Written evidence from Martin Bentham, Home Affairs Editor at the Evening Standard.

I write to raise my concerns about the impact on open justice of a number of issues raised by my recent experiences in trying to report details of an account freezing order and forfeiture "dirty money" case and by my previous experiences in covering confiscation order enforcement proceedings.

Account freezing and forfeiture proceedings.

I begin with an account freezing and forfeiture case. This case required me to make nine separate appearances in court as part of an ultimately successful attempt, that took nearly two years to complete, to make public the identities of Suleyman Javadov and his wife Izzat Khanim Javadova and the details of the "dirty money" allegations against them contained in an account freezing order application by the National Crime Agency relating to ten accounts at major UK banks totalling about £6.5 million. The case against the couple, both from Azerbaijan but living in London, was of clear public interest involving alleged large scale money laundering and payments by offshore shell companies to private schools among the concerns.

The process that I had to undergo to reach the position of being able to reveal these details shows, however, how extensive rights of appeal and the exploitation of judicial review, combined with some judicial tolerance, managed to secure secrecy for month after month at the expense of open justice, even though the courts eventually found that there were no grounds to justify this.

I now give a brief summary of how this happened, starting in the summer of 2019 when I discovered (not via any court listing) that a large account freezing order had been obtained at Westminster Magistrates against a person named Javadov. I applied to the court for documents relating to the case, but was eventually told that the relevant hearing had been conducted in private so I was not entitled to any documents. I was informed a short while later, however, that a new hearing to renew the account freezing orders against Mr Javadov and his wife Ms Javadova would take place on 2 December that year. I was intending to attend, but was unable to because of reporting on the aftermath of the Fishmongers' Hall terror attack shortly before, so again applied to the court for the documents in the case so that I could discover and report the details of the allegations and sums covered by the freezing orders, none of which I knew.

The then Chief Magistrate Emma Arbuthnot ordered a hearing, which took place because of adjournments over three separate days in February and March 2020, after which the Chief Magistrate issued a judgment in May 2020 in which she accepted my right as a journalist to receive a redacted NCA case summary, but also imposed both an anonymity order and a stay on my access to this summary.

The anonymity order was imposed on the grounds that the case was at an "early stage" and the financial and reputational damage that the Chief Magistrate decided would result from disclosure of the Javadovs' identities. The reason for the stay was that at the start of the hearings on my application, the Javadovs' barrister, James Lewis QC, had announced that they would be seeking a judicial review of the decision to hold the 2 December 2019 hearing in open court (even though neither the Javadovs nor their lawyers had attended that hearing to make any representation for a private hearing or reporting restrictions).

Permission for this judicial review was eventually granted, but after a directions hearing in February 2021 that imposed further reporting restrictions, the Javadovs' case was finally rejected on all grounds after a hearing before Lord Justice Fulford and Mr Justice Johnson in the Divisional Court on 29 June this year, for which the judgment was only published on 29 September this year. That was 20 months after the original hearing to which it related and 16 months after the judgment by the Chief Magistrate granting me the right to the redacted NCA case summary, which I was instead denied because of the judicial review. It is worth noting that in the subsequent forfeiture proceedings the Javadovs' lawyers made clear that the purpose of the judicial review was to maintain anonymity, even though the issue of anonymity was not one of the four unsuccessful grounds on which the judicial review was granted (or sought). In other words, judicial review was being used as a device to frustrate open justice.

Meanwhile, forfeiture proceedings began after an application by the NCA to seize the approximately £6.5 million in the Javadovs' bank accounts on the grounds that the money was the proceeds of corruption and had been brought into the country unlawfully via the "Azerbaijan laundromat" network of brass plate companies, mostly offshore, fronted by "men of straw" as the NCA characterised it.

A directions hearing was held in October 2020 at which the Javadovs' lawyers, who had previously accepted that there would be a fully open hearing at which names would be disclosed, if the case came to forfeiture, said without warning they would be applying instead for a private hearing at the final hearing scheduled for July 2021 and asked for anonymity to be maintained as a result. The Chief Magistrate said she did not have time to consider detailed arguments at the directions hearing, but agreed – despite no specific grounds being presented by the Javadovs – to impose anonymity pending a pre-trial review hearing in May 2021. She did, however, invite me to submit an application for anonymity to be removed ahead of this, which I did.

A hearing to consider my application on anonymity was eventually scheduled for late March 2021, despite attempts by the Javadovs' lawyers to argue that it should not be held, and took place before District Judge Vanessa Baraitser. The Javadovs had briefly changed lawyers and their new barrister presented no specific argument to the court at all, other than arguing that a decision should be postponed until the pre-trial review in May. DJ Baraitser expressed dissatisfaction at the absence of any grounds for anonymity being presented to the long-scheduled hearing, but agreed an adjournment because of the pending (though clearly hopeless) application for a fully private hearing when the final forfeiture proceedings took place

The pre-trial review hearing took place on 25 May 2021 at which the Javadovs' lawyers again presented no specific Article 8 or other grounds for anonymity, other than claiming that it would be wrong to remove it while the judicial review into the earlier freezing order hearing had still to be decided. DJ Baraitser rejected this and ordered that anonymity should be removed and that the final forfeiture hearing should be in public, basing her decision on both issues on the grounds that no arguments had been presented by the Javadovs to justify a different approach. Indeed, the couple, represented by James Lewis QC, told this hearing, contrary to their previous stance, that they were no longer seeking a fully private hearing on the grounds that it would be highly unusual for such a closed hearing to be permitted.

Instead, however, the Javadovs' lawyers said they wanted to seek permission for a second judicial review, this time of DJ Baraitser's decision to lift anonymity. As a result, DJ Baraitser placed a stay on the removal of anonymity to give the Javadovs time to make this application, which they did.

Their application was rejected on the papers by the High Court judge, Mr Justice Freedman, but he granted a further stay because he said it was customary to allow the right to an oral hearing in such cases. This took place in June 2021 before Mr Justice Lavender, who similarly rejected the Javadovs' arguments on all grounds. He, however, also granted another stay after being told that the Javadovs wanted to contest his decision at the Court of Appeal. Their case was finally rejected by Lord Justice Singh on 29 June 2021, again on all grounds, on the same day as the judicial review on the freezing order stage before Lord Justice Fulford and less than a week before the start of the final forfeiture proceedings on 5 July 2021. These were originally scheduled to last ten days, but instead ended on the first day with a settlement in which the Javadovs agreed to forfeit just over £4 million to the NCA after accepting that the money had been brought into the country illegally. The Javadovs' barrister, Mr Lewis QC, told the court that one reason for the settlement was to avoid further details relating to the couple being made public and although it is clearly impossible to prove a definite link, it is perhaps significant that this success in recovering "dirty money" only occurred days after this newspaper made the couple's names public.

Either way, the above summary shows, even in this relatively concise form, what a tortuous struggle it was to be able to reach this position and although the judicial review judgment by Lord Justice Fulford and Mr Justice Johnson is an important ruling in favour of openness, I believe that there are several over-arching points worthy of consideration by this committee's inquiry.

The first is that the onus should always be on those seeking to depart from the open justice principle (i.e. by seeking anonymity or other restrictions) to provide the cogent and strong grounds for doing so before any such order is made. It should not be, as in this case, that a lack of court time, or a failure to present such grounds, results in a repeated adjournments, which by definition achieve the objective of those seeking anonymity at the expense of open justice and the right of the media and the public more generally to know what is taking place in our courts. In this case, the Javadovs' lawyers were indulged as they changed their arguments on a private hearing in a blatantly contradictory manner, presented no detailed grounds for anonymity, and sought to exploit the judicial review in the freezing order hearing (and the long delay in this being decided) to frustrate openness in the forfeiture proceedings.

Another relevant point is the extent to which repeated appeals were allowed. DJ Baraister's decision to remove anonymity at the pre-trial review in May 2021 followed a long process in which the Javadovs' lawyers had already failed to present any evidence to a previous hearing in March 2021 that was already meant to have decided anonymity, but still led to the couple being given three further opportunities to revisit their case, first on the papers at the High Court, then in an oral hearing at the High Court, and finally on the papers at the Court of Appeal. Each delay was, inevitably, the expense of open justice and press freedom to report, so was not without consequence and amounted to a success for the couple despite, as the courts repeatedly found, them having presented no grounds at any stage to justify anonymity.

In addition, there is practical point in relation to the open justice principle. I represented myself in this case because the cost to my newspaper of spending the money required to

instruct counsel would have been prohibitive and not cost-effective. The same would be the case for most media organisations. Even on a personal level, the vast effort that was required to continue fighting this case, which involved the repeated submission of skeleton arguments and legal correspondence, as well as attendance, as indicated above, at nine court appearances is not something that I could either justify on a regular basis, if at all in future, nor something that my newspaper would be likely to be able to afford to from a time perspective. Again, I am sure that the same would apply for most media organisations. Unless the courts are robust in upholding the open justice principle and not to indulge the type of approach seen in this case then those with the funds to pay wealthy lawyers (which of course will include many of those involved in "dirty money" cases among others) will succeed by default because the media will not in many cases be able to justify the time or money to fight prolonged court battles.

Finally, listing is an enduring problem. In my experience, which appears to match that of barristers involved in such hearings, account freezing order cases are not generally listed, certainly at Westminster Magistrates, either on lists provided to the media ahead of the relevant day or on the lists displayed at the court. It is thus almost impossible to know about a case, which is an obvious obstacle to properly transparent justice and the ability of the media to know when it is worthwhile going to court (or even to find out once at a court whether such a hearing is taking place). Advance lists should ideally be published online in advance, including for magistrates' courts (which are where freezing order and forfeiture cases take place) and certainly on the printed lists at the relevant court itself. The names of the respondents (not the initials) should be listed too, unless there is a specific court order to the contrary, and it would also be helpful if any indication of the nature of the case could be part of the listing. Otherwise, it will remain difficult to identify cases, given the large number of cases taking place each day at a court such as Westminster Magistrates.

Confiscation orders

I have previously encountered a specific problem with obtaining information about court decisions to agree to write off confiscation order debts via the certificate of inadequacy process. The problem is that I have encountered is that in a number of cases when the extent of the inadequacy was agreed by the CPS and the subject of the confiscation order, the application was dealt with by the Crown Court administratively on the papers with no hearing listed and no court record of the basis of the decision. The CPS has argued in the past that it is unable to disclose the reasons for agreeing that the debt should be written off, meaning that the media and the public have no way of knowing whether such a decision was justified or not. It also means that the public, which has been told that a criminal has been ordered to repay a particular sum, is in fact left misinformed because clearly no such repayment will have been made or even ultimately sought.

I cite two cases that I identified via Freedom of Information, one involving the write-off of a £14 million confiscation order and the other involving the write-off of another confiscation order totalling more than £1 million.

Clearly, if there is to be proper transparency, such cases should be listed and held in open court, even if both parties agree as to what the outcome should be, and there should be a judgment published setting out the rationale for any reduction in the confiscation order (which as the NCA and politicians have argued can often be the best way of sanctioning serious criminals, as well as ensuring that they do not profit from their illegal actions). I should add, as a dispiriting aside, that the last time I submitted an Freedom of Information request to the CPS for details of certificate of inadequacy I received a response, contrary to

previous practice, in which the subjects of the confiscation order were no longer named, but instead identified only by a case number on supposed data protection grounds, a clear retreat from open justice and something which, of course, made it impossible to identify the people involved or for anyone to question whether the decision to write off the debt appeared justified.