspected financial impropriety at Nurbank,²³⁵ with a senior figure from the Kazakh financial police saying that Gilimov and Timraliyev had transferred KZT 809 million (\$6.47 million) without approval from the shareholders (which included Rakhat Aliyev).²³⁶ Gilimov was investigated by the Kazakh authorities on suspicion of fraud.²³⁷ This investigation into Nurbank coincided with the beginning of Rakhat's fall from grace from Kazakhstan's political elite. On February 9, he was dismissed as deputy foreign minister and sent to Vienna to serve as Kazakhstan's Ambassador to Austria.²³⁸ Aliyev's complete removal from positions of state power occurred a few months

later, when the Kazakh Ministry of the Interior announced on 23 May 2007 that a criminal case has been opened against Aliyev and two associates for extortion and the alleged kidnapping of the two Nurbank officials, Timraliyev and Khasenov.²³⁹ He was stripped of all official positions and an international arrest warrant issued regarding criminal association, economic crimes, and kidnapping.²⁴⁰ In response, Rakhat accused others of being involved in financial wrongdoing at Nurbank.²⁴¹

In 2011, the bodies of the two Nurbank officials were found.²⁴² Rakhat Aliyev was charged in Kazakhstan with their murder. According to the Kazakh authorities, Aliyev kidnapped both managers, tortured and murdered both men, put their bodies in a metal drum that was filled with chalk and buried on a waste dump,²⁴³ allegations repeated in an arrest warrant issued for Aliyev in Austria.²⁴⁴ In June 2014, Aliyev gave himself up to Austrian law enforcement in connection with the murder probe, although he denied the allegations.²⁴⁵ He was charged with the two murders by the Austrian authorities in December 2014, and was found hanged in his cell in February 2015 while awaiting trial.²⁴⁶

²²³ *NCA v Baker Respondents' Skeleton Argument*, para 165.

²²⁴ *NCA v Baker Judgment* p66. Note dated "20.09.10".

²²⁵ <https://www.independent.co.uk/news/people/profiles/goga-ashkenazi-royal-ascent-2239797.html>. Accessed 11 February 2022.

²²⁶ *NCA v Baker Respondents' Skeleton Argument*, para 164.

²²⁷ *NCA v Baker Respondents' Skeleton Argument*, para 168.

²²⁸ *NCA v Baker Judgment*, para 159, subpara 6.12.

²²⁹ *NCA v Baker Judgment*, para 159, subpara 6.14.

²³⁰ *NCA v Baker Judgment*, para 177, subpara 116.2. The exact date differs according to various reports. For example, <https://medium.com/@alinaniyazov/nurali-aliyev-appointed-nurbank-vice-chairman-7660a7937048> suggests Nurali became Nurbank's 'first vice chairman' in January 2007. Accessed 11 February 2022.

²³¹ <https://foreignpolicyblogs.com/2007/05/24/kazakhstan-nurbank-scandal-widens/>. Accessed 11 February 2022.

²³² https://kase.kz/files/emitters/NRBN/nrbnf9e2_2006_e.pdf. Accessed 11 February 2022.

²³³ <https://zonakz.net/2007/05/29/абильмажин-гилимов-экс-председатель-2/>, https://wikileaks.org/plusd/cables/07ASTANA1415_a.html. Both accessed 11 February 2022.

²³⁴ <https://www.rferl.org/a/1074541.html>. Accessed 11 February 2022.

²³⁵ <https://eurasianet.org/kazakhstan-political-reshuffle-involves-presidents-son-in-law>. Accessed 11 February 2022.

²³⁶ <https://kase.kz/en/news/show/1016802/>. Accessed 11 February 2022.

²³⁷ <https://www.rferl.org/a/1074541.html>. Accessed 11 February 2022.

²³⁸ *Ibid.*

²³⁹ <https://www.refworld.org/docid/46c58ee928.html>. Accessed 11 February 2022.

²⁴⁰ *Ibid.*

²⁴¹ <https://www.refworld.org/docid/46c58ee928.html>, https://wikileaks.org/plusd/cables/07ASTANA1415_a.html. Both accessed 11 February 2022.

²⁴² <https://www.rferl.org/a/missing-kazakh-bankers-found-dead/24177694.html>. Accessed 11 February 2022.

²⁴³ <https://web.archive.org/web/20140519112016/http://en.tagdyr.net/the-nurbank-murder-case/>. Accessed 11 February 2022.

²⁴⁴ https://forbes.kz/process/za_chto_prokuratura_venyi_arestovala_rahata_alieva/. Accessed 11 February 2022.

²⁴⁵ <https://timesofmalta.com/articles/view/Millionaire-exile-gives-himself-up-for-questioning-in-Austria.522384>. Accessed 11 February 2022.

²⁴⁶ <https://www.reuters.com/article/us-austria-aliyev-idUSKBNOL50LB20150224>. Accessed 11 February 2022.

2. WAS DARIGA'S SHAREHOLDING IN NURBANK SEPARATE FROM RAKHAT'S?

From Rakhat Aliyev's statements, Nurbank shares appeared to be a jointly owned business asset between himself and Dariga Nazarbayeva for the duration of their marriage. Writing in his book *The Godfather-In-Law*, Rakhat commented, "In 1995 we [i.e. Dariga and himself] bought a small, ailing bank with no customers in Atyrau and moved it to Almaty."²⁴⁷ However, according to the version of events proposed by Mishcon, Nazarbayeva built up her shareholding in Nurbank between 2002 and 2009,²⁴⁸ and that there was no link between her holdings in Nurbank and Rakhat Aliyev.²⁴⁹

According to the High Court transcript of the UWO hearing, Mishcon presented evidence of Nazarbayeva's share ownership, including that Nazarbayeva had bought shares in Nurbank in 2002 from a company called Expo Center Limited. No documents are available for

2002-2004 from Nurbank to verify this information.²⁵⁰ However, neither Export Center nor Nazarbayeva are listed as a Nurbank shareholder in reports from 2004 to 2006. Instead, a Nurbank report indicates that as of 1 September 2006, Rakhat Aliyev controlled directly or indirectly more than 50% of the shares, with three other named individuals controlling a further 37.8%.²⁵¹ Rakhat's father, Mukhtar, is also listed as a 6.84% shareholder (given as "M. Aliyev") at the end of 2006.²⁵²

Nurbank's 2006 consolidated financial statement says that as of end 2006: "Rakhat Aliyev is in the process of obtaining the status of the major shareholder of the bank."²⁵³ The September 2006 report indicates that Rakhat already possessed over 50% of the shares but media reports suggest that he may have increased his share around January 2007.²⁵⁴ It is unclear

what percentage Rakhat controlled at this point, but the same media article suggests it was around 75%.

It is clear from other financial reporting from Nurbank that Rakhat Aliyev owned at least some of his shares through a variety of companies. One of these companies that owned shares in 2006 and 2007, Almatinsky Sakhar JSC, is linked to Rakhat Aliyev through his sugar business.²⁵⁵ A second, Sakharny Center JSC, (which held just under 10% of Nurbank shares as of end 2006²⁵⁶) was jointly controlled by both Rakhat and Dariga prior to their divorce, according to Rakhat Aliyev.²⁵⁷ Nurali Aliyev also acted as the president of Sugar Centre when he was 19.²⁵⁸

According to *Forbes*, a third company, Alma TV JSC (again holding just under 10% of Nurbank shares as of end 2006), was also jointly owned by Rakhat and Dariga prior to their divorce.²⁵⁹

²⁴⁷ *The Godfather-in-Law*, p75.

²⁴⁸ *NCA v Baker Respondents' Skeleton Argument*, para 168.

²⁴⁹ Court Transcript, 10 March 2020, p55

²⁵⁰ https://nurbank.kz/en/investor/financial_results/financial_results_all. Accessed 11 February 2022.

²⁵¹ These are 1. Rashid Sarsenov, indirectly controlling 25.0%. 2. Abilmazhen Gilimov, controlling 2.7% directly and 7.3% indirectly of the common voting shares, 3. Gulmira Dzhumadillayeva (then Nurbank's Deputy Chairman of the Board) holding 2.8% of the common voting shares. See https://kase.kz/files/emitters/NRBN/nrbnf9e2_2006_e.pdf, accessed 14 February 2022. The report also gives the names of six companies, each holding just under 10%. These are Company Noviy Mir Limited LLP (Almaty), Alma-Tour JSC (Almaty), Almaty sugar JSC (Almaty region), A-Holding LLP (Almaty), ALMA-TV JSC (Almaty), Sakharniy center JSC (Almaty). Although the report does not indicate who the beneficial owners of these companies are, mathematically some of the companies have to be owned or co-owned by Rakhat Aliyev in order for him to possess over 50% of the bank's shares. Media articles, KASE documents, and the Austrian arrest warrant suggest links between all six of these companies and Rakhat Aliyev. See discussion below for possible links between some of these companies and Dariga Nazarbayeva.

²⁵² http://www.en.nurbank.kz/up_files/fs2007nurbankeng.pdf, p6. Accessed October 2021.

²⁵³ http://www.en.nurbank.kz/up_files/fs2006nurbankeng.pdf, p6. Accessed October 2021.

²⁵⁴ <https://foreignpolicyblogs.com/2007/05/24/kazakhstan-nurbank-scandal-widens/>. Accessed 11 February 2022.

²⁵⁵ https://kz.expert/ru/materials/analitika/1998_saharniy_trest_kotoriy_lopnul. Accessed 11 February 2022.

²⁵⁶ https://kase.kz/files/emitters/NRBN/nrbnf6_2006e.pdf, p6, accessed 11 February 2022. See http://www.en.nurbank.kz/up_files/fs2005nurbankeng.pdf, p5. Accessed October 2021. *Forbes* states that Alma-TV, which held 9.93% of Nurbank as of end-2006, was controlled by both Rakhat and Dariga (<https://www.forbes.ru/forbes-woman/373671-kak-dariga-nazarbaeva-perezkhila-opalu-i-smert-muzha-i-chut-bylo-ne-stala>, accessed 13 February 2022). It is of note that *Forbes* in 2013 stated that Dariga and Nurali now owned Alma TV (80/20 split), and that it was founded in 1994 (<https://forbes.kz/ranking/object/111>, accessed 13 February 2022).

²⁵⁷ In his book, *The Godfather-in-Law* (p74) Rakhat Aliyev writes: "We built up the private company Sakharny Tsent (Sugar Centre) with partners from the remains of the crumbling Soviet sugar industry. That was in the early 1990s..."

²⁵⁸ <https://cdn.occrp.org/projects/panamapapers/kazakhstan/Nurali%20Aliyev%20-%20CV%20from%20Astana%20Gov.pdf>. Accessed 14 February 2022.

²⁵⁹ <https://www.forbes.ru/forbes-woman/373671-kak-dariga-nazarbaeva-perezkhila-opalu-i-smert-muzha-i-chut-bylo-ne-stala>. Accessed 11 February 2022.

According to a sworn testimony given under oath to a magistrates' court in Malta in 2012, Aliyev said that Alma TV belonged to him or possibly to him and Dariga, depending on interpretation of his testimony.²⁶⁰ What happened to its ownership directly after Rakhat's fall from grace is unclear, although in 2014, *Forbes* reported that Dariga Nazarbayeva and Nurali Aliyev owned Alma TV and were about to sell it.²⁶¹

If Nazarbayeva owned shares in Nurbank via companies (Alma TV and Sakharny Center) that she jointly controlled with Rakhat Aliyev in 2006, this would contradict Mishcon's claim that her shareholding was independent of Rakhat Aliyev. The fact that two companies (and a possible third, Alma Tur, discussed below) that held shares in Nurbank at the end of 2006 can be linked to both Rakhat and Dariga again demonstrates the intertwining of Dariga/Rakhat's core business interests, a point made by the NCA,²⁶² who said that the NCA's suspicion was that there "was no evidence to suggest that, quite independently from Mr [Rakhat] Aliyev, she was making money."²⁶³



²⁶⁰ Transcript of questioning of Dr Rakhat Shoraz [Aliyev] by Dr B Wallner, Court of Magistrates (Malta), 16 February 2012. Rakhat is asked to confirm whether he owns companies of various names. On being asked about a company called "TV Media Agency", Rakhat replies: "Yes. It also belonged to us," meaning himself and Dariga. He is then asked about Alma TV. Rakhat replies: "Yes. It is a cable operator". It is unclear from this response whether his affirmative response meant that he owned it by himself or by himself with Dariga. Rakhat is then asked about "Alma Tur" to which he replies, "the company belonged to my wife and it was dealing with real estate."

²⁶¹ <https://forbes.kz/ranking/object/111>, accessed 11 February 2022. The sale took place in May 2014. The amount was not disclosed. One website claimed the deal was worth \$250 million (https://kz.expert/ru/materials/analitika/81_v_dele_bank_rbk_novie_imena). A later assessment of the company put its value in 2021 at \$16-\$19 million (<https://kursiv.kz/news/kompanii/2021-09/acquisition-priobrelya-9384-akciy-alma-tv>, both accessed 11 February 2022).

²⁶² NCA v Baker NCA's Skeleton Argument for the Discharge Hearing, footnotes 40- 41.

²⁶³ Court Transcript, 11 March 2020, p79.

3. BENEFITTING FROM CRIMINALITY?

It is likely that Rakhat Aliyev acquired some Nurbank shares through illegal means. According to a statement from the family of former Nurbank chairman Gilimov, reported by the then U.S. Ambassador to Kazakhstan in a leaked diplomatic cable, on signing his resignation letter Gilimov transferred “his 8% share in Nurbank to Aliyev’s family”.²⁶⁴ Rakhat Aliyev’s arrest warrant issued by the Vienna prosecutor’s office says that Aliyev forced Gilimov, by means of death threats, to transfer his shares in Nurbank to him.²⁶⁵ This suggests not only that Gilimov was likely a victim of extortion orchestrated by Rakhat Aliyev, but that it was Rakhat’s family as a whole (because at that point Rakhat was still married to Dariga) who benefited from this alleged crime. The NCA pointed to the fact that had Dariga Nazarbayeva owned shares between 2002 and 2007, this was likely because “[Rakhat] Aliyev was still in favour and a very powerful controlling figure, those shareholdings were acquisitions and, in the case of Mr Gilimov, it sounds like at the end of some serious threats.”²⁶⁶

Another company that is identified in Nurbank reports as owning just under 10% of the bank’s shares at the end of 2006 is called Alma Tur JSC. It is unclear whether this company was owned by Rakhat or Dariga, or jointly by them both. Under oath, Rakhat Aliyev said in 2012 that a company called Alma Tour²⁶⁷ belonged to Dariga. However, during Aliyev’s trial in Kazakhstan it was alleged that he was the owner of Alma Tour and that he threatened Nurbank’s chairman to transfer the business centre that housed the bank to this company.²⁶⁸ According to the written judgment of Rakhat Aliyev’s trial in Kazakhstan, Alma Tour acquired this property for least two and half times lower than its market value in January 2007.²⁶⁹

If Nazarbayeva was the owner or co-owner of Alma Tour at this time, then this would by default implicate her company in the act of extortion perpetrated by Rakhat, although there is no evidence to suggest that Nazarbayeva knew about her husband’s actions. If, however, she became the

owner of Alma Tour following Rakhat’s fall from grace, this would mean that she benefitted from her husband’s alleged crime regarding the transfer of the Nurbank building to this company, irrespective of her knowledge or involvement of that crime. A news article from Kazakhstan which cites Nurbank management indicates that Alma Tour continued to exist following Rakhat Aliyev’s exile, but was liquidated around September 2009.²⁷⁰

In response Mishcon commented: “As to the allegations regarding Alma Tour, these are premised on the presumption that Dr [Dariga] Nazarbayeva did in fact jointly own Alma Tour, which your letter acknowledges may not be the case.”²⁷¹ Mishcon failed to clarify whether Dariga Nazarbayeva ever had an interest in Alma Tour, and if so, at what point.

²⁶⁴ https://wikileaks.org/plusd/cables/07ASTANA1415_a.html. Accessed 11 February 2022.

²⁶⁵ https://forbes.kz/process/za_chto_prokuratura_venyi_arestovala_rahata_alieva/. Accessed 11 February 2022.

²⁶⁶ Court Transcript, 11 March 2020, p78.

²⁶⁷ Dr Rakhat Shoraz [Aliyev] questioned by Dr B Wallner, Court of Magistrates (Malta), 16 February 2012. Rakhat is asked about “Alma Tur” to which he replies “the company belonged to my wife and it was dealing with real estate.” The Malta document spells the company as ‘Alma Tur’: the differences in spelling (Alma Tour, Alma Tur, Alma Tor) can be explained by the translation and transliteration from Russian ‘Typ’ which means ‘tour’ but can be transliterated as Tur, Tour or Toor.

²⁶⁸ https://forbes.kz/process/za_chto_prokuratura_venyi_arestovala_rahata_alieva. Accessed 11 February 2022.

²⁶⁹ https://online.zakon.kz/Document/?doc_id=30368333#pos=287;-8&doc_params=text%3D%25D0%2590%25D0%25BB%25D0%25BC%25D0%25B0%2520%25D1%2582%25D1%2583%25D1%2580%26mode%3Dindoc%26topic_id%3D30368333%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&doc_pos=13. Accessed 11 February 2022.

²⁷⁰ <https://diapazon.kz/news/4278-nurbank-oprovergaet-obvinenija-v-rejiderstve>. Accessed 11 February 2022.

²⁷¹ Correspondence from Mishcon de Reya to Prof. John Heathershaw, 29 September 2021.

4. DARIGA BECOMES NURBANK'S MAIN SHAREHOLDER IN MYSTERIOUS CIRCUMSTANCES

The 2007 Nurbank report indicates that Nazarbayeva owned zero shares in Nurbank at the end of 2006.²⁷² As described above, in May 2007, Aliyev was removed from all official power structures in Kazakhstan and was reportedly divorced from Nazarbayeva in June 2007. What happened to Rakhat's shares in Nurbank is unclear. The same month as the divorce, the Kazakh stock exchange issued a note that said that the Kazakh authorities had agreed that Dariga and Nurali could purchase the "status of big participant of Nurbank JSC (Kazakhstan)".²⁷³

In October 2007 Nurali Aliyev was confirmed as Nurbank board chairman.²⁷⁴ A shareholders meeting from October 2007 indicates that all four companies mentioned above (Alma TV, Alma Tour, Almatinsky Sakhar, Sakharny Center) continue to hold Nurbank shares (though in smaller amounts), along with a new shareholder, Dariga Nazarbayeva, whose shareholding is given as 36.287%.²⁷⁵

According to Nurbank reporting, at the end of 2007, Dariga Nazarbayeva owned 38.39% and Nurali 6.14% of the bank's shares, and that the bank was ultimately controlled by them.²⁷⁶ At this point, Almatinsky Sahar JSC no longer held any shares, but the other three companies still did. Neither Rakhat or Mukhtar Aliyev are listed as shareholders, and there is no indication as to what happened to these shares, who purchased them, or at what price.²⁷⁷ As Rakhat owned as much as 75% of the bank's shares in April 2007, some of Nazarbayeva's shares are likely to have been previously owned by Rakhat Aliyev, even if they were first returned to the bank in some fashion and then re-issued.²⁷⁸ This again undermines Mishcon's claim that Nazarbayeva's shareholding was "independent" of Rakhat Aliyev.

According to Mishcon, Nazarbayeva: "increased her shareholding in Nurbank in June 2007 and again in June 2008." June 2007 is the date of Rakhat's divorce from Dariga Nazarbayeva. According to Mishcon, the shares

Nazarbayeva owned in Nurbank: "were primarily purchases from Nurbank following share issues by the bank."²⁷⁹ No such share issue is mentioned in Nurbank's 2007 consolidated financial accounts, or by Kazakh stock exchange news reports in June 2007.²⁸⁰ No documents appear to have been submitted by Mishcon to the court regarding this supposed share sale. Mishcon's statement that Nazarbayeva "primarily" acquired shares through share issues suggests that she also acquired them via other means. Mishcon's statement also contradicts reporting at that time as to what happened to Rakhat Aliyev's shares. An August 2007 article published by *The Financial Times* states that: "Most of Mr [Rakhat] Aliyev's assets, including a 51 per cent stake in Nurbank and a large media holding, have been confiscated and handed to his politician wife, Dariga Nazarbayeva, who has divorced him."²⁸¹ The opacity of what happened to Rakhat's shares, coupled with the contradictory information above, suggests that this cannot be ruled out as a possibility.

²⁷² http://www.en.nurbank.kz/up_files/fs2007nurbankeng.pdf. Accessed October 2021. It is possible that Dariga held shares through unnamed legal entities (companies), but the Nurbank report indicates that no other single shareholder held more than 5% at this time. It is possible that Dariga's total shareholding was not revealed as it was under this threshold, but as its list contains one shareholder holding as little as 0.95%, this suggests that the bank believed that Dariga's shareholding at this time was zero and not simply under 5%.

²⁷³ <https://kase.kz/en/news/show/1025470/>. Accessed 11 February 2022.

²⁷⁴ <https://online.zakon.kz/m/amp/document/30134925>, <https://cdn.occrp.org/projects/panamapapers/kazakhstan/Nurbank%202007%20-%20Nurali%20Aliyev%20-%20President%20of%20BoD.pdf>. Both accessed 11 February 2022.

²⁷⁵ https://kase.kz/files/emitters/NRBN/nrbn_resht_111007.pdf. Accessed 11 February 2022.

²⁷⁶ http://www.en.nurbank.kz/up_files/fs2007nurbankeng.pdf, p6. Accessed October 2021. Nurali and Dariga's shareholding at this moment in time is also referenced in *NCA v Baker Respondents' Skeleton Argument*, para 110(i).

²⁷⁷ *Ibid.*

²⁷⁸ <https://www.latimes.com/archives/la-xpm-2007-jun-21-fg-kazakh21-story.html>. Accessed 11 February 2022.

²⁷⁹ *NCA v Baker Judgment*, para 159, subpara 6.10.

²⁸⁰ http://www.en.nurbank.kz/up_files/fs2007nurbankeng.pdf. Accessed October 2021. A KASE news release suggests that in March 2007 the authorized capital of bank would be increased, and shares would be offered among existing shareholders. Shares appear to have been issued in late April 2007. <https://kase.kz/en/news/show/1019265/>, <https://kase.kz/en/news/show/1022241/>. Both accessed 11 February 2022.

²⁸¹ <https://www.ft.com/content/863bf850-45e0-11dc-b359-0000779fd2ac>. Accessed 11 February 2022.

5. A LINK TO RAKHAT REMAINED

Under Nazarbayeva's ownership, the bank was not purged of all links to Rakhat Aliyev. At the end of July 2007, a new board of directors was confirmed, which included Dariga Nazarbayeva and a man called Duman Seitov.²⁸²

In January 2008, a Kazakh district court handed down sentences for Rakhat Aliyev *in absentia* and his alleged accomplices in a variety of crimes. Seitov was originally prosecuted for theft, and the forgery of documents in relation to a criminal conspiracy, but these charges were dropped. Instead, he was found guilty of concealment of a crime.²⁸³ His sentence is not given in this document. According to the judgement, Duman Seitov was used by Rakhat Aliyev as a proxy in order for the latter to "illegally obtain ownership of real estate" in Kazakhstan. One of the buildings was fraudulently transferred from Aibar Khasenov – the Nurbank official who was later found murdered – to a company co-founded by Seitov (there is no suggestion that Seitov was involved in the murder).²⁸⁴ Despite this conviction, Seitov remained on the Nurbank board with Dariga Nazarbayeva and Nurali Aliyev until June 2010,²⁸⁵ just after Dariga Nazarbayeva had sold her stake in the bank in May.²⁸⁶

In conclusion, there is evidence to suggest that Nazarbayeva's shareholding in Nurbank was not independent of Rakhat Aliyev. There is also evidence to suggest that at least some of Rakhat Aliyev's shares in Nurbank were criminally acquired at a time when he was still married to Dariga Nazarbayeva, and that the bank itself was part of Aliyev's money laundering network. Not only was Aliyev prosecuted in Kazakhstan on financial crime charges, including extortion, he was also being investigated in the EU for money laundering at the time of his death.

Such criminal behaviour in the acquisition of property is not unusual in kleptocracies such as Kazakhstan. Therefore, while there is no evidence to suggest that Nurali Aliyev and Dariga Nazarbayeva were involved in any of these criminal acts, it is clear that they benefitted from Rakhat Aliyev's involvement in Nurbank, and, if they acquired some or all their shares from him, their wealth with respect to Nurbank is entangled in the criminal behaviour of Nurali's father and Dariga's former husband.

²⁸² <https://kase.kz/en/news/show/1028714/>, https://kase.kz/files/emitters/NRBN/nrbn_resch_230707.pdf, both accessed 11 February 2022. Seitov was also the director of two companies that continued to hold shares in Nurbank in 2008, A-Holding and Novyi Mir, <https://kase.kz/en/news/show/1040352/>, https://kase.kz/files/emitters/NRBN/nrbn_resch_050908.pdf, both accessed 14 February 2022. By July 2008, these companies were no longer listed as holding more than 5% of the bank's shares. <https://kase.kz/en/news/show/1051509/>, accessed 14 February 2022.

²⁸³ https://online.zakon.kz/Document/?doc_id=30368333#pos=45;-38, <https://time.kz/news/archive/2008/01/16/2580>, both accessed 11 February 2022.

²⁸⁴ https://online.zakon.kz/Document/?doc_id=30147993. Accessed 11 February 2022.

²⁸⁵ <https://tengrinews.kz/news/dariga-nazarbaeva-nurali-aliev-vyivedenyi-soveta-direktorov-54704/>, <https://nurbank.kz/ru/about/press/news/2010/June/06-18>, both accessed 11 February 2022.

²⁸⁶ *NCA v Baker Respondents' Skeleton Argument*, para 110(i).

A TAX AVOIDANCE SCHEME JIMMY CARR WOULD HAVE BEEN PROUD OF

In March 2013, the legal titles of all three UWO properties were transferred from offshore companies to private foundations. This was done according to the respondents' law firm Mishcon de Reya "in anticipation of the introduction on 1 April 2013 of the ATED tax..."²⁸⁷ "a new residential tax under which properties owned through offshore corporate structures were liable to tax, but those owned by Foundations were not".²⁸⁸ In correspondence with the authors of this report, Mishcon commented that "foundations can be treated as trusts for UK tax purposes... a foundation is a trust and not a company in the standard tax sense... and that trustees are not within the scope of ATED."²⁸⁹ A September 2015 HMRC report on behaviours regarding the ATED tax does not mention the use of foundations, but says that some estate agents were encouraging the use of trust structures if individuals wanted to preserve their privacy.²⁹⁰ The HMRC Capital Gains Manual confirms that "trustees" are exempt from ATED.²⁹¹

The ATED tax was introduced to deter the enveloping of high value residential

property in corporate structures by imposing a fixed annual charge based on the value of the property held.²⁹² Such deterrence was needed because the onward sale of the property via the sale of the company's shares would avoid stamp duty and capital gains tax.²⁹³ Thus, even though by the letter of the regulation, the flipping of the three properties to foundations was legal, it was clearly against the spirit of the legislation that was aimed to force people enveloping residential property in corporate structures to pay their "fair share" of tax.²⁹⁴ Even though, according to Mishcon, a foundation is "not a company in a standard sense", there is considerable similarity between the two, leading one offshore services provider to say that a "Panama foundation takes the best elements of a trust and an offshore company."²⁹⁵

By Mishcon's own admission in *NCA v Baker*, the three foundations used to hold the property were 'off the shelf' structures. Clearly when HMRC refer to "trustees" as being exempt from ATED, it is a reference to the fact that a person granted the position

of trust should not be liable for tax payments. As all three properties were used as private dwellings by Dariga Nazarbayeva, Nurali Aliyev and their relatives, and were ultimately owned by Dariga and Nurali, it is debatable whether such an exemption should be allowed, as it currently appears to be. The tactic of flipping the properties to foundations was labelled by the NCA's lawyer as "quite an aggressive tax avoidance manoeuvre."²⁹⁶ The flipping of these three properties to foundations meant that Dariga Nazarbayeva and Nurali Aliyev avoided paying up to £4.214 million in ATED tax from 2013-2022.²⁹⁷

In 2012, comedian Jimmy Carr was pilloried for using what was then a perfectly legal arrangement to minimise tax on his earnings (Carr later repaid the money he saved and denounced the use of such structures).²⁹⁸ HMRC should scrutinise the use of off-the-shelf overseas foundations to avoid ATED tax in this manner to see whether such a construction should be caught by the General Anti-Abuse Rule.²⁹⁹

²⁸⁷ *NCA v Baker* Respondents' Skeleton Argument, para 170(ii).

²⁸⁸ *NCA v Baker* Respondents' Skeleton Argument, para 158 (iv).

²⁸⁹ Correspondence from Mishcon de Reya to Prof. John Heathershaw, 29 September 2021.

²⁹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457946/HMRC_Research_Report_384_-_Views_and_behaviours_in_relation_to_the_Annual_Tax_on_Enveloped_Dwellings.pdf, p.23, para 10.6. Accessed 11 February 2022.

²⁹¹ <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg73611>. Accessed 11 February 2022.

²⁹² <https://www.att.org.uk/annual-tax-enveloped-dwellings-ated-%E2%80%93-changes-april-2018>. Accessed 11 February 2022.

²⁹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457946/HMRC_Research_Report_384_-_Views_and_behaviours_in_relation_to_the_Annual_Tax_on_Enveloped_Dwellings.pdf, p.6. Accessed 11 February 2022.

²⁹⁴ *Ibid.*

²⁹⁵ <https://www.offshore-protection.com/panama-private-interest-foundations-formation>. Accessed 11 February 2022.

²⁹⁶ Court Transcript, 11 March 2020, p56.

²⁹⁷ The ATED tax due for the Manresa Road property would have been in the £20m+ bracket meaning that in the following years, the amount liable would be in 2013: £140,000. 2014: £143,750. 2015: £218,200. 2016: £218,200. 2017: £220,350. 2018: £226,950. 2019: £232,350. 2020: £236,250. 2021 to 31 March 2022: £237,400. (=£1,873,450 total).

Figures vary for the Bishops Avenue property valuation, yet as the property was valued and sold to Nurali Aliyev at over £20m, the tax due between 2013 and 2022 would be the same as the Manresa Road property: £1,873,450. (A valuation between £10m-£20m would result in £936,200 total liable ATED tax for the same time period.) The ATED tax due for the Denewood Road property would be £467,150. For the breakdown of the amounts liable per year, see <https://www.gov.uk/guidance/historic-chargeable-amounts-for-annual-tax-on-enveloped-dwellings> and <https://www.gov.uk/guidance/annual-tax-on-enveloped-dwellings-the-basics>, both accessed 11 February 2022.

²⁹⁸ <https://www.theguardian.com/business/2012/jun/19/tax-scheme-jimmy-carr-hmrc>, <https://www.theguardian.com/culture/2021/sep/29/jimmy-carr-on-booze-taxes-and-being-a-virgin-at-26-do-i-sound-like-an-incel-elder>, both accessed 11 February 2022.

²⁹⁹ <https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules>. Accessed 11 February 2022.

PROPERTY 3: 33 BISHOPS AVENUE

Property bought with a loan from Nurbank



1. THE SHAHAR LLP DEAL: LINKS TO RAKHAT?

Nurali Aliyev is the owner of 33 Bishops Avenue, a large mansion in London, which was purchased on 20 May 2008 for £39.5 million.³⁰⁰

Nurali paid the £4 million³⁰¹ deposit on the Bishops Avenue house using the proceeds of sale of shares in a television and radio company which garnered \$9.3 million.³⁰² The company in question – Shahar LLP – has a limited public ‘footprint’, and so it is difficult to judge whether the \$9.3 million that Aliyev received was a fair price. As the NCA submitted as part of the case, although the company was sold in November 2007 after Rakhat’s divorce from Dariga, the company’s origins date to 2006 when Rakhat was still in favour: “A 20-something year old [Nurali Aliyev], his father is the deputy head of [tax] police, ripping people off left, right and centre, and this young man is given a shareholding. And that is what he says in part to fund this property.”³⁰³

Further possible links to Rakhat Aliyev were not uncovered by the NCA, or at least not presented to the court. For example, when the Kazakh district court found Nurbank board member Duman Seitov guilty of concealing a crime committed by Rakhat Aliyev and his criminal group, Seitov is described in the judgment as the financial director

of “TRK Shahar LLP”.³⁰⁴ This company (short for *TeleRadioKompaniya Shahar*) appears to be a different company as it was registered some years before Shahar LLP,³⁰⁵ but the similarity in its name, its line of business, and links between Seitov and Rakhat Aliyev uncovered by the latter’s trial deserves further inspection regarding possible ties between the two companies.

Furthermore, according to Mishcon, the money from the sale of Shahar LLP was not received by Nurali Aliyev directly, but by Timur Segizbayev, who is described by Mishcon simply as “an employee of Nurali Aliyev.”³⁰⁶ It is unclear why Segizbayev was needed in the Shahar transaction as a trustee for Nurali Aliyev.

Segizbayev was also a known associate of Rakhat Aliyev: Segizbayev was the former head of the Kazakh football federation, a position subsequently held by Rakhat Aliyev.³⁰⁷ The January 2008 judgment of Rakhat Aliyev issued by a Kazakh court states that Segizbayev (who died in 2017³⁰⁸) was involved with the same property that Duman Seitov was involved in, leading to Seitov’s conviction for helping Rakhat Aliyev to conceal a crime.³⁰⁹ Firstly, the building was transferred from a company owned by murdered bank official Aibar Khasenov to Seitov’s

company. Then Segizbayev bought the shares of this company off Seitov and a co-owner in April 2007. According to one article, in May 2007 (before Rakhat was divorced from Dariga) Nurali Aliyev then became the shareholder of this same company, and thus the owner of the building.³¹⁰ The wife of Khasenov decided not to pursue a claim against Seitov (or Nurali Aliyev), only Rakhat Aliyev.³¹¹

It appears from this information that both Seitov and Segizbayev were thus working for Rakhat Aliyev, but were kept on as associates of Nurali Aliyev and Dariga Nazarbayeva after Rakhat Aliyev was removed from power structures in Kazakhstan. The above information also indicates how Nurali Aliyev benefitted from the crimes of his father – irrespective of whether or not he knew of his father’s actions – as Nurali ended up as the owner of a company that owned a building that was fraudulently taken from the murdered Nurbank official on the instruction of Rakhat Aliyev.

The authors of this report wrote to Mishcon to get their clients’ comment on this particular transaction, including the suggestion that Nurali Aliyev appears to have benefitted from the crimes of his father. Mishcon did not respond.³¹²

³⁰⁰ NCA v Baker Respondents’ Skeleton Argument, para 181.

³⁰¹ NCA v Baker Judgment 176, sub para 5.15.

³⁰² NCA v Baker Judgment 176, sub para 5.14.

³⁰³ Court Transcript, 11 Ma 0, p86.

³⁰⁴ https://online.zakon.kz/Document/?doc_id=30368333, accessed 11 February 2022. TOO is the Kazakh equivalent of an LLP. The judgment does not say that TRK Shahar LLP was itself involved in illegal activity and is not mentioned again in the document. The company appears to be involved in TV and radio production; see for example: <https://kz.linkedin.com/in/sultan-mollayev-32323110a>. Accessed 13 February 2022.

³⁰⁵ <https://statsnet.co/companies/kz/32846723>. Accessed 11 February 2022.

³⁰⁶ NCA v Baker Respondents’ Skeleton Argument, para 174.

³⁰⁷ <https://sportsarena.kz/ru/post/18371803-vahty-rulevyh-kazfutbola-part-1>, <https://time.kz/news/archive/2008/08/20/6332>, both accessed 11 February 2022.

³⁰⁸ <http://kazfootball.kz/news/21652>. Accessed 11 February 2022.

³⁰⁹ https://online.zakon.kz/Document/?doc_id=30368333. Accessed 11 February 2022.

³¹⁰ https://online.zakon.kz/Document/?doc_id=30147993. Accessed 11 February 2022.

³¹¹ *Ibid.*

³¹² Emails from Prof. John Heathershaw to Mishcon de Reya, 7 January 2022 and 31 January 2022. Both emails went unanswered.



2. A LEGITIMATE LOAN?

The rest of the money used to buy the Bishops Avenue mansion came from a \$65 million loan from Nurbank to Nurali Aliyev that was issued in August 2008.³¹³ As part of Nurali's response to the UWO, Mishcon stated that: "by the time that the loan was advanced RA's position had fundamentally altered both politically and in relation to the 'Aliyev family'. He was no longer involved in Nurbank, in Kazakh domestic politics, he was estranged from his family, had left Kazakhstan and was in effective exile. The prior link between RA and Nurbank cannot assist the NCA and offers no reasonable basis for a suspicion that Property2 [33 Bishops Avenue] is connected to RA."³¹⁴

This is true, and again highlights the problem the NCA faced by attempting to tie the properties directly to Rakhat Aliyev. However, Nurali undoubtedly benefited from his father's control of the bank: he had been appointed, aged just 22, as the bank's deputy chairman, in January 2007 when his father was the bank's main shareholder. As discussed above, Nurbank was investigated in February/March 2007 for financial impropriety by the Kazakh authorities, and Rakhat was later found guilty of financial crime charges in Kazakhstan. In short, Nurali was the bank's second most senior official at a time when Rakhat Aliyev was the bank's main owner and may have been using the bank for financial crime.

The [\$]65 million loan is itself problematic. As the diagram below demonstrates, this money was loaned to Nurali Aliyev through an incredibly complex series of company structures, all of which – according to Mishcon – Nurali owned, one of which made a further loan to another company that Nurali also controlled. The loan funds were then transferred to the bank accounts of one of Nurali's companies (Triumph Alliance Inc).³¹⁵ A transfer of £37.557 million was then made from this account to Herbert Smith, a law firm in London, for the purchase of the property.

When it was issued in August 2008, Nurali was the bank's chairman, a position he acquired in April 2007. At the time the loan was issued, Nazarbayeva was Nurbank's main shareholder,³¹⁶ having increased her holding to over 50% of the bank's shares at the end of 2008, with Nurali owning just over 6%, according to the bank's annual reports.³¹⁷ This means that Nurali was receiving a multi-million loan through a complex series of company structures from a bank he chaired and in which his mother was the largest shareholder. During the court hearing, the lawyer for the NCA argued: "This is just complexity for the sake of complexity. It is classic money laundering. Nurali Aliyev says that he got this money from a £65 million loan from his dad's bank, effectively, and then he is washing it

between all of these different entities and there is no explanation... for this."³¹⁸ Indeed, the fact that the money was loaned a second time to a further company was clearly unnecessary if Nurali owned both companies. A fair conclusion to draw is that Nurali was trying to obscure the origins of the loan and his ownership of the funds, which calls into question the legitimacy of the loan arrangement.

Although Nurbank details general information about its total loans in its financial reporting, there is no mention of a specific \$65 million either to Terra Holding LLP or to Nurali Aliyev in its 2008 financial report, a point raised by the NCA.³¹⁹ No loan agreement appears to have been submitted to the court. When Ms Justice Lang asked one of the respondents' lawyers whether she wanted to say anything about the fact that there was no mention of the loan in Nurbank's financial statements, she replied that there was no other material on it and "it does not devalue the facts of all the other evidence."³²⁰

There is also no information in the court documents as to whom in the bank approved this loan, whether the loan was ever paid back, or whether Nurali was even required to pay it back.³²¹ When asked to respond by the authors of this paper to the claim that the loan was not repaid in full, Mishcon did not give any comment.

³¹³ NCA v Baker Respondents' Skeleton Argument, para 176.

³¹⁴ NCA v Baker Respondents' Skeleton Argument, para 110(i).

³¹⁵ NCA v Baker Respondents' Skeleton Argument, paras 177-178.

³¹⁶ "At this point the bank was ultimately controlled by DN, with NA holding a 6.14% share." NCA v Baker Judgment, para 182.

³¹⁷ http://www.en.nurbank.kz/for_investors/financial_results/2008, p6. Accessed October 2021.

³¹⁸ Court Transcript, 11 March 2020, p85. The transcript says "£65 million" but the loan was in US dollars.

³¹⁹ Court Transcript, 11 March 2020, p38.

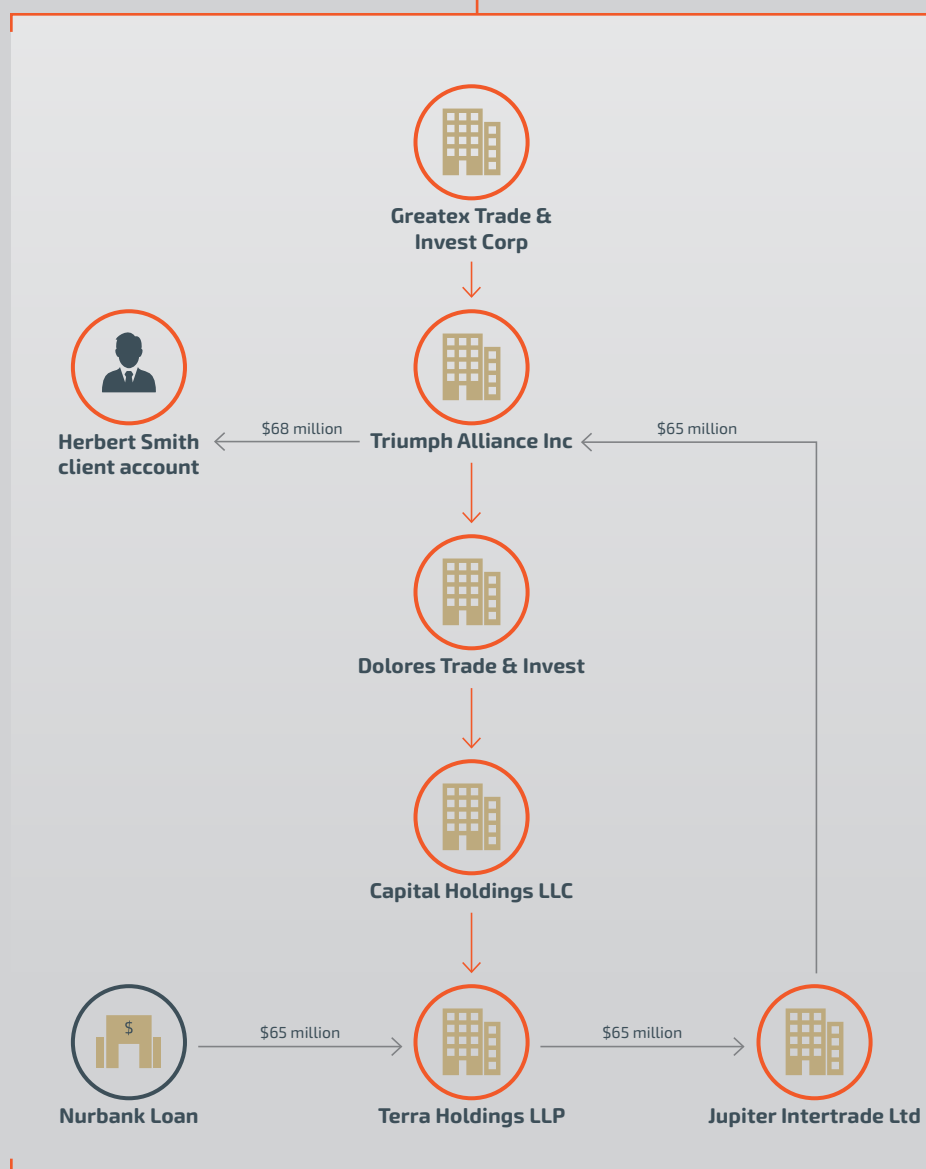
³²⁰ *Ibid*.

³²¹ <https://www.moneylaundering.com/news/loan-documents-link-barclays-to-kazakhstani-family-accused-of-corruption/>. Accessed 11 February 2022.



Nurali Aliyev
beneficially owns:
Greatex Trade, Triumph Alliance, Dolores Trade,
Capital Holdings, Terra Holdings, Jupiter Intertrade

Instead, Mishcon pointed to Justice Lang's comments in her judgment that at the time of the loan "the bank was subject to scrutiny and rating. It was independently audited by Ernst & Young, who in that capacity, produced the bank's consolidated financial statements."³²² The second part of this statement is incorrect, and stresses the need for judges who have expertise in the matters at hand to preside over these cases. It was Nurbank's management that was responsible for the bank's consolidated financial statements, not the Ernst & Young member firm in Kazakhstan, which was engaged only to perform an audit of those financial statements and issue an auditor's report. Auditor's reports are not forensic audits that examine all transactions, but instead rely on analysing samples of data. It is also noteworthy that the Ernst & Young member firm in Kazakhstan audited the Nurbank 2006 accounts without issue, when Rakhat Aliyev was the bank's main shareholder, and the 2007 accounts, when allegations of high-level criminal activity regarding Rakhat Aliyev surrounded the bank.³²³



³²² NCA v Baker Judgment, para 179.

³²³ See page 49.

Both of these accounts would have also been prepared by the bank's management and not Ernst & Young.

Ms Justice Lang also commented that the loan was legitimate – something that was “independently confirmed in 2019, and as the relevant bank statements demonstrate,”³²⁴ although it is not clear on what evidence this was based or who provided the independent confirmation. It is likely that the legitimacy of the loan was confirmed by the bank's management as of 2019 when the UWO was issued. Indeed, Mishcon argue that since 2010 the bank “has been wholly independent of Nurali Aliyev and his mother.”³²⁵ The implication is that the confirmation of the legitimacy of the loan was done without interference from Dariga and Nurali. However, at this point the ownership of Nurbank remained in the hands of associates of the Nazarbayeva-Aliyev family. In 2010, Dariga Nazarbayeva sold her shares to a woman called Sofia T. Sarsenova,³²⁶ the sister of Rashit Sarsenov, a Kazakh businessman. Sarsenov indirectly

controlled 25% of Nurbank's shares as of September 2006 when Rakhat Aliyev's was the bank's majority shareholder,³²⁷ and was described in one media article as Rakhat Aliyev's “one-time business partner”.³²⁸ Sarsenov became a shareholder of Nurbank again in 2016,³²⁹ after his son, Eldar, was made the chairman of Nurbank's board in 2015.³³⁰ He retains a position on the board, as of February 2022.³³¹

Given the immense power that the Nazarbayev family have in Kazakhstan, it is arguable whether any financial institution operating in the country, no matter who its shareholders, would be able to give a truly independent opinion on the legitimacy or otherwise of a loan granted to President Nazarbayev's grandson while he was the bank's chairman. The relationship between the Sarsenov and Aliyev family only raise more questions as to the claim of legitimacy regarding Nurali's 2008 loan, and the supposed independence of this claim.

The owner of the legal title of 33 Bishops Avenue was changed, once in March 2013,³³² and again in January 2014.³³³ This second change appears to be in relation to a mortgage taken out with Barclays Bank UK PLC.³³⁴ According to Mishcon, Nurali borrowed £17.5 million.³³⁵ Documents obtained by Transparency International and reported in a media report regarding the loan do not show “whether the Aliyev family [Nurali and his wife] simply remortgaged the property or used it as collateral for an unrelated advance.”³³⁶

³²⁴ NCA v Baker Judgment, para 179.

³²⁵ NCA v Baker Respondents' Skeleton Argument, para 176.

³²⁶ NCA v Baker Respondents' Skeleton Argument, para 110(i); NCA v Baker Judgment, para 159 subpara 6.11.

³²⁷ https://kase.kz/files/emitters/NRBN/nrbnf9e2_2006_e.pdf. Accessed 11 February 2022.

³²⁸ <https://eurasianet.org/kazakhstan-counting-the-fat-cats-millions>. Accessed 11 February 2022.

³²⁹ https://baigenews.kz/news/dela_semeynye_2-_chem_vladeyut_kazakhstanskije_magnaty_i_ikh_semi/. Accessed 11 February 2022.

³³⁰ https://www.inform.kz/en/new-head-of-nurbank-jsc-appointed_a2843322, accessed October 2021. <https://www.reuters.com/companies/NRBN.KZ/key-developments>, accessed 13 February 2022. Eldar appeared to have retained this position until around December 2021/January 2022.

³³¹ <https://nurbank.kz/en/about/directors>. Accessed 11 February 2022.

³³² NCA v Baker Respondents' Skeleton Argument, para 185.

³³³ NCA v Baker Respondents' Skeleton Argument, para 187.

³³⁴ On the same date, a legal charge was signed on behalf of the two legal owners, Manrick Private Foundation and Alderton Investments Ltd, in favour of Barclays.

³³⁵ NCA v Baker Judgment 176, sub para 5.13.

³³⁶ <https://www.moneylaundering.com/news/loan-documents-link-barclays-to-kazakhstani-family-accused-of-corruption/>. Accessed 11 February 2022.

NCA v BAKER: CONCLUSIONS

The NCA's argument in essence was that Dariga Nazarbayeva was not a legitimate businesswoman, and was not independently wealthy from her former husband, whose wealth was also not legitimate.³³⁷ With her son Nurali, the NCA argued along similar lines, saying that the information submitted by Mishcon did not explain "how he was able to accumulate such considerable wealth at a young age and within a short timeframe."³³⁸

As the above sections demonstrate, despite the fact that the NCA could not show a *direct* link between the properties and funds belonging to Rakhat Aliyev, all of the properties can be *indirectly* but *intimately* linked with his prior business empire. Rakhat controlled both the sugar company and Nurbank prior to his apparent divorce from Dariga, and Nurali had been appointed as Nurbank's deputy chairman in this period, and used an associate of Rakhat Aliyev to receive the deposit for his house on The Bishops Avenue. In its 2015 report, Global Witness commented: "It is... arguable that most, if not all, of Aliyev's wealth may have originated from illegitimate sources."³³⁹ If we accept that much of Nazarbayeva's wealth was based on: (a) developing businesses on the back of her husband's likely

illegal acquisitions, and (b) acquiring these or other equally tainted assets from Rakhat after the divorce, then the wealth used by Nazarbayeva to buy the properties becomes similarly tainted. At the very least, there appear to be further questions to be asked in this regard.

In her judgment Ms Justice Lang appears to at least concede this point, arguing that "if the NCA wish to allege that DN's shares in JSC Kant were a tainted gift, that would be a matter for civil recovery proceedings under POCA 2002."³⁴⁰ Whether the evidence in respect of the acquisition of the JSC Kant shares would be enough to satisfy a civil court that the evidentiary threshold had been met for seizure is a matter of debate.

In rebuttal, Mishcon argued that Nazarbayeva was a successful self-made multi-millionaire, who had relied on her own wits to forge out a successful business in the burgeoning economy of Kazakhstan. With Nurali, Mishcon argued his case both ways, saying on one hand that "there is readily available material demonstrating that Nurali Aliyev is an independently successful businessman (as reflected not least in the NCA's own material which includes a history of

Nurali Aliyev's professional history)"³⁴¹ but on the other accusing the NCA of "deliberately to ignore his mother's resources" by focusing on his young age.³⁴²

Ultimately, Ms Justice Lang sided with the respondents' case. As Spotlight on Corruption commented: "Given that the distribution of corruptly gained assets to wives and children is a widespread feature of kleptocratic money laundering it is concerning if the courts take a narrow view on this."³⁴³

The above sections argue that the NCA could have introduced a lot more supplementary material which would have challenged the evidence presented by Mishcon. The report above has highlighted several instances where the information submitted was arguably misleading or incomplete, not least the fact that Nazarbayeva may have owned one of the companies she sold JSC Kant shares to, which would not therefore explain the origins of the funds used to buy the property.

However, a second major reason why the UWOs were dismissed was the approach of the judge herself, and her surprising willingness to accept the arguments proposed by Mishcon at face value.

³³⁷ NCA v Baker NCA's Skeleton Argument for the Discharge Hearing, para 45.3; Court Transcript, 11 March 2020, p42.

³³⁸ NCA v Baker NCA's Skeleton Argument for the Discharge Hearing, para 45.4.

³³⁹ https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf, p12.

³⁴⁰ NCA v Baker Judgment, para 77. POCA 2002 is a reference to the Proceeds of Crime Act, which was passed into law in 2002.

³⁴¹ NCA v Baker Respondents' Skeleton Argument, para 144.

³⁴² NCA v Baker Respondents' Skeleton Argument, para 161(iv).

³⁴³ <https://www.spotlightcorruption.org/from-hajiyeva-to-aliyev-where-next-for-unexplained-wealth-orders/>. Accessed 11 February 2022.



A FAILURE OF JUDGMENT?

This chapter argues that the judge who heard the case, Ms Justice Lang, erred in dismissing the UWOs, as she failed to properly interrogate information provided by the Kazakh authorities. It also questions her judgment about the use of complex offshore structures. Finally, the chapter examines on what basis the Court of Appeal decided to dismiss the NCA's appeal, thus rubber stamping Ms Justice Lang's judgment.

1. THE ISSUE OF SOURCING INFORMATION FROM KLEPTOCRACIES

One of the main reasons why legislation regarding UWOs was created was to circumvent the problem of having to source information from the country of the government official in question, as little information is likely to be forthcoming, and what is presented is likely to be tainted by political bias. What was dispiriting in *NCA v Baker* – the second UWO case to involve 'politically exposed persons' – is that the judge appeared to accept and afford weight to information from Kazakh law enforcement bodies as ostensibly legitimate.

For example, Rakhat Aliyev disputed that his divorce from Dariga Nazarbayeva was legally executed, saying that it had been made without his consent and his signature forged.³⁴⁴ Yet all of Rakhat's testimony appears to have been dismissed by the judge on the basis that, as Rakhat was found

guilty of dishonest practices, his statements were not to be trusted. Ms Justice Lang says she was "surprised" by the NCA's readiness to rely upon Rakhat's account of the divorce "in preference to that of DN and the divorce court."³⁴⁵ The judge does not seem to have considered that Nazarbayeva's account may also have been self-justifying, or considered how Rakhat Aliyev's dramatic fallout with the then Kazakh president, Dariga's father, could have affected legal proceedings in Kazakhstan, including the divorce.³⁴⁶

Regarding Nurali Aliyev, the judge says in her judgment: "In my view, this information demonstrates that NA was sufficiently independent of his parents by 2008 to purchase Property 2 [33 Bishops Avenue] for himself"³⁴⁷ – itself a puzzling statement, as Nurali needed a \$65 million loan from a bank

he chaired to complete the transaction, and later received a mortgage from Barclays. Despite questioning the fact during the hearing that the loan was not recorded in Nurbank's financial reporting, Ms Justice Lang concluded: "Nurbank was evidently in a position to, and did, make a legitimate loan as it has independently confirmed in 2019, and as the relevant bank statements demonstrate."³⁴⁸ The NCA only presented limited evidence in regard to Nurbank's torrid history, and said nothing about the links to the Aliyev family via its owner, as of end 2021, Rashit Sarsenov. But again, there seems to have been no contemplation on behalf of the judge as to possible political interference regarding any claim of legitimacy regarding this loan by Nurbank or any other persons within Kazakhstan.

³⁴⁴ *The Godfather-in-Law*, pp.54-56; <https://www.latimes.com/archives/la-xpm-2007-jun-21-fg-kazakh21-story.html>, accessed 11 February 2022.

³⁴⁵ *NCA v Baker* Judgment, para 72.

³⁴⁶ A point made by Spotlight on Corruption: "Given that Rakhat had fallen out with his wife's father who was President at the time, one might have thought some caution should apply about relying on this documentation." <https://www.spotlightcorruption.org/from-hajiyeva-to-aliyev-where-next-for-unexplained-wealth-orders/>, accessed 11 February 2022.

³⁴⁷ *NCA v Baker* Judgment, para 178.

³⁴⁸ *NCA v Baker* Judgment, para 179.

Ms Justice Lang also quotes in her judgment the supposed fact that what Dariga received from Rakhat in this divorce was not “any part of his suspected proceeds of crime”³⁴⁹ and castigates the NCA for not “consider[ing] it appropriate to take into account the investigation and confiscation proceedings against RA in Kazakhstan which confiscated his assets, but not those of DN.”³⁵⁰ As argued above, statements from the Kazakh authorities carry little weight, given that Kazakhstan’s judiciary is not independent and has been identified as open to political interference. It is therefore unclear why the judge did not question Mishcon’s reliance on investigations led by the Kazakh authorities, or the credibility of official statements when dealing with a very senior member of the country’s ruling political elite.

In a similar fashion, Ms Justice Lang was happy to cite second-hand information from Mishcon in her judgement, noting that Nazarbayeva “is a successful businesswoman who was named in Forbes list of richest people in Kazakhstan in 2013, and so her wealth could have been identified by [the NCA’s] Ms Kelly from material in the public domain.”³⁵¹ Lang seemed to disregard evidence that was presented that showed how before their divorce, Rakhat had abused his positions of power in the tax police and secret police in a criminal fashion to generate capital that his family relied upon, using the capital to create companies that both he and Dariga Nazarbayeva then helped to build up.

However, outside of the issue of trying to separate Rakhat and Dariga’s sources of wealth, also absent from the judgment was any questioning of the background to Dariga herself acquiring wealth: as the eldest daughter of Kazakhstan’s autocratic president, she appears to have benefitted and been enriched from the kleptocratic underpinnings of Kazakh society in which the political and business spheres are wholly enmeshed. Mishcon’s attempts to present Nazarbayeva making \$45 million in three years in the 1990s as an example of an “entrepreneurial” individual “who capitalised on the economic reforms in Kazakhstan at this time” clearly should be questioned further, certainly in the absence of reliable contemporaneous evidence to corroborate the story.

One could argue that the judge was not given sufficient information and context to make proper assessments, as from the available information the NCA appears not to have presented much information about this aspect of Kazakh society. Rather than focus on Nazarbayeva, it concentrated in its written submission on supposed links between the properties and Rakhat Aliyev. The NCA also did not draw on expert witness testimony. However, judges must surely be cognisant of the underpinnings and context of the case.

In her judgement Ms Justice Lang rather naively accepted that Nazarbayeva’s JSC Kant must be legitimate, apparently because the company is now large and successful, and that Rakhat, despite his criminality, was also “a successful

businessman”. This paragraph is worth replicating in full:

I accept [one of the respondents’ lawyers] Ms Montgomery QC’s submissions that if the NCA wish to allege that DN’s shares in JSC Kant were a tainted gift, that would be a matter for civil recovery proceedings under POCA 2002. In any such proceedings, DN will be able to present three powerful arguments. First, notwithstanding his criminality, RA had been a successful businessman and JSC Kant is and was a legitimate business (it is a major sugar company).

Second, that the divorce settlement was genuine and legitimate.

*Third, that the Prosecutor General’s Department investigated all RA’s Kazakhstan assets at the relevant time, confiscating those which were the proceeds of crime. As a result of the investigations, it was confirmed that RA did not transfer any illegally acquired funds or assets to DN*³⁵²

Far from being “powerful”, the arguments are all, on closer inspection, very weak, for the reasons given above. The sentence “notwithstanding his criminality, [Rakhat Alyev] had been a successful businessman” speaks for itself in its fundamental misunderstanding of the political economy of Kazakhstan.

³⁴⁹ NCA v Baker Judgment, para 73, sub para 4.16.

³⁵⁰ NCA v Baker Judgment, para 70.

³⁵¹ NCA v Baker Judgment, para 68.

³⁵² NCA v Baker Judgment, para 77.

2. THE ISSUE OF OFFSHORE STRUCTURES

Outside of the issues specific to Kazakhstan, much legal discussion concerned the use of complex corporate structures. In its argument, the NCA noted the “very considerable steps which had been taken to conceal the identity of individuals who held an interest in the properties (e.g. the use of BVI companies offshore foundations, mandate agreements, powers of attorney, care of addresses, property management companies etc),” and the fact that “the UBOs were neither known nor ascertainable”³⁵³ until revealed by the parties themselves. The NCA argued, “It is not just that there is a lack of identifiable lawful income, but an unusual structure has been used which positively prevents such information being known [...] a reasonable person is bound to ask why such a structure has been used, given its location (in an unusual jurisdiction) and the time, expense and risk likely to arise in using it.”³⁵⁴

Mishcon argued that the secrecy and complexity of company structures does not amount to illegality, citing a legitimate desire for privacy, safeguarding and tax mitigation,³⁵⁵ adding that the use of corporate structures to hold high value properties in the way found in the present case “is recognised as legitimate by the UK government.”³⁵⁶ In the court hearing, a lawyer for the respondents argued that “complexity is effectively neutral unless you are able to combine it with some other indicia that would allow you to reach reliable conclusions about

it”³⁵⁷ and as Dariga and Nurali had explained the sources of wealth, the issue of complexity of structure was irrelevant. However, this argument only holds if you accept the legitimacy of the dealings as presented by Mishcon, which is debatable, as discussed above. The NCA questioned the veracity of the documents, but failed to spot key possible flaws, such as that Nazarbayeva may have sold shares in her sugar company to herself, while claiming that this generated capital for one of the property purchases.

Ultimately on the issue of complexity the judge sided with Mishcon’s argument:

*This raises an important point of principle. The need for caution in treating complexity of property holding through corporate structures as grounds for suspicion has been recognised in the context of the risk of dissipation of assets in civil proceedings. In Candy v Holyoake [2018] Ch 297, Gloster LJ said, at [59]: “Several cases have emphasised that there is nothing implicit in complex, offshore corporate structures which evidences an unjustifiable risk of dissipation”*³⁵⁸

It is unclear which of the criteria for the issuance of a UWO the judge was referring to in this analysis, or whether this was a general point regarding such structures. It may be that this argument pertained to the ‘serious crime’ provision of the legislation, that the way the properties were held was not evidence that the respondents

were involved in money laundering. But it was not the NCA’s argument that Baker and the other respondents were themselves actively involved in money laundering, and again demonstrates the flaw of the way the legislation is drafted by having to tie non-beneficial owners to serious crime.

Yet, the way Ms Justice Lang’s sentence is structured it appears that she is arguing that, outside of the UWO legislation, the complex manner in which properties are held should not, in and of itself, amount to ‘reasonable grounds for suspecting’. However, such structures should give rise to further investigation, according to guidance on money-laundering issued by UK enforcement bodies. For example, the FCA in its handbook states that: “Situations that present a higher money laundering risk might include, but are not restricted to: customers... who have unnecessarily complex or opaque beneficial ownership structures; and transactions which are unusual, lack an obvious economic or lawful purpose, are complex or large or might lend themselves to anonymity.”³⁵⁹ The UK’s Money Laundering Regulations of 2017 state that in terms of risk assessment, a person in the regulated sector must employ enhanced due diligence in any case where “a transaction is complex and unusually large, or there is an unusual pattern of transactions, and the transaction or transactions have no apparent economic or legal purpose.”³⁶⁰ In other words, though a complex structure is not always indicative

³⁵³ NCA v Baker NCA’s Skeleton Argument for the Discharge Hearing, para 45.2.

³⁵⁴ NCA v Baker NCA’s Skeleton Argument for the Discharge Hearing, para 29.3(1).

³⁵⁵ Miss C. Montgomery QC [instructed by Mishcon on behalf of three of the respondents]: “...You equally get these structures in relation to large entrepreneurs who like to have this sort of opaque structure so as to make sure their assets are appropriately safeguarded around the world [...] There are, as we know, any number of instances in which international figures will want to make sure that their assets are not capable of being readily identified for all sorts of legitimate reasons to do with privacy.” Court Transcript, 10 March 2020, p31.

³⁵⁶ NCA v Baker Respondents’ Skeleton Argument, para 107.

³⁵⁷ Court Transcript, 11 March 2020, p97.

³⁵⁸ NCA v Baker Judgment, para 96.

³⁵⁹ <https://www.handbook.fca.org.uk/handbook/FCG.pdf>, para 3.2.7. Accessed 11 February 2022.

³⁶⁰ [https://www.legislation.gov.uk/uksi/2017/692/made,33.1\(f\)](https://www.legislation.gov.uk/uksi/2017/692/made,33.1(f)). Accessed 11 February 2022.

3. WHY WAS THE NCA's APPEAL DISMISSED BY THE COURT OF APPEAL?

of illegal activity, it should lead to further investigation as to why such a structure is being used. Such structures are not – and are not recognised as the respondents' lawyer argued – as “effectively neutral”. Although there may be legitimate reasons for the use of such structures, it is this further research which will determine whether the uses are legitimate or illegitimate.

According to Spotlight on Corruption, Justice Lang may have set a troubling precedent in this ruling:

According to some practitioners,³⁶¹ this is the first time in a Proceeds of Crime Act application that holding property in a complex and opaque manner has not in and of itself been allowed as a grounds for suspicion. The ruling³⁶² by the Court of Appeal in the Hajiyeveva case in contrast specifically states that “the process by which an acquisition is made may be a legitimate starting point” for such suspicion (§41). A generous interpretation of how reasonable the NCA's suspicion has to be was also made in a serious and organised crime related UWO judgement³⁶³ in February 2020.³⁶⁴

On 17 June 2020, the NCA's permission to appeal was refused with the court deciding it had “no real prospect of success”. This decision was based on six grounds. Grounds 1, 2, 3 primarily relate to the fact that the UWO was issued against Andrew Baker, who did not have “effective control over the property” nor was shown to be involved in serious crime based on reasonable grounds. Ground 6 also mentions that Baker was not involved in, and would have no knowledge of, the shares granted to Nazarbayeva, as this took place years before his involvement in the property. This pertains to problem ‘d’ explained in chapter 2. This finding suggests the NCA blundered by not discharging the original UWOs and obtaining new ones with Dariga Nazarbayeva and Nurali Aliyev as the respondents, after Mishcon had volunteered information regarding their ownership.

Ground 4 refers to information not considered by the NCA, including the fact that Nazarbayeva was a successful businesswoman whose wealth was listed on *Forbes*. The Court of Appeal ruling said that the material had been in the NCA's possession for over six months and was “capable of verification”. This suggests that the NCA erred by not producing enough rebuttal to the information provided by Mishcon, nor did it make a strong enough case questioning the sources of Nazarbayeva's wealth. Had the NCA properly researched Mishcon's claims and, for example, adduced evidence that questioned whether Nazarbayeva may have misled the court over the details of the Gas Development LLP transaction, Ms Justice Lang may have reached a different conclusion.

Ground 5 refers to the use of complex structures and does not seek to challenge the judge's ruling that complexity does not automatically give rise to a reasonable basis for suspicion in and of itself. However, the NCA's argument on appeal was that it was the use of such structures, coupled with a lack of explanation from Mishcon as to why such structures were used, plus other indicators, that suggested that the properties could be tied to Rakhat Aliyev's criminally obtained capital. However, the Court of Appeal says the: “the facts did not give rise to the **irresistible inference** that the property could only have been derived from crime.” This suggests the NCA may have had better prospects had the orders been made against Dariga and Nurali as politically exposed people, which would require no evidence of the proceeds deriving from serious crime. The ruling on Ground 4 suggests that the Court of Appeal would have been happy with *Forbes'* assessment of Nazarbayeva's fortune as a legitimate statement of wealth.

Ground 6 addressed that point that Ms Justice Lang considered that Rakhat's sugar company, JSC Kant, was a “legitimate business, and that all of RA's Kazakhstan assets which were the proceeds of crime were confiscated.” This relates to the problem cited above: the issue of accepting evidence from a kleptocracy. The Court of Appeal concludes: “Lang J was entitled to make those findings, and there is nothing to suggest her decision is wrong.”³⁶⁵ In this way, the appeal court appears to have rubber-stamped the reliability of evidence from officials in kleptocracies. This marked a rather dispiriting end to the *NCA v Baker* case.

³⁶¹ <https://www.5sah.co.uk/knowledge-hub/articles/2020-04-10/mcmafia-order-misses-the-mark-the-limitations-of-unexplained-wealth-orders>. Accessed 11 February 2022.

³⁶² <https://www.bailii.org/ew/cases/EWCA/Civ/2020/108.html>. Accessed 11 February 2022.

³⁶³ <https://www.casemine.com/judgment/uk/5e5caf2e2c94e00dac31b1b1>. Accessed 11 February 2022.

³⁶⁴ <https://www.spotlightcorruption.org/from-hajiyeveva-to-aliyev-where-next-for-unexplained-wealth-orders/>. Accessed 11 February 2022.

³⁶⁵ *NCA v Baker* et al, In The Court Of Appeal, Civil Division, REF: C1/2020/0723.

CONCLUSIONS

The information released through the precedent-setting *NCA V Baker* case provides a fascinating insight into the workings of a kleptocracy. While a state official, Rakhat Aliyev built up his empire through the ruthless expropriation of businesses in Kazakhstan. Other assets were built up with his wife on the back of nepotism, cronyism and favouritism. As soon as Rakhat Aliyev was declared *persona non grata* in Kazakhstan it seems that the majority of his assets were transferred to Dariga Nazarbayeva, either through a divorce that Rakhat alleged was conducted fraudulently, or in opaque circumstances, such as his shareholding in Nurbank. According to Rakhat's relatives, they were shaken down and asked to transfer their companies to Nazarbayeva under duress.³⁶⁶ After consolidating control over what had been held by Rakhat Aliyev (either solely or jointly), some assets were cashed out by Nazarbayeva, and the proceeds placed into over £177 million worth of lucrative real estate in the UK, such as the apartment block on Baker Street and the luxury apartment on Manresa Road. She consolidated control over Nurbank which was used by her son, Nurali, now the bank's chairman, to buy a near £40 million property on Bishops Avenue using a loan acquired in opaque circumstances.

Unexplained Wealth Orders were introduced to try and stop this kind of kleptocratic financial flow from corruption hotspots. And yet the investigation was a failure. The under-funded NCA failed to issue a UWO on the Baker Street property, and failed to provide counter evidence regarding disputable claims made by the respondents' lawyers, such as how Nazarbayeva acquired her shares in Nurbank. To top it all, the presiding judge, Ms Justice Beverly Lang, failed to ask searching questions about the sources of wealth, setting back anti-kleptocracy efforts to before 2007, when the money laundering regulations introduced the concept of political risk.

The precedent set by this ruling indicates that it may indeed be impossible to bring a successful UWO against an incumbent official who enjoys the support of his or her country's ruling powers. The template has been set: no matter how dubious the transaction, the official will be able to get a confirmation of the legality of the transaction from their home country's investigative bodies. Only non-compliance with the order leads to a presumption that the property was purchased through illicit funds. The NCA could launch a civil recovery process based on the information it has received through the UWO

investigation, though if the transaction has been ruled legal, such a process is unlikely to be successful.

Though well-intentioned, the UWO legislation was badly worded, a point confirmed by the March 2022 reform of the Economic Crime Bill, which dealt with several of the issues highlighted above. However, the reform failed to go far enough in addressing issues regarding wealth specifically from kleptocracies. Further reform could look at definitions of 'corruption' as a basis for bringing UWOs and in other legislation aimed at freezing the wealth gained from kleptocracies.

Along with reform of UWOs in the bill, the government also published a white paper on corporate transparency and register reform,³⁶⁷ and a new kleptocracy unit within the NCA was announced.³⁶⁸ Although these steps are welcome, this needs to be accompanied with increased funding for the NCA and other UK bodies so that new and existing legislation is properly enforced.

Only then will we start to stem the flow of capital corruptly acquired from kleptocracies.

³⁶⁶ See page 39. These allegations are denied by Dariga Nazarbayeva.

³⁶⁷ <https://www.gov.uk/government/speeches/statement-on-corporate-transparency-and-economic-crime-measures>

³⁶⁸ <https://www.independent.co.uk/news/business/russia-uk-sanctions-putin-impact-b2022683.html>

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