



SHERIFF APPEAL COURT

**[2022] SAC (Crim) 4
SAC/2019/688/19**

Sheriff Principal M Stephen QC
Sheriff Principal D L Murray
Sheriff A Cubie

OPINION OF THE COURT

Delivered by Sheriff Principal D L Murray

In Appeal by

CRISTIAN PICCO

Appellant

Against

THE PROCURATOR FISCAL, EDINBURGH

Respondent

**Appellant: Hann, Solicitor Hann; & Co
Respondent: Wilson AD; Crown Agent**

11 October 2019

Background

[1] Part 7 of the Proceeds of Crime Act 2002 (“the Act”) deals with money laundering. It provides a regime whereby business within the “regulated sector” which includes banks and certain professions must report to the authorities suspicions of money laundering by customers or others. Where such a suspicious activity report (SAR) is made, after a period of 7 working days starting from the day after the SAR is made if authorisation to transact in

relation to the property is refused then a moratorium period of 31 days applies to allow the authorities to undertake further enquiry. The Criminal Finances Act 2017 amended the Act *inter alia* inserting new sections 336A and 336 B which provide for the moratorium period to be further extended on application to the court. This appeal challenges the decision of the sheriff, on 22 May 2019, to extend the moratorium period and to do so at a hearing at which the appellant was not present or represented. The marking of this appeal has the effect of extending the moratorium period for 31 days starting with the day after the end of the extension period granted by the sheriff in terms of section 336A (see 336C(3), (4) and (5)). On 21 July the respondent made a further application to the sheriff at Edinburgh in terms of section 336(A). The sheriff granted another 31 day extension to the moratorium period. The appellant does not challenge that decision and is content to focus his argument on the original decision of 22 May being fundamentally flawed.

[2] The note of appeal also challenged the competency of the application to extend the moratorium on the basis that it was out of time. The appellant however accepted that given the explanation provided by the Crown in their note of argument, that as the official of the TSB Bank plc who had made the SAR was based in Birmingham, 22 April 2019 was a relevant bank holiday. Accordingly the notice period in terms of Section 335(5) expired at midnight on 23 April 2019 being 7 working days after 11 April 2019, being the day after the SAR was made by the bank official. The petition for extension of the moratorium period was therefore lodged timeously. Accordingly he no longer insisted on the competency argument set out in the note of appeal

[3] We were told that the appellant is a chef and was a part-owner of a property in Italy. This property was sold and €181,000 (approximately £170,000) was transferred to an account in his name with the TSB Bank plc in the UK on or about March 2019. The appellant's bank

account was frozen on 2 April 2019 and he was asked by the bank for information on the source of funds which he provided. The account of the appellant was unfrozen on 8 April and then frozen again on 9 April. The bank made a disclosure and request for consent to the National Crime Agency on 10 April 2019. On 23 April 2019 officers of the National Crime Agency refused consent in terms of Section 335 of Act. As a consequence of this refusal a 31 day moratorium period commenced in terms of Section 335(6) of the Act. This period expired on 23 May 2019.

[4] We were also informed that the appellant's partner and children lived outside Edinburgh and he had been adversely affected by the breakdown of his relationship in 2018. He had intended using the funds from Italy to purchase a home close to his children. However during the period between March and the freezing of the account at the beginning of April he had abused alcohol and spent more than £100,000. Only £62,000 remained in the frozen bank account.

[5] On 17 May the appellant and his agents learned from Police Scotland that the Crown were intending to present an application in terms of section 336A of the Act to extend the moratorium period. The Detective Constable who contacted the appellant's agents declined to give any indication of what was under investigation. On the same day the agents wrote to Edinburgh Sheriff Court and to the Crown to advise of their interest and to seek the opportunity to make representations in opposition to any petition to extend the moratorium period. On 22 May Police Scotland telephoned the appellant's agents and advised that a petition would be presented to Edinburgh Sheriff Court that day after 2 pm. The appellant's agent then spoke with the procurator fiscal depute who was dealing with the case and was advised that the Crown were seeking to have the court exclude the appellant and his agents from the hearing of the application. The appellant was not provided with a copy of the

petition. The appellant's agents made representation to the procurator fiscal depute in the course of the telephone conversation and were invited to put these in writing. They submitted these by email on 22 May a copy of which was produced to the sheriff and to this court.

[6] The applicable provisions of the Act are:

"335 Appropriate consent

- (1) The appropriate consent is —
 - (a) the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer;
 - (b) the consent of a constable to do a prohibited act if an authorised disclosure is made to a constable;
 - (c) the consent of a customs officer to do a prohibited act if an authorised disclosure is made to a customs officer.
- (2) A person must be treated as having the appropriate consent if —
 - (a) he makes an authorised disclosure to a constable or a customs officer, and
 - (b) the condition in subsection (3) or the condition in subsection (4) is satisfied.
- (3) The condition is that before the end of the notice period he does not receive notice from a constable or customs officer that consent to the doing of the act is refused.
- (4) The condition is that —
 - (a) before the end of the notice period he receives notice from a constable or customs officer that consent to the doing of the act is refused, and
 - (b) the moratorium period has expired.
- (5) The notice period is the period of seven working days starting with the first working day after the person makes the disclosure.
- (6) The moratorium period is the period of 31 days starting with the day on which the person receives notice that consent to the doing of the act is refused.
- (6A) Subsection (6) is subject to —
 - (a) section 336A, which enables the moratorium period to be extended by court order in accordance with that section, and
 - (b) section 336C, which provides for an automatic extension of the moratorium period in certain cases (period extended if it would otherwise end before determination of application or appeal proceedings etc).
- (7) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the person is when he makes the disclosure.
- (8) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).
- (9) A nominated officer is a person nominated to receive disclosures under section 338.

(10) Subsections (1) to (4) apply for the purposes of this Part.

336 Nominated officer: consent

(1) A nominated officer must not give the appropriate consent to the doing of a prohibited act unless the condition in subsection (2), the condition in subsection (3) or the condition in subsection (4) is satisfied.

(2) The condition is that—

(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the National Crime Agency, and

(b) such a person gives consent to the doing of the act.

(3) The condition is that—

(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the National Crime Agency, and

(b) before the end of the notice period he does not receive notice from such a person that consent to the doing of the act is refused.

(4) The condition is that—

(a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the National Crime Agency,

(b) before the end of the notice period he receives notice from such a person that consent to the doing of the act is refused, and

(c) the moratorium period has expired.

(5) A person who is a nominated officer commits an offence if—

(a) he gives consent to a prohibited act in circumstances where none of the conditions in subsections (2), (3) and (4) is satisfied, and

(b) he knows or suspects that the act is a prohibited act.

(6) A person guilty of such an offence is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

(7) The notice period is the period of seven working days starting with the first working day after the nominated officer makes the disclosure.

(8) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.

(8A) Subsection (8) is subject to—

(a) section 336A, which enables the moratorium period to be extended by court order in accordance with that section, and

(b) section 336C, which provides for an automatic extension of the moratorium period in certain cases (period extended if it would otherwise end before determination of application or appeal proceedings etc).

(9) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the nominated officer is when he gives the appropriate consent.

(10) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

(11) A nominated officer is a person nominated to receive disclosures under section 338.

336A Power of court to extend the moratorium period

(1) The court may, on an application under this section, grant an extension of a moratorium period if satisfied that –

(a) an investigation is being carried out in relation to a relevant disclosure (but has not been completed),

(b) the investigation is being conducted diligently and expeditiously,

(c) further time is needed for conducting the investigation, and

(d) it is reasonable in all the circumstances for the moratorium period to be extended.

(2) An application under this section may be made only by a senior officer.

(3) The application must be made before the moratorium period would otherwise end.

(4) An extension of a moratorium period must end no later than 31 days beginning with the day after the day on which the period would otherwise end.

(5) Where a moratorium period is extended by the court under this section, it may be further extended by the court (on one or more occasions) on the making of another application.

(6) A moratorium period extended in accordance with subsection (2) or (4) of section 336C may also be further extended by the court on the making of an application under this section.

(7) But the court may not grant a further extension of a moratorium period if the effect would be to extend the period by more than 186 days (in total) beginning with the day after the end of the 31 day period mentioned in section 335(6) or (as the case may be) section 336(8).

(8) Subsections (1) to (4) apply to any further extension of a moratorium period as they apply to the first extension of the period under this section.

(9) An application under this section may be made by an immigration officer only if the officer has reasonable grounds for suspecting that conduct constituting the prohibited act in relation to which the moratorium period in question applies –

(a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement),

or

(b) is undertaken for the purposes of, or otherwise in relation to, a relevant nationality enactment.

- (10) In subsection (9)—
“prohibited act” has the meaning given by section 335(8) or (as the case may be) section 336(10);
“relevant nationality enactment” means any enactment in—
- (a) the British Nationality Act 1981,
 - (b) the Hong Kong Act 1985,
 - (c) the Hong Kong (War Wives and Widows) Act 1996,
 - (d) the British Nationality (Hong Kong) Act 1997,
 - (e) the British Overseas Territories Act 2002, or
 - (f) an instrument made under any of those Acts.

336B Proceedings under section 336A: supplementary

- (1) This section applies to proceedings on an application under section 336A.
- (2) The court must determine the proceedings as soon as reasonably practicable.
- (3) The court may exclude from any part of the hearing —
 - (a) an interested person;
 - (b) anyone representing that person.
- (4) The person who made the application may apply to the court for an order that specified information upon which he or she intends to rely be withheld from—
 - (a) an interested person;
 - (b) anyone representing that person.
- (5) The court may make such an order only if satisfied that there are reasonable grounds to believe that if the specified information were disclosed —
 - (a) evidence of an offence would be interfered with or harmed,
 - (b) the gathering of information about the possible commission of an offence would be interfered with,
 - (c) a person would be interfered with or physically injured,
 - (d) the recovery of property under this Act would be hindered, or
 - (e) national security would be put at risk.
- (6) The court must direct that the following be excluded from the hearing of an application under subsection (4) —
 - (a) the interested person to whom that application relates;
 - (b) anyone representing that person.
- (7) Subject to this section, rules of court may make provision as to the practice and procedure to be followed in connection with proceedings in relation to applications under section 336A.
- (8) An appeal lies to the appropriate appeal court on a point of law arising from a decision made by the Crown Court in Northern Ireland or by the sheriff.
- (9) The appropriate appeal court may on such an appeal make any order that it considers appropriate (subject to the restriction mentioned in section 336A(7)).
- (10) The appropriate appeal court is —
 - (a) in the case of a decision of the Crown Court in Northern Ireland, the Court of Appeal in Northern Ireland;
 - (b) in the case of a decision of the sheriff, the Sheriff Appeal Court.

(11) For rights of appeal in the case of decisions made by the Crown Court in England and Wales, see section 28 of the Senior Courts Act 1981 (appeals from Crown Court and inferior courts)."

Submissions for the appellant

[7] The appellant invited the court to recall the interlocutor of 22 May which had excluded him from the hearing and extended the moratorium period. The appellant maintained that the sheriff had erred in not permitting him to be represented at the hearing on 22 May 2019. He submitted that Sections 336B(4), (5) and (6) did not permit a blanket exclusion. The sheriff erred in determining the matter without giving the appellant an opportunity to be heard and in doing so acted contrary to natural justice and in contravention of the appellant's Article 6 and Protocol 1 Convention rights. The sheriff had apparently excluded the appellant from the hearing on the basis of Sections 336B(4), (5) and (6), none of which permitted such a blanket exclusion. Section 336B(4) and (5) only permitted the sheriff to exclude the appellant from the hearing for the purpose of his considering the specified information which the Crown sought to be withheld from the appellant. These subsections did not provide a basis for the appellant to be excluded from the whole hearing before the sheriff, and thereby deny him an opportunity to oppose the petition. Section 336B(6) permitted exclusions to be only whilst any application under Section 336B(4) was determined. The statutory scheme requires any decision to exclude the appellant from proceedings (other than whilst determining a Section 336B(4) application) to have been made by reference to Section 336B(3). Even if the statutory references in the interlocutor were accepted to be a "scrivener's error" and the sheriff proceeded under Section 336B(3) it was nevertheless incompetent for the sheriff to exclude the applicant on that basis from the entire hearing of the petition, and from making submissions.

[8] The terms of Section 336B(3) only entitled the sheriff to exclude the appellant from part of the hearing rather than the entire hearing. Clear and unambiguous words were required to exclude an interested person from an entire hearing and prevent them from making representations in opposition to a Section 336(A) application. Under reference to Lord Hoffman's *dicta* in *R v SSHD ex parte Simms* [2000] 2 AC 115 at 113(d) the intention of Parliament in inserting Section 336B(3) which was not clear and unambiguous in its terms gave rise to a presumption that Parliament did not intend to abrogate a fundamental right such as that to oppose state interference in one's property.

[9] The approach adopted by the Crown in this case to seek exclusion of the appellant and his agent from proceedings was inconsistent with the assurance given to Parliament in the course of the passage of the Bill which became the Criminal Finances Act 2017 and inserted Section 336B into the Act. As the terms of Section 336B were ambiguous the ministerial statement produced (Hansard 17 November 2017) could be considered to clarify the perceived ambiguity (*Pepper v Hart* 1993 AC 593 HL). It was further submitted that the impact assessment and Home Office Circular "Power to Extend the Moratorium Period" could also be referred to in order to clarify the ambiguity. These sources demonstrated that it was intended that a party would be permitted to appear at a hearing even if they were then to be excluded from relevant parts.

[10] Reference was also made to Rule 47B(3) of the Criminal Procedure Rules which regulate, in England and Wales, the exercise by the court of the powers in determining an application to extend the moratorium period. The rule provides in some detail the procedure to be followed and in particular narrates that the court must not determine such an application in the applicant's absence if the applicant asks for a hearing. The Scottish rules are set out in the Act of Adjournal Criminal Procedure Rules 1996 37AA 10 and 37AA

11 as inserted by Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 5) (Proceeds of Crime etc.) 2017/429 and simply provide that the application shall be made by petition and the form of an appeal to this court.

[11] The appellant also maintained that the sheriff had erred in granting the Crown's motion that the entirety of the Crown case including the nature of the alleged criminal activity was withheld from the appellant in terms of Section 336B(4). The appellant ought to have been provided with the general gist of the allegations against him sufficient to allow him to instruct representation in opposition. In *Bank Mellat v HM Treasury* 2014 AC 700 Lord Neuberger noted that the European Court of Human Rights decisions in *Chahal v United Kingdom* 1996 23 EHRR 413 and *A v United Kingdom* 2009 49 EHRR 625 found that Article 6 of the European Convention of Human Rights is not infringed by closed material procedure provided the appropriate conditions are met. Lord Neuberger highlighted the importance of the requirement for a proper summary or gist of the closed material be provided. He endorsed the decision of Lord Phillips of Worth Matravers in *Secretary of State for Home Department v AF(3)* [2010] AC 269 where he stated that an excluded party "must be given sufficient information about the allegations against him to enable him to give effective instruction in relation to those allegations" and this need not include "the detail or the source of the evidence forming the basis of the allegations".

Submissions for the Crown

[12] Section 336B(3) provides the person or his representative may be excluded from the hearing to extend the moratorium. Section 336B(4) permits the person making the application to apply to the court for an order that specific information be withheld from the

interested person and his representative. Section 333B(6) requires that the court must exclude them from the hearing of that application. Before making an order that specified information may be withheld the court must be satisfied that there are reasonable grounds to believe that if the information was disclosed then at least one of the matters specified in subsection 5 is satisfied. The sheriff was addressed on the matters in subsection 5 and his report demonstrates that he was satisfied in terms of Section 336B(5)(b) that disclosure would impact on the gathering of information about the possible commission of an offence and 336B(5)(d) the recovery of property under the Act would be hindered. The Crown conceded that the decision to exclude the appellant from the hearing on whether to extend the moratorium proceeded on the basis of the wrong subsection of the Act. The sheriff had the power under Section 336B to exclude the appellant and his agent. The sheriff had been addressed on the question of whether the appellant and his agent should be excluded from the hearing and concluded that they should be. The procurator fiscal depute made available to the sheriff the letter of 22 May 2019 and the sheriff had the opportunity to consider it. The terms of the appellant's agent's letter of 22 May 2019 demonstrated that the appellant, or at least his agent, was aware that the procurator fiscal depute's intention was to have the appellant and his agent excluded from the entire hearing in terms of Section 336B(3) of the 2002 Act. The allegations against the appellant concerned Part 7 of the Act and related to money-laundering. The appellant was therefore aware of the gist of the allegations made against him.

[13] Parliament has expressly provided that an interested person who is represented can be excluded from "any part of the hearing" on the question of whether or not to extend the moratorium. Those words included all of the hearing and were not ambiguous. In *R v Secretary of State for the Home Department ex parte Simms* it was recognised that it was open to

Parliament to legislate contrary to fundamental principles of human rights. For a fair trial it was necessary that:

“the controlee must be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations.”

Secretary of State for the Home Department v AF (No.3) [2010] 2AC 269 at 354

The sheriff had the opportunity to consider the appellant’s agents letter of 22 May. That showed the appellant knew the intention was for an application to be made to exclude him from the hearing. It was also apparent that the appellant had knowledge that the allegations related to the money-laundering sections of the Act. Thus the fair notice requirements were satisfied.

[14] In the course of submissions by the Advocate Depute we enquired as to the sensitive information which had been made available to the sheriff and on which he relied in reaching his decision. DC Furney who had given evidence to the sheriff was present in court. Mr Hann, by concession, agreed to leave the court to allow DC Furney to address us out with his presence.

[15] The constable clarified that he appeared along with the procurator fiscal depute before the Sheriff in support of the petition. He had explained to the sheriff that he wished the appellant and his agent to be excluded because of the covert police operations into apparent money-laundering activity in which it seemed a significant sum in excess of £100,000 had disappeared from the appellant’s bank account. The officer indicated it would be prejudicial to their investigations for the details of police intelligence and investigations to be available to the appellant. The details which had been provided to the sheriff were repeated to this court. We were also provided with the document, styled the annexe, which had been produced to the sheriff. This provided a chronology of events and the activities

which the police had undertaken. DC Furney confirmed that he had a brief conversation with Mr Picco to advise a 31-day extension to the moratorium was to be sought and he understood that Mr Picco was going to contact his solicitor. The officer explained that the police would not, as a matter of course, ask the appellant to provide details of the source of funds where there is a prospect that he might be charged. The exclusion was sought because of the ongoing criminal inquiry. The appellant may face criminal charges in future and the majority of the information provided to the sheriff was covert intelligence. The constable also explained that experience showed that in complex money-laundering activities it was often unclear which aspect or details were particularly significant until the whole jigsaw was pieced together and the police approach was that it was better not offer any explanation until a clear picture had emerged and at a time when they were in a position to charge a particular individual. He confirmed that the sheriff had asked him about diligent progress being made with the enquiries and believed he had satisfied him about that.

[16] DC Furney told the court this was the first moratorium extension application he had done and he believed the exclusion of the appellant and his agent was justified. He explained that both he and the Procurator Fiscal Depute had subsequently addressed the sheriff on a further application for extension of moratorium in this case and separately in another case and the individual had been excluded for the hearing in all these applications. That reflected the position we were advised of by the Advocate Depute that he was unaware of any case in which the Crown had not sought a blanket exclusion although each case had been assessed on its individual merits.

[17] The advocate depute confirmed that neither the appellant nor his agent had been provided with a copy of the petition. He submitted that the procurator fiscal depute had advised the appellant's agent of the section of the Act under which the petition proceeded.

She had advised the agent if there were documents or representations he wished to be placed before the sheriff that she would do so and she did provide the sheriff with a copy of the email letter of 22 May, which was all that was submitted to her. The letter demonstrated that the appellant was aware of the gist of the allegations and was able to make representations in writing. The actions of the Crown and of the sheriff did not contravene the appellant's rights under Article 6 and Article 1 of Protocol 1 of the European Convention on Human Rights. Any interference with the appellant's property rights by the extension of the moratorium for a period of 31 days was a proportionate response to the activities with which part 7 of the Act is concerned and is specifically provided for by the Act.

Analysis

[18] The substantial question which the court has to determine is whether the sheriff was entitled to extend the moratorium on 22 May 2019 and to exclude the appellant and his solicitor from the hearing convened to consider the respondent's petition in terms of section 336A. *Pepper v Hart* [1993] AC 593 relaxed the rule excluding references to Parliamentary material as an aid to the construction of legislation but only so far as to permit such references where (a) the wording of legislation was ambiguous or obscure or its literal meaning led to absurdity; (b) the material relied upon consisted of one or more statements by the minister or other promoter of the Bill together if necessary with such other Parliamentary material as was necessary to understand such statements and their effect; and (c) the statements relied on were clear.

[19] We are satisfied that the terms of section 336B(3) are not ambiguous and there is no basis for us to have regard to the Hansard references or to the explanatory memorandum to which we were referred. We reserve our position on whether the materials beyond the

Hansard report would be relevant for consideration in terms of *Pepper v Hart* were we to have found ambiguity. The terms of section 336B(3) also satisfy the dicta of Lord Hoffman in *Simms* that the power to exclude must be clearly stated. The words “any part of the hearing” have the effect of permitting the sheriff to exercise his discretion exclude the appellant or his agent from the whole hearing.

[20] We accept that the appellant had sufficient information to understand the gist of what was being investigated. The letter of 22 May and the submissions to this court make clear that the appellant was aware that there was an issue about the source of funds which were transferred to his account with the TSB Bank. He was also aware there were concerns over his having disbursed in excess of £100,000 in a short period of time.

[21] No point was taken by the appellant on the absence of formal intimation of the petition. We can appreciate that having seen the terms of the petition no obvious prejudice occurred given the brevity of its terms. We observe that in cases such as this satisfactory notice should be given to interested parties which affords them the opportunity to make meaningful representations and allows them or their representative to appear at a hearing with a view to consideration of whether exclusion should take place in terms of Section 336B for the whole hearing or simply for the part of the hearing where sensitive information was disclosed. We note that 336B(6) requires that they must be excluded from the part of the hearing which considers an application in terms of section 336B(4) withhold specified information. In this case it is unsatisfactory that the appellant’s agent was apparently in the sheriff court building but unable to lodge further items for consideration by the sheriff

[22] We have some concerns as to the procedure adopted by the Crown in relation to this and apparently other applications. While we were assured that each case was looked at on its merits we were also told that in every application made so far to the courts in Scotland,

the Crown had sought blanket exclusion on the basis of Section 336B(3). It was therefore surprising that the petition contained a handwritten interlineation making reference to Sections 336B(6) alongside the typed Section 336B(5) but no reference to the section on which the Crown actually proceeded, namely Section 336B(3). We do however accept from the terms of the sheriff's report it was clear that he had regard to Section 336B(3) although that is not as clearly expressed in the terms of the interlocutor as it should be.

[23] We can see force in the submission that the appellant could have been represented for at least part of the hearing especially to address the sheriff on the question of exclusion. This court only considered the information which was available to the sheriff. We are satisfied on the basis of the information available to the sheriff, which included the letter from the appellant's agents, he was entitled to exclude the applicant and his representative from the whole hearing. It was not suggested that the appellant could have produced documentation to the court which would have ameliorated the material provided by DC Furney, material which we accept entitled the sheriff to extend the moratorium. We also observe it was not really challenged by the appellant that he was validly excluded from that part of the hearing where sensitive information was disclosed by the police. Having regard to the margin of appreciation afforded to the state, we accept that the procedures followed were proportionate in balancing the rights of the appellant and the interests of the state in avoiding money laundering, and did not contravene the appellant's Article 6 and Protocol 1 Convention rights. We accept that the legislative intention to support, what we were told are complex investigations of alleged money laundering, where confidentiality is important, justified the exclusion of the appellant and his representative from the hearing. The purpose of which was to consider an application to extend period of the appellant's bank account being frozen for such investigations to be undertaken. The proportionality, of the limitation

of the appellant's convention rights, is supported by the requirement on the court to be satisfied that the investigation is being conducted diligently and expeditiously (section 336A(b) and a long stop that the moratorium can only be extended for a maximum of 186 days (section 336A(7)). Accordingly we shall refuse the appeal.

[24] We heard this appeal on 13 August 2019. We were informed that this is the first appeal in terms of section 336B(8). There are no previous decisions which analyse or apply the court's powers in terms of section 336A and B. The appeal had been marked immediately the sheriff's decision of 22 May was intimated to the appellant. As we have observed, in terms of section 336C(3) (4) and (5), the marking of this appeal has the effect of extending the moratorium period for a maximum of a further 31 days starting with the day after the end of the extension period granted by the sheriff. Having regard to the requirement that the proceedings should be determined as soon as reasonably practicable, the appeal ought to have been heard and determined more speedily. It would appear that the novelty of the proceedings may have inadvertently caused there to be insufficient focus on expedition. The relevant rule is 37AA 11 of the Criminal Procedure Rules 1996 which provides for the form of appeal; intimation of the appeal and the fixing of the hearing on the appeal. In this case, intimation was not made to the nominated officer as an interested party in terms of section 336D(3), nevertheless the nominated officer and TSB Bank PLC have confirmed that they do not wish to be heard on the appeal. The statutory admonition to determine proceedings as soon as reasonably practicable strictly relates to proceedings in terms of section 336A. It is clear from the statutory scheme that Parliament intended that the moratorium period be restricted and in terms of section 336A(7) cannot exceed a period of more than 186 days beginning with the day after the end of the initial moratorium period. We consider that standing the effect of the moratorium on funds in individual's bank

accounts the need for expedition applies at all stages including investigation by the national crime agency (section 336A(b)). It is obvious and likewise important that appellate proceedings are dealt with expeditiously and as far as is reasonably practicable disposed of within the 31 day extension to the moratorium period prescribed in section 336C(5).