SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2026] SC GLA 102

GLW-PC99-25

JUDGMENT OF SHERIFF S REID

in the cause

THE SCOTTISH MINISTERS

Pursuers

against

SAID HASHIM BAHARUNI

First Defender

and

INTENSIFY LIMITED

Second Defender

and

VAPE LIMITED

Minuter

Pursuer: Ms C Walsh, Civil Recovery Unit, Edinburgh
First Defender: Absent
Second Defender: Absent
Minuter: Mr R Singh (Authorised lay representative)

GLASGOW, 16 September 2026

Summary

[1] In this summary application, the pursuers seek an order for forfeiture of a credit balance of £229,245.12 held in a frozen account with a financial services company called Equals Connect Limited, in terms of the Proceeds of Crime Act 2002 ("the 2002 Act"),

section 303Z14(2). It is said that the money in the account represents "recoverable property" (that is, the proceeds of criminal conduct) or was intended for use in unlawful conduct.

[2] This is the first time that an application under section 303Z17A of the 2002 Act has been determined in Scotland. There are no published decisions on the section from the other UK jurisdictions.

[3] The account is held in the name of the second defender (Intensify). The account is subject to an Account Freezing Order ("AFO") made by this court on 31 January 2025, in separate summary application proceedings at the instance of a detective constable of Police Scotland. The AFO was sought on the ground that the officer had reasonable grounds to believe that the account was being used to facilitate the offence of money laundering. The AFO was granted for a period of 6 months.

[4] The forfeiture proceedings have been served on the second defender (the account holder) and upon the first defender (the sole registered director). Neither entered appearance. Instead, a third party called Vape Limited entered the proceedings by way of minute ("the minuter"). The minuter seeks release of £226,435.20, being the greater part of the credit balance of £229,245.12 in the frozen account. In terms of section 303Z17A of the 2002 Act, the minuter claims to be the owner of the sum claimed and alleges that it was deprived of it by unlawful conduct. Specifically, the minuter claims that, in early December 2024, it entered into a contract with the second defender for the purchase of a quantity of single-use vaping products at a discounted promotional price; that, pursuant to the agreement, the minuter paid the total sum of £226,435.20 to the account (held in the name of the second defender) in five separate transfers between 12 and 16 December 2024; but that, in breach of the agreement, the second defender failed to deliver the vaping products to the minuter.

[5] Having heard evidence and submissions at proof, I conclude that the minuter has failed to establish the three statutory conditions necessary to trigger release of the money. Firstly, the minuter has failed to prove that it was deprived of the money (to which the minute relates) by unlawful conduct (2002 Act, section 303Z17A(4)(a)). In this context, I interpret the first condition as requiring that the claimant must have been acting in good faith when it was "deprived" of the money. Put another way, the claimant must establish that it is a "victim". This interpretation is informed by the common law doctrine *ex turpi causa non oritur actio* (namely, that a claimant cannot found a cause or head of claim upon his own wrongdoing). Secondly, the minuter has failed to establish that the money now sought to be released was not "recoverable property" immediately before it was paid into the frozen account (2002 Act, section 303Z17A(4)(b)). Indeed, I go further and conclude, by inference, that it was recoverable property at that time. Thirdly, the minuter has failed to prove that it is the "owner" of the money to which the minute relates (2002 Act, section 303Z17A(4)(c)). Accordingly, the crave of the minute is refused. Separately, being satisfied that the credit balance in the frozen account represents recoverable property and/or that it was intended for use in unlawful conduct, I have granted the pursuers' crave for forfeiture.

The law

[6] The sheriff may order forfeiture of money that is subject to an Account Freezing Order if satisfied that the money or part thereof is "recoverable property" or is intended by any person for use in unlawful conduct (2002 Act, section 303Z14(4)). "Recoverable property" is property obtained through unlawful conduct (2002 Act, section 304). Unlawful conduct includes anything unlawful under the criminal law of the United Kingdom. Under section 242(2)(b) of the 2002 Act, it is not necessary to show that the conduct is of a particular

kind, if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct; it is not necessary to set out a specific criminal offence; and it is sufficient for the pursuer to establish, on the balance of probabilities, the alleged kind of unlawful conduct by which the property was obtained (*National Crime Agency* v *Nuttall* [2024] 7 WL UK 245). In this case, on the balance of probabilities, the unlawful conduct by which the property was obtained by the second defender is money laundering.

[7] However, in common with other chapters of the 2002 Act, section 303Z17A makes provision for "victims" and "other owners" to claim a preferential ranking on property which might otherwise be subject to state forfeiture. In relation to money that is subject to an Account Freezing Order, a person who claims that such money (or part of it) belongs to them may apply to the court for the money to be released (2002 Act, section 303Z17A(1)). In Scotland, such an application is made to the sheriff.

[8] In terms of section 303Z17A(4) of the 2002 Act, the sheriff has a discretion to order the money to which the application relates to be released to the applicant if it appears to the sheriff that:

> "(a) the applicant was deprived of the money to which the application relates, or of property which it represents, by unlawful conduct,
>
> (b) the money the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and
>
> (c) the money belongs to the applicant."

[9] Separately, the 2002 Act confers a discretion upon the court to order the release of money (to which an application relates) (i) where the applicant is not the person from whom the money was seized; (ii) where the money is shown to belong to the applicant; and (iii) where the sheriff has decided not to make a forfeiture order in respect of the money (this

latter condition being referred to as "release condition"). This separate provision may be seen as a mechanism "of last resort" to release money to an owner, not being the person from whom it was seized, where no forfeiture order is to be made. It does not apply in the present case.

The evidence

[10] For the minuter, I heard evidence from Mr Nasir Sarwar, the director of Vape. For the pursuers, I heard evidence from David Dunne, a detective constable, and Lisa Williams, a forensic accountant.

Nasir Sarwar

[11] Mr Sarwar, the director of Vape, adopted his (undated) affidavit as lodged in process. In his written testimony, he stated that the minuter trades lawfully in the purchase and sale of vaping products; that it had traded successfully with Intensify between around June to November 2024 in the purchase of such products; in late 2024, he entered into a transaction with Intensify (through the first defender, Mr Baharuni) whereby Vape would place orders with Intensify for at least £220,000 worth of vaping products and would thereby obtain a further £60,000 worth of vaping products for free. Pursuant to this agreement, Intensify issued five invoices to Vape (between 4 and 22 October 2024) for sums ranging between £43,891.20 and £46,569.60; and five payments, corresponding to each of the five invoices, were then made by Vape to Intensify's account between 12 and 16 December 2024, totalling £226,435.20; but that Intensify then failed to deliver the agreed goods. Mr Sarwar insisted that no refund or replacement goods were ever received from Intensify.

[12] In cross-examination, Mr Sarwar acknowledged that he was appointed as a director on 3 October 2024 but that the Companies House form confirming his appointment was not registered with the Registrar of Companies until 18 July 2025 (9 months or so later). He acknowledged that there was no written contract or any other documented record of the agreement between Vape and Intensify for the supply of the vaping products; there were no purchase orders; no delivery notes; no business records; no contemporaneous emails; no texts or digital communications; it had all been agreed verbally with Mr Baharuni. He explained the absence of documentation by reason of his previous trading relationship with Intensify, which was also conducted verbally over the phone. He acknowledged a series of payments by Vape to iBanFirst from October to November 2024 totalling approximately £1.2 million in respect of which he had also produced no contractual vouching, purchase orders, delivery notes, invoices or other business records. He had produced "filleted accounts" for Vape up to 30 June 2024; they did not disclose a profit and loss account; they did not disclose a balance sheet; no full accounts for any year of Vape's trading history had ever been filed at Companies House.

David Dunne

[13] David Dunne, a detective constable with the Police Service of Scotland, with 13 years' service, adopted his affidavit dated 18 June 2026. In his written testimony, he explained the investigations carried out in relation to Intensify to ascertain its trading address, if any. He spoke to his communications with Mr Baharuni who denied any knowledge of the account or involvement with Intensify. The AFO was obtained on 31 January 2026. No investigation was carried out into Mr Baharuni's allegation that he had been falsely named at Companies House as a director of Intensify.

Lisa Williams

[14] Ms Williams, a forensic accountant, qualified for 20 years, now employed by the Civil Recovery Unit, adopted the terms of her two reports dated 2 July 2026 and 4 August 2026. She testified that while she had been able to verify, from a list of transactions produced by Vape, that the five payments made by Vape to Intensify between 12 and 16 December 2024 totalling £226,435.20 were indeed made from a Vape account with Barclays Bank, despite repeated requests Vape had failed to exhibit bank statements from Barclays Bank covering the period from 6 December 2024 onwards to allow the source of those funds to be verified. From her analysis of the documentation produced by the minuter, across all 18 invoices produced by Vape, cross-referenced to Vape's banking records, she inferred that all but one of those 18 invoices were paid in advance of receipt of the goods; that, on average, payments by Vape were made 48 days after the date of the related invoices; and this was said to be inconsistent with Vape's assertion that its practice was to pay for goods in advance. She spoke to inconsistencies in the sequential numbering of the invoices; to the inadequacy of the "filleted accounts"; to the absence of normal business records, such as cash flow records, bank reconciliations, or the like. As a result, Ms Williams was unable to verify whether Vape was a legitimate trading company at all.

[15] In cross-examination for the minuter, Ms Williams conceded that her first report (dated 2 July 2026) erroneously stated that Intensify had a non-operational email. However, she adhered to her opinion that the absence of basic trading records was a matter of legitimate criticism and concern, while conceding that certain adminicles of evidence were supportive of legitimate trading. She adhered to her opinion that, based on her review of the records, the goods in question were "probably delivered".

Closing submissions

[16] I had the benefit of excellent written and supplementary oral submissions for both parties. In the interests of brevity, I shall not repeat them at length.

Formal findings

[17] Having considered the evidence and closing submissions, I made the following FINDINGS-IN-FACT:

1. The second defender is a company incorporated under the Companies Act 2006 (company number 13003576) on 9 November 2020 and has its registered address at 85 Great Portland Street, First Floor, London.
2. The first defender was the sole registered director and shareholder of the second defender;
3. The first defender resides at Flat 0/2, 38 Southdeen Avenue, Glasgow, G15 7RL.
4. An account in the name of the second defender is held with Equals Connect Limited [*details redacted*] ("the Account").
5. On 31 January 2025, on the application of a detective constable of the Police Service of Scotland in summary application proceedings under case reference GLW-PC16-25 an Account Freezing Order, effective for 6 months, was granted by the sheriff at Glasgow in respect of the Account, in terms of section 303Z1 of the Proceeds of Crime Act 2002.
6. The Account Freezing Order was sought and obtained on the basis that the officer had reasonable grounds to believe that the Account was being used to facilitate money laundering.

7. The total credit balance in the Account, at the date of the Account Freezing Order, was £229,245.12.

8. On 25 February 2025, the first defender provided a signed statement to a detective constable of the Police Service of Scotland in which he denied all knowledge of or involvement with (i) the second defender, its incorporation and its operation; (ii) the financial institution, Equals Connect Limited; and (iii) the Account and the credit balance therein.

9. On 25 March 20205, the pursuers wrote to the first defender inviting him to sign a disclaimer recording that he had no interest in the credit balance in the Account and to sign a mandate on behalf of the second defender instructing that all funds in the Account be transferred to the Scottish Ministers for onward transmission to the Scottish Consolidated Fund upon recall or expiry of the AFO; but the first defender failed to reply.

10. On 17 June 2025, the pursuers lodged a summary application at Glasgow Sheriff Court seeking an order for the forfeiture of the total frozen credit balance in the Account, totalling £229,245.12.

11. Of the total frozen credit balance in the Account, the total sum of £226,435.20 was received from Vape in five separate bank transfers, namely: (i) on 12 December 2024, a payment of £43,891.20; (ii) on 13 December 2024, a payment of £46,569.60; (iii) on 13 December 2024, a payment of £45,350.40; (iv) on 16 December 2024, a payment of £44,995.20; and (v) on 16 December 2024, a payment of £45,628.80.

12. Vape claims that the foregoing five payments comprised the agreed purchase price of vaping products purchased by the minuter from the second defender; that the agreement between the minuter and the second defender was entered into "in early

December 2024" (per Article 2 of the Minute); that the agreement involved a "promotional deal on the bulk sale of vaping products", whereby, provided the minuter placed a minimum order of £220,000 worth of vaping products in December 2024, the second defender would provide "additional free products worth in the region of £60,000" in addition to the invoiced products; that the parties' deal required the minuter "to place the second defender in funds to the [Account] quickly to secure the offer" (Article 4, Minute); that the second defender issued a number of invoices to the minuter totalling £226,435.20; that the minuter paid the said total sum of £226,435.20 to the Account as detailed in finding-in-fact (11); but that, despite requests, the second defender failed to deliver the agreed vaping products to the minuter, failed to provide replacement goods, and failed to refund the payments.

13. Mr Nasir Sarwar claims to have replaced Mr Charanjeet Singh Gulati as sole shareholder of the minuter on 3 October 2024.

14. The foregoing change in shareholder control was not notified to, or filed with, the Registrar of Companies until 17 October 2025.

15. In terms of section 790VA (now repealed) of the Companies Act 2006, Vape was required to notify the Registrar of Companies within 42 days of the occurrence of any change in the particulars of the person(s) having significant control of the company; a failure to do so constituted a continuing criminal offence by the company and its defaulting officers; and it is unusual for a legitimate company to delay, for over a year, in filing such a formal statutory record with the Registrar of Companies.

16. Further, Mr Sarwar claims to have been appointed as joint director of the minuter, with Mr Gulati, on 3 October 2024.

17. The foregoing appointment was not notified to, or filed with, the Registrar of Companies until 30 September 2025.

18. In terms of section 167G of the Companies Act 2006, Vape was required to notify the Registrar of Companies within 14 days of the occurrence of any change in the particulars of the directors of a company; a failure to do so constitutes a continuing criminal offence by the company and its defaulting officers; and it is unusual for a legitimate company to delay, for over a year, in filing such a formal statutory record with the Registrar of Companies.

19. The minuter has failed timeously to lodge with the Registrar of Companies financial statements for the year ended 30 June 2025; such statements ought to have been filed with the Registrar of Companies by no later than 31 March 2026; and the failure to timeously file such financial statements within the specified statutory filing period constitutes a criminal offence in terms of section 441 of the Companies Act 2006.

20. The only financial statements ever filed by the minuter with the Registrar of Companies are "filleted" financial account for the period ending 30 June 2024; they were filed with the Registrar of Companies on 13 January 2025; they are irregular and inadequate; contrary to conventional practice, they do not contain a profit and loss account or a balance sheet; contrary to conventional practice, they do not disclose the value or volume of the minuter's trading activity; and, despite repeated requests from the pursuer, the minuter has failed to disclose adequate accounting records of such trading activity.

21. The minuter has failed to prove that, in December 2024 (when the five payments were made by it to Intensify), it operated as a legitimate trading business *et separatim* that the said five payments were made in the ordinary course of legitimate trading.

22. The minuter has a history of failing to make timeous statutory returns; it has failed to produce or disclose adequate financial, business and accounting records to verify its legitimate trading activities; and it has failed to demonstrate that it is a legitimate commercial trading business.

23. The minuter claims to have had a trading relationship with Intensify between around June 2024 to December 2024 involving the alleged purchase of vaping goods by the minuter from the second defender to a value in excess of £580,000.

24. The minuter has produced 15 invoices purportedly issued by Intensify in the period from June 2024 to November 2024 in respect of the alleged purchase of vaping products by the minuter totalling in excess of £580,000; ten of these invoices relate to alleged purchases from Intensify prior to the "promotional deal" now founded upon by the minuter and are said to have been delivered and implemented by Intensify; five of the invoices relate to the "promotional deal" now founded upon and are said not to have been delivered or implemented by Intensify; and those five invoices all bear to be dated and issued in October 2024.

25. No contemporaneous purchase order, contract, letter of engagement, terms of business, correspondence, email, text or documented digital communication, or entry in any conventional business, financial or accounting book or record has been produced or exhibited by the minuter to vouch or document the existence and terms any alleged agreement between the minuter and Intensify for the purchase of any goods throughout the course of their alleged trading relationship from around June 2024 to December 2024 (including the alleged agreement for the purchase of goods to which the minute relates).

26. No contemporaneous delivery note, receipt, correspondence, email, text or documented digital communication, or entry in any conventional business, financial or accounting book or record has been produced or exhibited by the minuter to vouch or document the actual delivery and receipt of any goods allegedly purchased by the minuter from Intensify during their alleged trading relationship from June 2024 to December 2024.

27. The invoice numbering sequence in the 15 invoices purportedly issued by Intensify to the minuter is irregular and unusual: (i) invoices 24–1001180 to 24-1001194 are sequentially numbered and are dated between 11 June 20204 and 5 July 2024; (ii) invoices 24-1001195 to 24-1001199 are sequentially numbered and are dated between 4 October 2024 and 22 October 2024 (and bear to relate to the "promotional deal" now founded upon by the minuter); however, (iii) invoices 24-10001200 to 24-1001204 are sequentially numbered but are dated between 15 July 2024 and 24 August 2024, being dates prior to the dates of the preceding invoices (numbered 24-1001195 to 24-1001199).

28. The said 15 invoices were not created contemporaneously with the alleged transactions to which they bear to refer.

29. Further, during 2024, substantial payments totalling £1,179,761 were made by the minuter to an entity called iBanFirst; the minuter claims that these payments related to the purchase of stock; but no contemporaneous purchase order, contract, letter of engagement, terms of business, correspondence, email, text or documented digital communication, or entry in any conventional business, financial or accounting book or record has been produced or exhibited by the minuter to vouch or document the

existence and terms any alleged agreement between Vape and any third party supplier for the purchase of such stock.

30. Further, notwithstanding the significant volume of stock allegedly purchased by the minuter (and the significant payments allegedly made therefor), no conventional business, financial or accounting books or records have been produced or disclosed by the minuter to show a corresponding level of trading activity by it (such as commensurate onward sales or storage, transport or shipping costs).

[18] I made the following FINDINGS-IN-FACT AND IN-LAW:

1. Between around June and December 2024, the second defender was engaged in unlawful conduct, namely the common law offence of fraud and the statutory offence of money laundering.
2. The second defender's Account was set up fraudulently for the purposes of facilitating money laundering.
3. The total sum of £226,435.20, to which the minute relates, was obtained by the second defender through unlawful conduct, namely fraud and money laundering.
4. The total sum of £226,435.20, to which the minute relates, is "recoverable property" *et separatim* the sum was intended for use in unlawful conduct, in terms of sections 303Z14(4)(a) & (b) of the 2002 Act.
5. The minuter has failed to prove that it was a "victim" of such unlawful conduct, in terms of section 303Z17A of the 2002 Act.
6. The minuter has failed to prove that, acting in good faith, it was "deprived" of the sum of £226,435.20 by unlawful conduct, in terms of section 303Z17A(4)(a) of the 2002 Act.

7. The minuter has failed to prove that the sum of £226,435.20 was not "recoverable property" immediately before the minuter paid the sum to the Account, in terms of section 303Z17A(4)(b) of the 2002 Act.

8. The minuter has failed to prove that the sum of £226,435.20 "belongs" to the minuter, in terms of section 303Z17A(4)(c) of the 2002 Act.

9. The minuter has failed to prove the provenance of the money from which the total payment by the minuter of £226,435.20 was made.

10. The minuter was not engaged in legitimate trading activity when making payment to the Account of the total sum of £226,435.20; it was not acting in good faith when making that payment to the Account; and it knew, or ought to have known, that it was facilitating the unlawful conduct by which the recoverable property was obtained by the second defender.

Reasons for decision

[19] To some extent, despite the novelty and apparent complexity of the proceedings, the issues involved are relatively straightforward.

[20] First, in order to succeed in its summary application under section 303Z14 of the 2002 Act, the onus lies on the pursuers to establish, on the balance of probabilities, that the frozen credit balance in the account is "recoverable property" or that it was "intended by *any person* for use in unlawful conduct" (my emphasis). If either condition is satisfied, the sheriff has a discretion to make a forfeiture order of the money or any part of it. The key definitions of "unlawful conduct" and "recoverable property" appear in sections 241, 242 and 304 of the 2002 Act.

[21] Neither the first defender (Mr Baharuni) nor the second defender (Intensify) has entered appearance to oppose the pursuers' summary application. However, Vape has lodged a minute in the summary application proceedings seeking release of part of the credit balance in the frozen Account. Therefore, the court must determine the minute prior to granting decree of forfeiture.

[22] Section 303ZA17A, on which the minute proceeds, reads as follows, so far as material:

> "Victims and other owners
>
> (1) A person who claims that money in respect of which an account freezing order has effect belongs to them may apply for the money to be released.
>
> (2) An application under subsection (1) is to be made… in Scotland, to the sheriff.
>
> (3) The application may be made in the course of proceedings under section 303Z3 or 303Z14 or at any other time.
>
> (4) The court or sheriff may, subject to subsection (8), order the money to which the application relates to be released to the applicant if it appears to the court or sheriff that—
>
> (a) the applicant was deprived of the money to which the application relates, or of property which it represents, by unlawful conduct,
>
> (b) the money the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and
>
> (c) the money belongs to the applicant.
>
> (5) If subsection (6) applies, the court or sheriff may, subject to subsection (8), order the money to which the application relates to be released to the applicant.
>
> (6) This subsection applies where—
>
> (a) the applicant is not the person from whom the money to which the application relates was seized,
>
> (b) it appears to the court or sheriff that the money belongs to the applicant,
>
> (c) the court or sheriff is satisfied that the release condition is met in relation to the money, and
>
> (d) no objection to the making of an order under subsection (5) has been made by the person from whom the money was seized.

(7) The release condition is met—
  (a) in relation to money held in a frozen account, if the conditions for making an order under section 303Z3 in relation to the money are no longer met, or
  (b) in relation to money held in a frozen account which is subject to an application for forfeiture under section 303Z14, if the court or sheriff decides not to make an order under that section in relation to the money.

(8) Money is not to be released under this section— ….
  (b) if an application for its forfeiture under section 303Z14 is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

(9) In relation to money held in an account that is subject to an account freezing order, references in this section to a person from whom money was seized include a reference to a person by or for whom the account was operated immediately before the account freezing order was made.

[23] It was accepted by both parties, correctly in my view, that the onus lay on the minuter to establish each of the three statutory conditions for release of the money as set out in section 303Z17A(4). I conclude that the minuter has failed to discharge that onus. None of the three statutory conditions is satisfied on the evidence.

[24] Firstly, the minuter has failed to discharge the onus of proving that, acting in good faith, it was "deprived" of the sum of £226,435.20 by unlawful conduct, in terms of section 303Z17A(4)(a) of the 2002 Act. Put another way, it has failed to prove that it was a "victim" of unlawful conduct (as indicated in the heading to section 303Z17A). On the contrary, the evidence supports the inference that the minuter was not carrying on legitimate trading activity in making the five payments to the Account between 12 and 16 December 2024; that it was not then acting in good faith; that it knew, or ought to have known, that it was facilitating, actively or passively, the "unlawful conduct" of money laundering.

[25] Secondly, the minuter has failed to prove that the sum of £226,435.20, to which the minute relates, was not recoverable property immediately before it paid the sum to the Account, in terms of section 303Z17A(4)(b) of the 2002 Act. Although, undoubtedly, the money emanated from an account in the name of the minuter, the legitimate provenance of that money was not proved.

[26] Thirdly, in a similar vein, the minuter has failed to prove that the sum of £226,435.20, to which the minute relates, "belongs" to the minuter, in terms of section 303Z17A(4)(c) of the 2002 Act. Although, the money emanated from a Barclays Bank account in the name of the minuter, the provenance of that money was not proved.

[27] Overall, the evidence justifies the inference that the minuter was not carrying on legitimate, good faith trading activity at all when making these five payments to the Account between 12 and 16 December 2024.

[28] To explain, the *modus operandi* of the minuter, and the history of its supposed transactions with Intensify (and other alleged suppliers), is highly irregular. The sums of money involved are significant. Yet there is a striking and inexplicable dearth of even the most basic business, financial and accounting records. Such records would ordinarily have been expected in any legitimate commercial operation to explain and verify the nature and purpose of those significant payments. There is a total absence of contract documentation, terms of business, letters of engagement, purchase orders, delivery notes, shipping documents, correspondence, emails, texts, or other documented communications of any kind, paper or digital, explaining or vouching the true nature of the alleged contractual arrangements or, critically, the actual delivery of any goods (as opposed to the mere movement of money). There are also no contemporaneous ledger entries or accounting or financial records to vouch the transactions.

[29] Such is the *modus operandi* of the outlaw, including those involved in money laundering. The minuter knew or ought to have known this. Persons who conduct their business in this irregular, unvouched, untraceable manner, with no credible, reliable, intelligible, or contemporaneous audit trail, run the real risk that adverse inferences may be drawn against them.

[30] The stark dearth of basic, conventional, intelligible, and contemporaneous records (a fortiori when viewed in the context of the hearsay evidence of Detective Constable Dunne regarding Mr Baharuni's forthright denial of any knowledge of the Account or of involvement with the second defender) justify the inference of unlawful conduct, specifically the use of the Account for money laundering.

[31] It is within judicial knowledge that money laundering commonly follows a recognised pattern involving the movement of funds through legitimate financial institutions, often with no regular, intelligible or contemporaneous vouching. The objective is to conceal and obscure the true criminal source of the funds.

[32] The minuter was in the best position to prove the legitimacy of its own alleged transactions. It singularly failed to do so. Its trading activity was unorthodox and unvouched. The casual informality of Mr Sarwar's approach to these alleged commercial transactions (especially transactions of such value) was unimpressive, implausible, and deserving of censure. I reject his testimony as unreliable and lacking in credibility. I shall consider each of the statutory conditions in turn.

Was the minuter deprived of the money by unlawful conduct? (2002 Act, section 303Z17A(4)(a))

[33] The minuter required to establish that it was "deprived" of the money by unlawful conduct. It failed to do so.

[34] By way of preliminary observation, I interpret this condition as requiring that the minuter bears the onus of proving that, acting in good faith, it was deprived of the money. Put another way, a person who is implicated, actively or passively, in the unlawful conduct (that is, a person who knows, or ought to have known, that he is facilitating the unlawful conduct) cannot avail himself of the statutory relief. Otherwise, a person might complain that he has been "deprived" of money by unlawful conduct, even when he was well aware of, or was implicated in, or turned a blind eye to, the unlawful conduct (as, for example, where he has acquiesced in the use of his bank account as a conduit for the laundering of criminal proceeds). The essence of this relief provision (and, I would suggest, similar relief mechanisms within the 2002 Act) is that the party seeking the release of the money is, in truth, a victim, not a wilful participant.

[35] The common law doctrine *ex turpi causa non oritur actio* (namely, that a claimant cannot found a claim upon his own wrongdoing) does not feature expressly in the 2002 Act but it is influential in the interpretation of this relief provision. How could the position be otherwise? As was explained by Supreme Court in *Patel* v *Mirza* [2017] AC 467, there are two policy reasons for the common law doctrine of illegality as a defence to a civil claim: a person should not be allowed to profit from his own wrongdoing, and the law should be coherent, not self-defeating, and should not condone illegality. The same broad principles must apply here, given the mischief at which this particular statute is aimed. Were it otherwise, the absurd position could emerge in which money seized because it was

the proceeds of criminal conduct might then have to be released to a person who has knowingly participated in or facilitated that same conduct, on the dubious logic that that person has technically been "deprived" of the dirty money, albeit by his own (or his co-participants') unlawful conduct. That literal interpretation must be wrong because it would be incoherent (with the clear intent of the statute), it would be self-defeating, and it would condone and reward illegality. The proper interpretation of section 303Z17A(4)(a) is that the claimant (in this case, the minuter) must have been acting in good faith when it was "deprived" of the money. The notion of a *bona fide* claimant, as "victim", is inherent in the relief provision.

[36] Interpreting the statutory provision in that way, the minuter has clearly failed to satisfy the first condition of section 303Z17A(4). The most striking feature of the minuter's case is the complete absence of contemporaneous documentation to vouch the alleged high-value promotional arrangement with Intensify and the minuter's failure to prove the source of the funds. Mr Sarwar accepted in cross-examination that there was no written contract, no purchase order, no email, no WhatsApp message, no written confirmation of any kind recording this "special" arrangement for the purchase of goods worth approximately £280,000. It was all agreed by telephone. His explanation for the minuter's failure to vouch the provenance of the funds used by Vape to make the payments does not bear scrutiny. The minuter has failed to establish that it was acting in good faith, or in any legitimate trading activity, in choosing to participate in the "promotional" arrangement. Mr Sarwar and the minuter knew or ought to have known that they were facilitating unlawful conduct.

[37] The minuter's position is further undermined by the evidence relating to the invoices. The invoices corresponding to the disputed payments are dated in October 2024,

whereas the payments were not made until December 2024. Some confusion was created by one element of evidence of Ms Williams, the forensic accountant, to the effect that, in her opinion, the timing of the payments in December (viewed in the context of invoices issued in October) justified the inference that the goods must have been delivered. I did not accept this particular aspect of Ms William's opinion evidence. In any event, it was, in truth, properly understood as an alternative position. Her primary position was that *none* of the minuters' supposed trading activity was shown to be legitimate (including the five payments in December 2024). The minuter had failed to prove that any goods were ever bought, or received, or traded by it. The proper inference to be drawn from the reprehensible absence of conventional, intelligible, contemporaneous business, financial and accounting records is that, in truth, only money was being transferred and laundered in these arrangements; goods were not being bought, delivered or sold at all.

[38] The minuter sought to rely on supposed debt recovery efforts after the event. But the evidence was unsatisfactory and unreliable. The purported "letter before action" is a copy. It was not spoken to by the author. It does not even specify the amount sought. There is no proof of posting corresponding to its purported date in March 2025. Mr Sarwar accepted, during re-examination, that he had not seen the draft letter and that "no one told me it would be sent". Accordingly, the first statutory condition has not been established.

Was the money recoverable property? (2002 Act, section 303Z17A(4)(b))

[39] On the evidence, the second statutory condition is also not satisfied. The burden rests upon the minuter to satisfy the sheriff that the money sought to be released was not itself recoverable property *immediately before* the alleged deprivation. It is not for the pursuers to prove that the funds were recoverable property; rather, the minuter must

persuade the sheriff that they were not. The question is whether I can make a positive finding that the funds were *not* recoverable property. The evidence does not permit such a finding.

[40] The fundamental difficulty is that the provenance of the disputed funds remains unknown. The minuter was uniquely well-placed to prove the source of those funds; it failed to do so. It failed to produce the Barclays Bank statements covering the period in which the disputed transfers were made between 12 and 16 December 2024. This was significant. Ms Williams explained that, without those statements, it was impossible to identify the source of the sum of £226,435.20 or to conduct a proper tracing exercise in respect of those funds. She was clear that she could not verify the provenance of the disputed monies without the missing statements. The list of transactions, produced by the minuter, was not a comprehensive statement and could not be relied upon. Mr Sarwar feebly attempted to explain the absence of the missing statements by suggesting that the Barclays Bank account had been frozen and therefore statements could not be obtained. I reject that explanation as plainly erroneous. The frozen account was the Equals Connect account belonging to the second defender, not the Barclays Bank account of the minuter. No document, letter or email from Barclays Bank was produced to support Mr Sarwar's assertion. Mr Sarwar's testimony was vague, unvouched, unimpressive and unreliable. Interestingly, it emerged in evidence that the minuter had also failed to exhibit bank statements relating to another account (held with HSBC), details of which appeared on the VAT invoices produced to the court. The upshot is that the pursuers and the court have been left with a hopelessly (and, it might reasonably be inferred, deliberately) incomplete picture of the minuter's banking transactional activity.

[41] In a similar vein, the minuter also failed adequately to explain substantial payments made to "IBAN First", as shown in the Barclays Bank statements produced by it. Mr Sarwar asserted these represented purchases of stock. Strikingly, no contracts, purchase orders, invoices, stock records, delivery notes, or other basic, conventional supporting documentation were produced. Repeatedly, Mr Sarwar's explanation was that any supporting material would be held by his accountant. It was a weak attempt to deflect attention from his own and the minuter's failure. At its simplest, this is a tracing exercise: provision of banking and other material could readily, and should, have been produced, if the transactions were legitimate, to allow a qualified forensic accountant to offer an opinion on the provenance of the disputed money, specifically, whether they were generated legitimately or otherwise. The pursuers have an obligation to trace recoverable property; to that end, they requested evidence from the minuter to establish the provenance of the money; the minuter failed to comply. No other credible or reliable evidence was led to prove the source of the money. Accordingly, the minuter has failed to establish the second condition.

[42] On the evidence, I would go further. Viewed in the wider context of the minuter's highly irregular and unvouched transactional activity, and its repeated disregard of statutory filing obligations, I infer that the money now sought to be released was indeed recoverable property even *before* it was paid into the Account.

Does the money belong to the minuter? (2002 Act, section 303Z17A(4)(c))

[43] Lastly, the minuter must prove that the money in the frozen account, to which the minute relates, belongs to it. This has not been done.

[44] At its highest, the evidence demonstrates that the minuter transferred funds to the second defender. The fact that funds were transferred from its bank account into the frozen Account does not, of itself, determine that it was the true owner of the funds. The provenance of those funds has not been proved, due largely to the minuter's resolute failure to disclose a complete banking transactional history or reliable vouching to legitimise its supposed trading activities.

[45] True, the sum sought to be released emanated from the minuter's Barclays Bank account. But that is not sufficient to satisfy the third statutory condition. In the absence of comprehensive business, financial and accounting records, and a coherent explanation for these irregular and unvouched transactions, I am unable to conclude that the frozen funds, or any identifiable part thereof, actually "belong" to the minuter. Accordingly, the minute must be refused.

Is the credit balance in the account "recoverable property"? (2002 Act, section 303Z14)

[46] Returning then to the pursuers' summary application for forfeiture, for the reasons explained above, I am satisfied on the evidence that the money held in the frozen Account represents "recoverable property", being the proceeds of criminal conduct, namely fraud (in setting up the account) and money laundering.

[47] In addition, I am satisfied that it was intended for use by "any person" in the same unlawful conduct of money laundering. The hearsay evidence of David Dunne of Mr Baharuni's asserted ignorance of the Account and denial of any involvement with the second defender (of which he was the sole registered director and shareholder), viewed in the context of the unorthodox and suspicious trading activity of Intensify, amply justify the inference of unlawful conduct, specifically money laundering, by someone. The identity of

the perpetrator does not require to be established. Accordingly, decree of forfeiture should be granted.

Interlocutor (Orders of the Court)

[48] For the foregoing reasons, I shall refuse the crave of the minute.

[49] I shall grant the pursuers' crave for forfeiture of the whole credit balance of the frozen Account held in the name of the second defender with Equals Connect Limited, which account was previously the subject of an AFO in terms of section 303Z1 of the 2002 Act by interlocutor of the sheriff at Glasgow dated 31 January 2025 (in proceedings under case reference GLW-PC16-25), together with any interest accrued thereon.

[50] Meantime, I shall reserve the issue of expenses *sine die*. Although the issue was touched upon briefly in the written submissions, I do not presently have clarity as to the parties' respective positions. In the first instance, parties should seek to agree the issue between themselves, failing which a motion can be lodged and a hearing convened (to proceed by telephone conference call).