



Account Freezing Orders:

Law Enforcement's Ace of Spades

Author: Susan Hawley, George Havenhand and Joseph Sinclair

Account Freezing Orders (AFO) were introduced in the UK in the 2017 Criminal Finances Act, alongside Unexplained Wealth Orders (UWOs), as a new measure [designed to tackle illicit finance](#). While receiving far less attention than their glitzy sister order, AFOs are emerging as the [preferred tool](#) for law enforcement to freeze and recover corrupt assets in a relatively straightforward and cost-effective way. The amount of money frozen through AFOs and subsequently confiscated has increased significantly in recent years.

This note gives an overview of how AFOs work, their effectiveness in practice following recent cases, and lessons for the future.

What are AFOs?

AFOs are court orders sought by law enforcement bodies to freeze the contents of a bank or building society account. After the account is frozen, the authority can apply to seize its contents with a forfeiture order or notice.

AFOs and account forfeiture orders were introduced as an amendment to the [Proceeds of Crime Act 2002](#) (POCA) made by [Section 16 of the Criminal Finances Act 2017](#) and came into force on 31 January 2018.

Under the legislation, law enforcement officers from the police, HMRC, Serious Fraud Office (SFO), the National Crime Agency (NCA) or an accredited financial investigator may apply to the magistrates' court for an AFO if they can show **reasonable grounds to suspect** that money in an account is:

- obtained through unlawful conduct (and is therefore what is known as 'recoverable property'); or
- intended for unlawful use.

This applies to business or personal accounts, but the balance must be above £1,000 to be eligible for an AFO.

AFOs can be imposed for any period up to two years. However, [emerging practice](#) is for authorities to seek an AFO for three to six months and to make a further application if more time is needed for the underlying investigation.

AFOs are often made following a suspicious activity report (SAR) from a bank. Account holders may or may not be given notice of the application for an AFO, depending on whether it would undermine moves to forfeit the funds. However, once an AFO is granted, persons affected by the order will be notified and can apply to have it dismissed or varied, for example, to make withdrawals to cover reasonable living expenses or maintain a trade, business, profession or occupation.

Why do law enforcement like AFOs?

AFOs give law enforcement authorities time to investigate the origin of funds and decide whether to go on to seek to confiscate the money through a forfeiture order or forfeiture notice. In 2019, the National Crime Agency credited their introduction (alongside an extension of the time enforcement bodies are allowed for investigating suspicious activity reports) [with a 153.6% increase](#) in the criminal assets frozen.

Applications for AFOs are [relatively straightforward](#) and low risk for enforcement authorities. The bar - reasonable grounds to suspect the money is from or intended for criminal conduct - is low, and law enforcement does not need to be carrying out an active criminal investigation into the account holder to seek an order.

AFOs are also quicker and more cost-effective than UWOs (which require an application to the High Court in respect of property worth at least £50,000) or a prosecution, but can be used in conjunction with those and other tools.

Crucially, if an AFO is overturned, [the starting point](#) is that no costs be awarded against the enforcement authority, unless its conduct justifies such an award. This contrasts starkly with UWOs, where [adverse costs](#) awarded against law enforcement have significantly impacted upon their risk appetite to use them.

Who is using AFOs?

In the three years that AFOs have been available to law enforcement authorities, their use has increased significantly.

In their 2019 [Asset Recovery Action Plan](#), the Home Office reported that AFOs were used more than 650 times in 2018/19 to freeze £110 million of suspected illicit funds. In late 2019, the NCA alone said it had obtained 85 AFOs with a value of £180 million.

The NCA has made extensive use of AFOs including:

- the successful [forfeiture](#) of £24,668 from the niece of Syria's al Assad, Aniseh Chawkat, following an AFO against her UK bank accounts;
- successful [forfeiture](#) of £500,000 from the son of the former Moldovan prime minister, Vlad Luca Filat, following three AFOs;

- successful AFOs worth £3.6 million held in [the accounts](#) of 95 Chinese students due to concerns that they were acting as money mules for the proceeds of crime;
- [confiscating](#) £6.4 million from a corrupt Liberian business, following an AFO in 2019, on bank accounts at Commerzbank AG, which worked with the NCA to provide data;
- a £190 million [settlement](#) with Malik Riaz, one of Pakistan's wealthiest businessmen, £140 million of which had been frozen through AFOs;
- AFOs on eight bank accounts worth £100 million on a [further undisclosed case](#) relating to bribery and corruption concerning an individual who had already had £20 million of funds frozen at an earlier hearing; and
- an [AFO](#) worth £14 million against a couple's bank accounts linked to the Azerbaijan Laundromat.

The NCA is by no means the only agency to make extensive use of AFOs, however. HMRC [obtained 60 AFOs](#) and froze £7.9 million in 2018/19. The following year, they secured 166 AFOs and froze £19.4 million and the [number of forfeiture applications](#) increased fourfold, from 14 to 67. [HMRC is expected](#) to make significant use of AFOs to recover funds obtained fraudulently through Covid-related loan schemes.

In April 2020, the Metropolitan Police [reported](#) that it had used AFOs to freeze 25 bank accounts containing over €1.9m connected to a crime network based in Italy.

The UK's National Economic Crime Centre - a body set up in October 2018 to coordinate the UK's response to economic crime - has said it is seeking to [maximise](#) the use of AFO powers across all agencies. Greater transparency about their use and annual figures would help ensure more effective scrutiny of the success of AFOs in tackling dirty money.

What are the downsides of AFOs?

AFOs have [faced criticism](#) for the lack of safeguards and the issues arising from a lower standard of proof. Some of these arise from the fact that AFOs are heard in the magistrates' court in the first instance, and include that:

- there is no requirement to disclose material that might help the defence;
- someone applying to vary or dismiss an AFO against their account will bear their own legal costs unless they can prove wrongdoing by the law enforcement body.

There have also been teething problems in implementation. One AFO against an Iraqi national, Mr A, who came to the UK on a Tier 1 (Investor) visa (known as a ['golden visa'](#)) [unravalled](#) after the authority failed to provide Mr A with notice of the application, even after the AFO was granted, and allegedly did not give 'full and frank' disclosure to the court.

Although there has yet to be a high-profile loss or challenge to the AFO regime, like the [Baker](#) case in respect of UWOs, AFOs do face regular challenges. In December 2020, lawyers successfully had three AFOs involving a high net worth Russian individual brought by Somerset police [discharged](#) for lack of underlying evidence.

Case study 1: Vladimir Filat and the “theft of the century”

Between 2012 and 2014, Vladimir Filat, former Prime Minister of Moldova, assisted in the theft of \$1bn from three Moldovan banks – the equivalent to [12.5% of the country’s GDP](#) – in what has been described as the “[theft of the century](#)”.

In addition to being found guilty of abuse of his office, Filat was found guilty of taking a \$250 million bribe. He was [released](#) in December 2019 after serving half his 9-year sentence, which Moldovan prosecutors [described](#) as “*too mild*”.

Reports suggest that the [proceeds were laundered](#) through the Latvian financial system, arriving in countries such as Cyprus, China, Switzerland, and in the UK through Filat’s son, Vlad Luca Filat.

Luca arrived in London to study a year after Vladimir Filat’s arrest. His lavish spending was [widely reported](#), including a £390,000 upfront payment for a penthouse in Cadogan Square and a £200,000 Bentley. All the while, Moldova was [suffering](#) economic and political fallout that hit citizens’ real standards of living.

In May 2018, the NCA [applied](#) for AFOs in respect of three of Luca’s HSBC bank accounts with a balance of [£466,321.72](#). The sum had been [generated](#) by international transfers from companies based in Turkey and the Cayman Islands. There was also roughly £90,000 cash paid into an account from locations all over the UK over 4 days.

The circumstances – including the international transfers and the fact that Luca was a full-time student – indicated that the funds in Luca’s account had been obtained through the unlawful conduct of his father. The District Judge gave weight to Luca’s [poor explanation](#) of the provenance of the funds and, in February 2019, Westminster Magistrates’ Court granted the AFOs.

Luca appealed the decision with reference to his family’s legitimate wealth, his own business activities, and the assertion that wealthy friends had lent him the money after his father’s arrest.

After a contested hearing at Southwark Crown Court, HHJ Gledhill QC dismissed Luca’s appeal. The Judge found that there was sufficient evidence that the sums must have come from the criminal behaviour of Vladimir Filat. The Judge was satisfied that the payments were the proceeds of money laundering.

Luca’s case consolidated the place that AFOs have in the UK’s illicit finance enforcement arsenal and their use to tackle the proceeds of overseas corruption.

Case study 2: X and Y

In December 2020, the Evening Standard reported that [the NCA applied](#) for an AFO against accounts held by a London-based couple in November 2019. The NCA identified that around £14 million – which the NCA said was likely to be the proceeds of crime – was channelled into the UK via a network of 21 companies as part of the ‘[Azerbaijan laundromat](#)’ scheme.

The identity of the couple was kept secret by a court order, which the Evening Standard contested on the grounds of open justice and transparency. In May 2020, Westminster Magistrates' Court handed down [an important judgement](#) ordering press access to redacted and anonymised versions of the AFO documents on the basis that there was "...an important story to tell" and access "enable[es] the public to scrutinise the court."

The NCA's case summary noted that, on the back of AFOs granted in 2018, the NCA has moved now to forfeit the frozen funds in 10 bank accounts. The full 10-day forfeiture hearing is due to take place in July 2021. The NCA is alleging that the amounts in the couple's UK bank accounts were double the rental profits that the couple declared to law enforcement authorities as the source of their wealth; that the couple were unable to explain the role of some of the 21 companies through which money was transferred; and that the companies themselves were in many cases 'brass plate' entities. It isn't clear whether the NCA is also seeking to freeze the couple's UK property in the process.

The case is currently the [subject](#) of a judicial review as to whether an AFO should be heard in open court - a key test of transparency in the regime.

Lessons

AFOs are increasingly a crucial tool for law enforcement in the fight against dirty money. However, AFOs can only target cash in bank and building society accounts. Their continued success for use against foreign politically exposed persons suspected to have engaged in corruption (in stark contrast to problems emerging in the use of UWOs in these cases), raises questions as to whether a Property Freezing Order to tackle corrupt funds laundered through property should be considered as an additional tool for law enforcement.

Meanwhile, aside from the circumstances in which AFOs will be sought without notice to avoid jeopardising forfeiture, the AFO regime will be most effective where there is transparency and publicity in their use. Open justice plays a crucial role in providing scrutiny of how courts and enforcement implement these orders. In our view, court proceedings, those involved, and the underlying facts should be public in all but the most exceptional circumstances. This creates a real deterrent effect for those who may think about laundering looted or corrupt assets through the UK by increasing the reputational risks for those contemplating acts of corruption.

Finally, it is vital that there is more transparency about how law enforcement is using AFOs as the regime develops. The National Economic Crime Centre should be looking to produce annual statistics about their use, the amounts confiscated as a result, as well as the number of AFOs contested and dismissed.