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NCA Ducks Litigation Risk In 1st Seizure Of Sanctioned Assets

By Christopher Crosby

Law360, London (July 30, 2024, 5:34 PM BST) -- The decision by the National Crime Agency to secure the forfeiture of the assets of a sanctioned Russian oligarch is a pragmatic victory that avoids the risk of setting a damaging legal precedent, lawyers say.



The NCA's settlement suggests that enforcement agencies are keen to crack down on alleged breaches of sanctions after Russia invaded Ukraine, lawyers say. (STR/NurPhoto via Getty Images)

The NCA's settlement with Petr Aven's business manager for £768,000 (\$986,000) on Monday was the first time that a U.K. law enforcement agency has secured the frozen assets of a sanctioned individual following alleged criminal conduct. It marks a milestone for the country's sanctions regime.

The agreement suggests that law enforcement agencies have an appetite for cracking down on alleged sanctions breaches amid growing criticism that there had been little action more than two years after Russia invaded Ukraine, Andris Ivanovs of Ashurst LLP said.

"The outcome also highlights that law enforcement's ability to go after such assets can arise even if a clear intention to breach, or circumvent, sanctions cannot be established," Ivanovs said.

Under the **terms of the agreement**, Aven's associate did not admit that the money — mostly cash, although some was in bank accounts — was recoverable property or was intended to be used illegally. And the NCA was not required to prove that was so under the Proceeds of Crime Act 2002.

Stephen Gater, Aven's business manager, simply consented to the forfeiture, ending a two-year legal

battle.

By striking a deal, the NCA was not required to prove criminal breaches of sanctions had taken place, nor whether the assets were recoverable property under the Proceeds of Crime Act 2002, where the burden is the civil standard on the balance of probabilities.

Dan Hudson, a partner at the boutique firm of Seladore, said the decision was evidence that the NCA was willing to be pragmatic.

"These proceedings highlight how the NCA is prepared to use new, pragmatic means to seize funds suspected of being connected to designated persons, without actually having to prove any sanctions breach or intention to use the funds for unlawful purposes."

Liam Lane of Peters & Peters LLP said that the NCA's tactical move to avoid any potential legal setback might have played into the agency's decision to cut a deal. The attraction of securing binding court finding, which could boost the prospects of further seizures, was ultimately outweighed by the risk of a damaging defeat.

"It is undoubtedly important for the NCA, and the U.K.'s sanctions enforcement, that they get some wins under their belt, to show that sanctions do have teeth, so civil recovery and settlement is much safer to demonstrate than the risk of litigation," Lane said.

The NCA won nine account freezing orders worth almost £1.5 million in May 2022 linked to Aven, a former director of Russian banking giant Alfa Group.

Prosecutors alleged that Aven had used offshore companies to move \$5 million from foreign accounts just before he was sanctioned by the European Union in March 2022.

The NCA freezing orders restricted accounts operated by a service company for Aven's three U.K. properties — Ingliston Management Ltd., his family office and his security business, Lodge Security Team Ltd.

But, after a two-year investigation, the NCA sought the permanent forfeiture of approximately £1.2 million, representing the salaries of more than 20 household staff, as the suspected proceeds of crime.

The NCA had opened just one other case, before it turned to Aven, over suspected sanctions evasion, **targeting an alleged ally** of Vladimir Putin in a criminal prosecution in February. The lack of enforcement by the Office of Financial Sanctions Implementation had created doubts about the ability of Britain to enforce such measures, although an estimated £23 billion in assets had been frozen and almost 1,700 individuals and 291 entities designated by February.

Banks in Britain raised the alarm and were able to alert the NCA to the payments. But techniques for evading sanctions are becoming more sophisticated, requiring cooperation across countries and more innovative intelligence-gathering operations, Ivanovs of Ashurst said.

"Ultimately, the ability of law enforcement to bring such actions depends on timely supply of relevant intelligence from the private sector," he said.

Gater, who was not a designated individual, was supported by Aven as he applied to the High Court to have the freezing orders **thrown out** after the NCA failed to tell the judge who imposed the restrictions that the Office of Financial Sanctions Implementation had given Ingliston Management and Lodge Security licenses to allow Aven to pay with the accounts.

Aven's lawyer argued that the license also allowed him to send money to the companies' accounts from his account with an Austrian bank.

The High Court **ordered the NCA** in October 2022 to revisit its grounds for freezing Aven's assets, finding that a lower court had applied the wrong legal test when it considered an application to block the orders imposed on the accounts.

Monday's hearing had been scheduled for the judge to give directions to the two sides on the next steps in the case. The agreement allows them to sidestep having to litigate those issues, and ultimately looks like a draw for both sides, Neil Dooley of Steptoe International (UK) LLP said.

"From a lawyer's perspective, it was certainly a missed opportunity for some clarity in this area," Dooley added.

--Editing by Ed Harris.

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