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cc. Graeme Biggar  
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Dear Lynne

### **NCA settlement with Malik Riaz Hussain regarding assets and property in the UK**

We would like to congratulate the NCA on this action against suspicious money in the UK. It is very encouraging that the NCA is actively using new powers under the Criminal Finances Act to such good effect, and that you have secured such a substantial amount to be returned to Pakistan.

As this is the first use, to our knowledge, of a settlement involving the use of Account Freezing Orders for suspect funds, we wanted to highlight several areas that may risk undermining the success of this settlement and others that follow, if not addressed.

We want to highlight three areas:

- 1. The risk of perceived impunity where no admission of guilt is made and few details of suspected criminality are made public**

At the Global Forum on Asset Recovery in 2017, the Civil Society Organisations' [statement](#) raised concerns about the use of amnesty agreements that are not made public. The statement urged governments to ensure that:

*"any settlements or amnesty agreements reached with corrupt actors are legal, available in the public domain with full details of the corrupt activity and sanctions*

*imposed detailed, subject to judicial oversight, and that they provide victims and relevant community stakeholders the right to provide statements and evidence. Such settlements must avoid blanket immunity clauses which undermine public confidence in the fight against corruption, and must not be used to deny requests for assistance from other affected jurisdictions.”*

Such agreements have been controversial when used in countries such as Nigeria and Tunisia. Action by the NCA should be a credible deterrent against corruption and, where possible, prevent further misconduct occurring by those the action is taken against. Settlements of this nature allow individuals to carry on their business without a criminal record and with no information of investigations into them in the public domain. This can be problematic where they are made with individuals who have had numerous and egregious allegations made against them, as it can give rise to a perception of impunity. This perception can be aggravated where there is little transparency about the basis and nature of the settlement.

To secure the confidence of the public both at home and in the countries where corrupt actors come from, we encourage the NCA to ensure that when it engages in such settlements:

- There is transparency about the nature of the agreement including its legal basis;
- The agreement, which should include the background to the settlement, should be a public document in the same way that the US Department of Justice’s Kleptocracy Initiative publishes the settlement agreements it makes in its civil forfeiture agreements;
- The potential for further criminal action in the UK against the owner of the suspect assets is seriously considered and no clause in the agreement prevents this.

## **2. The importance of transparency and non-governmental stakeholder input into how the funds will be returned to a sovereign state**

We welcome the fact that the assets frozen will be returned to Pakistan. So far, little detail has been provided about how this will be done. We encourage the NCA to publish the steps it will take to ensure that the money will help those who have been victims of any corruption or theft in Pakistan, or to help Pakistan build its defences against corruption and money laundering.

Since the settlement has been made public, Malik Riaz Hussain has intimated that the funds will finance another settlement in Pakistan which was reached after he was alleged to have acquired land unlawfully. If this is the case, then there is a risk that the funds returned may benefit Hussain himself, in clear breach of Principle 9 of the Global Forum on Asset Recovery Principles for the disposition and Transfer of Confiscated Stolen Assets in Corruption Cases (Preclusion of Benefit to Offenders).

We encourage the NCA and other government stakeholders to make public how it is meeting Principles 4 (Transparency and Accountability), 5 and 6 (Beneficiaries and Strengthening

Anti-Corruption and Development), and 10 (Inclusion of non-governmental stakeholders) of the GFAR principles in this case.

Any arrangement between the NCA and Pakistan should be made public in line with Principle 4, with the potential for non-governmental stakeholders to feed into how such an arrangement will be structured and monitored. GFAR attendees recognised that the involvement of third party organisations in monitoring returned funds can help install the very confidence eroded by corruption from the start.

### **3. The need for UK enablers of the suspected corrupt activity to be held to account**

We welcome the recent emphasis on tackling the enablers of corrupt activity in the UK. We hope that the NCA and its partners – such as the FCA and other regulators – will make public whether they intend to take action against anyone who is suspected of committing crimes under the Proceed of Crime Act or breaching the Money Laundering Regulations, regarding this case.

It would be good to discuss this in person and we would very much appreciate an opportunity to have a meeting to do so.

Yours sincerely

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