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Freezing Orders and Foreign Respondents: The Court of Appeal Draws a Firm Jurisdictional Line in *Gilbert v Broadoak Private Finance Ltd*

This article has been co-authored by Astraea's Joe Young, Partner and Dr Khristyna Khanas, Senior Associate.

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In *Gilbert v Broadoak Private Finance Ltd* [2026] EWCA Civ 1172, the Court of Appeal confirmed that the English court's broad power to grant freezing injunctions does not, by itself, provide a route for serving a free-standing freezing order application on defendants abroad. The judgment provides important guidance on the scope and limits of three jurisdictional gateways.

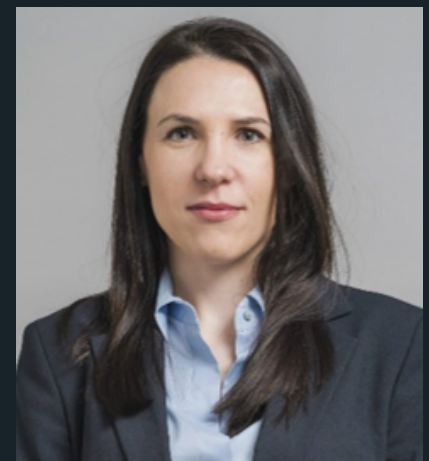
Background facts

The claimants, Benjamin Gilbert and BG Projects Limited, had obtained judgments worth more than £5.5 million against Broadoak Private Finance Limited ("**Broadoak**") in respect of unpaid loans. During enforcement, third-party disclosure showed that around £5 million had been removed from Broadoak's bank account. This included payments of €2.55 million to a Spanish account held by Shahena Bleakley, as well as other sums said to have benefited King Street Capital SL, a Spanish company ("**King Street**"). Neither Mrs Bleakley nor King Street had been a defendant to the underlying debt claim. They were therefore non-cause-of-action defendants, or "**NCADs**".



Joe Young
Partner

joe.young@astraea-group.com
[LinkedIn](#) | [www.astraea-group.com](#)



Khristyna Khanas
Senior Associate

khristyna.khanas@astraea-group.com
[LinkedIn](#) | [www.astraea-group.com](#)

The claimants obtained a worldwide freezing order (“WFO”) against the NCADs on a *Chabra* basis – in other words, on the footing that assets apparently held by them were, in reality, available to satisfy the judgment against *Broadoak*. At the return date, the NCADs brought a wide-ranging challenge to the WFO. The High Court accepted that the substantive requirements for relief had been met: (i) there was good reason to believe that funds had been transferred without a proper purpose; (ii) a real risk of dissipation, there being a strong inference that the NCADs knew that they had no right to receive or benefit from the money, and that risk was exacerbated by the NCADs’ failure to give satisfactory asset disclosure; and (iii) a basis for concluding that an injunction would be just and convenient. However, the High Court held that it had no personal jurisdiction over the Spanish respondents, and that none of the gateways in paragraph 3.1 of Practice Direction 6B permitted service of the application outside England and Wales.

The appeal therefore turned on a procedural question: how can a claimant serve a free-standing application for a WFO on an overseas NCAD? The claimants relied primarily on the “enactment gateway” in PD 6B paragraph 3.1(20)(a), arguing that section 37 of the Senior Courts Act 1981 was an enactment under which such proceedings could be brought. They also sought permission to rely on the injunction and property gateways.

The Court of Appeal’s decision

1. The enactment gateway

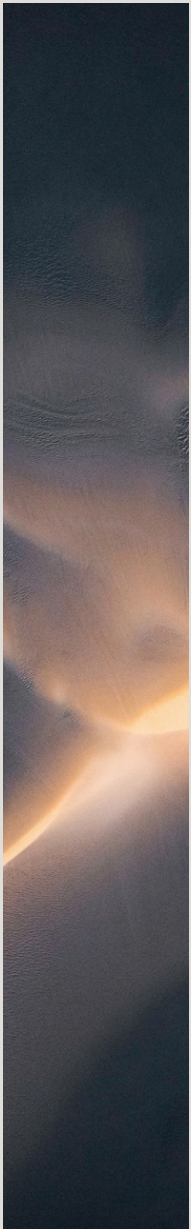
The claimants’ main argument was that an application for a WFO is a claim “under an enactment which allows proceedings to be brought”, namely section 37 of the Senior Courts Act 1981. They relied on three developments: the broad approach to the gateway in *Orexim Trading Ltd v Mahavir Point and Terminal Private Ltd*[1]; the recognition in *Broad Idea International Ltd v Convoy Collateral Ltd*[2] that a freezing order protects an enforcement interest and need not be ancillary to a domestic cause of action; and the decision in *Gorbachev v Guriev*[3] that applications of a procedural nature may still amount to “claims” and “proceedings” for service-out purposes.

The Court of Appeal rejected that argument. Its central conclusion was that gateway 20(a) applies only to **claim-conferring enactments**, and there must be a strong legal connection between the claim and the statute: the enactment must itself confer the right to bring the claim and will ordinarily set out, either directly or by incorporation, its main requirements.

1 [2018] EWCA Civ 1680

2 [2021] UKPC 24, [2023] AC 389

3 [2023] EWCA Civ 1270, [2023] KB 1



Section 423 of the Insolvency Act 1986 and sections 33 and 34 of the Senior Courts Act are examples. Section 37 is different. It is a general provision that confirms, restates or codifies the court’s power to grant injunctions. It is directed to the court, contains only the broad requirement that relief be “just and convenient”, and does not set out the conditions for any particular form of injunction. Those conditions come from the case law. A WFO claim is therefore not a claim “under” section 37, and section 37 does not “allow proceedings to be brought” for the purposes of the gateway.

The Court did not need to decide whether the modern source of the injunctive jurisdiction is statutory, inherent, or both. Even if section 37 places the power on a statutory footing, it is not claim-conferring. The real question is therefore not simply whether the power appears in legislation, but whether Parliament created the claim the applicant is seeking to pursue.

2. The injunction gateway

The Court refused permission to appeal on the argument that the order could be served under the gateway for an injunction requiring an act to be done, or not done, within the jurisdiction. The interpretation established in a previous case, *The Siskina*[4], remains binding: the gateway is concerned with substantive injunctive relief based on an asserted legal or equitable right, not a free-standing interim freezing order. Although *Broad Idea* recast the conceptual basis of freezing relief, it deliberately left intact the settled interpretation of materially identical service-out wording. Any change must come from the Civil Procedure Rule Committee, rather than through judicial reinterpretation.

3. The property gateway

The property gateway was no more helpful. The Court explained that the “subject matter” of a claim means its substance or essence, viewed at a relatively high level of generality. The words “wholly or principally” require a strong connection; some overlap is not enough. Here, the application was, in substance, aimed at restraining the NCADs from dealing with assets under their control. The English judgment debt explained why enforcement was sought, but it was not the principal subject matter of the freezing application. Nor could a limited pool of English assets justify worldwide relief when most of the assets were abroad. Permission to appeal on this ground was therefore also refused.

4 *Siskina (Owners of the Cargo) v Distos Cia Naviera SA* [1979] AC 210

What is new or clarified in this judgment?

1. **A statutory power is not enough.** For gateway 20(a), the enactment must confer the claim, not merely describe the court's remedial jurisdiction.
2. **Free-standing freezing relief and service out are distinct questions.** *Broad Idea* establishes that, once personal jurisdiction over the respondent has been established, the court may grant freezing relief without a substantive cause of action in the domestic jurisdiction. It does not, however, itself provide a basis for establishing personal jurisdiction over a foreign respondent or authorising service out.
3. **The injunction gateway remains confined.** It does not provide a route to serve a free-standing WFO application abroad; reform must come through amendment of the procedural rules.
4. **The property gateway demands substance, not enforcement purpose.** The existence of an English judgment debt does not make every execution-supporting application principally about property in England.



Key Takeaways

The significance of the decision lies in the jurisdictional gap it exposes. A claimant may have an English judgment, strong evidence that assets were transferred to overseas NCADs, and a compelling case for *Chabra* relief, yet still be unable to serve the application abroad. By contrast, PD 6B includes a gateway for freezing relief intended to assist in enforcement of a foreign judgment. The Court described this asymmetry as a “curiosity” and expressly invited the Rules Committee to consider it.

For practitioners, the message is straightforward: establish the basis for personal jurisdiction at the outset, rather than treating it as an issue to be addressed after the merits of the injunction. If the proposed respondent of the freezing injunction is overseas, applicants should consider carefully whether they can properly bring a substantive claim against that party – for example, a transaction defrauding creditors claim under section 423 of the Insolvency Act 1986, a constructive trust claim, or another cause of action falling within an established gateway. That claim may provide both a route for service and a basis on which to seek interim freezing relief. The Court noted that the *Gilbert* claimants had since issued claims under section 423 and in constructive trust, meaning that the respondents' jurisdictional victory may ultimately prove pyrrhic.



The judgment also cautions against trying to combine gateways creatively to achieve indirectly what the rules do not permit directly. The Court did not decide whether a domestic element of a worldwide order could be coupled with the closely connected claims gateway and said that the point would require careful consideration. Accordingly, this approach should not be treated as an established workaround.

Conclusion

Gilbert does not mark a retreat from the modern, expansive approach to freezing injunctions. Instead, it underlines the distinction between the court's power to grant a remedy and its jurisdiction over the respondent. Once a respondent is properly before the court, the court may have ample power to freeze assets. Section 37, however, does not itself open the jurisdictional door. Unless and until the rules are amended, claimants pursuing overseas recipients of assets will need to identify a recognised gateway – usually by bringing a substantive claim – before the court can exercise its freezing jurisdiction.

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Astraea
7 Down Street
London, W1J 7AJ
T +44 (0)208 092 8411
astraea-group.com

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