

ENGLAND AND WALES / JUDGMENT

Leila Eslami v North Tyneside Magistrates' Court

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Neutral Citation Number: [2026] EWHC 219 (Admin) Case No: AC-2026-LON-000276 IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION ADMINISTRATIVE COURT Royal Courts of Justice Strand, London, WC2A 2LL Date: 5 February 2026 Before: Paul Bowen KC (sitting as a Deputy Judge of the High Court)

- ----- Between: LEILA ESLAMI Claimant
- and – NORTH TYNESIDE MAGISTRATES' COURT Defendant THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS Interested Party
- -----
- ----- Nathan Rasiah KC (instructed by Spencer West, Solicitors) appeared for the Claimant The Defendant did not appear Vincent Blake-Barnard (instructed by HMRC Legal Group) appeared for the Interested Party Hearing dates: 4 February 2026
- ----- APPROVED JUDGMENT This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand down is deemed to be 4pm on Thursday 5 February 2026. Judgment Approved by the court for handing down Eslami v. N. Tyneside Magistrates' Court Paul Bowen KC (sitting as a Deputy Judge of the High Court):

Introduction

This is a claim for judicial review brought by the Claimant, Ms Leila Eslami, against the Defendant, North Tyneside Magistrates' Court, which did not appear. His Majesty's Commissioners for Revenue and Customs ("HMRC") are an Interested Party and defend the claim. The claim was listed before me for hearing on 4 February 2026 but was vacated to be determined without a hearing pursuant to CPR 54.18 with the consent of all the parties. The claim concerns a decision of the Defendant dated 8 January 2026 refusing the Claimant's application under s 303Z4 of the Proceeds of Crime Act 2002 to vary an account freezing order made under s 303Z3, so as to make exclusions from the prohibition on making withdrawals or payments from a frozen account for the purpose of meeting her reasonable living expenses under s 303Z5. The proceedings have been treated as urgent. On 21 January 2026, on an application for urgent consideration, directions and interim relief, Lang J ordered that the claim be expedited, having

regard in particular to the Claimant's evidence that she was at risk of losing her accommodation if unable to access funds to meet rent payable in advance. The judge ordered that the Defendant and Interested Party should file any Acknowledgment of Service (AOS) and Summary Grounds of Defence (SGD) within 7 days, i.e. by 28 January 2024. Permission to apply for judicial review was granted on all grounds by Coppel J on 27 January 2026. In granting permission, the Judge observed that, in the absence of any argument to the contrary, the Defendant's decision appeared to have been taken unlawfully and without consideration of the correct legal test, and that expedition was justified given the extreme urgency of the Claimant's circumstances. On the same day the Interested Party, HMRC, wrote to the Administrative Court Office confirming that it had filed its AOS and SDG on 27 January 2024, before the deadline directed by Lang J, which Coppel J had not considered in granting permission to apply for judicial review and requesting that the permission decision be set aside on that basis and reconsidered. On 2 February 2026 HMRC filed Detailed Grounds of Defence ('DGD') which broadly mirrored their SGD, accompanied by the statement of Mick Henderson, HMRC Financial Investigator dated 13 October 2025 which had been relied on before the Magistrates' Court together with authorities relied on. On 3 February 2026 the Claimant filed a supplementary bundle containing authorities and a reply to HMRC's DGD. Accordingly, there are two applications before me: HMRC's application to set aside the grant of permission to apply for judicial review; and, depending on the outcome of the first application, the Claimant's substantive claim for judicial review. 1. 2. 3. 4. 5. 6. 7. Judgment Approved by the court for handing down Eslami v. N. Tyneside Magistrates' Court

Background

On 17 June 2024 HMRC obtained an account freezing order against the Claimant in the sum of £958,321.06 before North Tyneside Magistrates' Court. The basis advanced for the order was that the balance of the account was said to be inconsistent with the Claimant's declared income and therefore gave rise to suspicion that the funds constituted recoverable property. Over the course of the following year HMRC obtained a series of extensions to the freezing order, each permitting the continued restraint of the funds for a further six-month period. Those extensions were granted in December 2024, May 2025 and October 2025 respectively. During that period the Claimant cooperated with HMRC's enquiries and did not oppose the continuation of the freezing order. By the autumn of 2025, the Claimant's personal financial position had become acute. She had no access to the frozen funds and no other material assets available to meet her living expenses. She occupied rented accommodation for which rent was payable six months in advance and faced the imminent risk of losing her home if payment could not be made. Against that background, and while unrepresented, she sought a variation of the freezing order to allow access to part of the restrained funds for the purpose of meeting her reasonable living expenses. HMRC opposed that application and the Magistrates' Court declined to grant the requested variation. The Claimant renewed her application in December 2025, by which time she was legally represented. The renewed application again sought a limited variation of the account freezing order to permit access to funds for rent and essential living expenses, supported by a witness statement and documentary exhibits explaining her financial circumstances and the

absence of any alternative means of support. These detailed monthly expenses as follows: rent, £2,480 pcm; EDF Energy, £54.38 pcm; Council tax, £66 pcm; Vitality Health Insurance, £114 pcm; Loan repayment with Zopa Ltd., £137 pcm; Loan repayment with Lendabel Ltd, £188 pcm; GiffGaff telephone bill, £10 pcm; food subsistence, £300 pcm. The total is £3,349.38 pcm. Her monthly income as a Sourcing Support Assistant with East Croydon Council is £2,318.85 pcm. The shortfall was therefore approximately £1,030.53 pcm. The application was listed before North Tyneside Magistrates' Court for a contested hearing on 8 January 2026 with both parties appearing by video-link. The Court heard detailed submissions on behalf of both the Claimant, acting in person, and HMRC represented by an investigator. The written application, together with the Claimant's witness statement and exhibits, was read by the Court and accepted as the evidential basis upon which the application was to be determined. Questions were asked of both the Claimant and the HMRC Officer but the Claimant was not required to give evidence on oath. HMRC opposed the application on the basis that (i) an application for an exclusion to be made in relation to living expenses had previously been made, and refused, by the Court on the basis there had been no statement of assets that complied with para 7.3.3 of the Practice Direction on Civil Recovery Proceedings; (ii) the new application was premature as the Claimant had not engaged with HMRC to seek consent to an exclusion for reasonable living expenses or provided a compliant statement of assets; 8. 9. 10. 11. 12. 13. Judgment Approved by the court for handing down Eslami v. N. Tyneside Magistrates' Court (iii) HMRC suspected that other assets had not been disclosed with unexplained payments having been made into the Claimant's personal account. HMRC did not tender any evidence of its own in resistance to the application, nor did it seek to call any witnesses. During the course of the hearing the Claimant was asked a single question by the Court as to whether she had any other available assets. She answered that she did not. She was not otherwise examined and was not required to give evidence. Following submissions, the Court retired briefly. On its return, the Magistrates gave their ruling in the following terms: 'We have considered the law and evidence that we have heard and consider that this application is not in the interests of justice and we therefore refuse the application'. Although no formal document has been provided by the Defendant recording its ruling the parties agree that these were the only reasons given.

Legal Framework

The statutory framework The account freezing order in this case was made pursuant to Part 5 of the Proceeds of Crime Act 2002 ("POCA"), which makes provision for the civil recovery of the proceeds of unlawful conduct. Chapter 3B of Part 5 (sections 303Z1–303Z19), which was introduced by the Criminal Finances Act 2017, governs account freezing orders and related applications. Section 303Z3 empowers a Magistrates' Court, on an application by an enforcement authority, to make an account freezing order where there are reasonable grounds for suspecting that money held in an account is recoverable property or is intended for use in unlawful conduct. Property is 'recoverable property' if it is obtained through unlawful conduct: s 304(1) POCA 2002. Where such property has been disposed of since it was obtained, it remains recoverable if it is held by a person into whose hands it may be followed or it represents property obtained through

unlawful conduct: s 304(2) and s 305, as applied to Part 5, Chapter 3B by s 362I, s 240. An order under s 303Z3 prohibits withdrawals or payments from the account for the duration of the order, subject to any exclusions or variations permitted by the court. An account freezing order is a preliminary, and necessary, step in taking further investigatory steps (for example, obtaining a search warrant under s 352) or for making any application for the forfeiture of money in the frozen account: s 303Z14. An account freezing order may be made for an initial period of up to two years, but is subject to variation, discharge or extension in accordance with the statutory scheme. Section 303Z4 confers power on the court to vary or discharge an account freezing order on the application of a person affected by it or of the enforcement authority. By s 303Z4(3), before varying or setting aside an account freezing order the court must give the parties to the proceedings and any person who may be affected by its decision an opportunity to be heard. 14. 15. 16. 17. 18. 19. 20. Judgment Approved by the court for handing down Eslami v. N. Tyneside Magistrates' Court 21. 22. Section 303Z5(1) provides that the court may make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies. Such an exclusion may be made either at the time the account freezing order is made or on an application to vary an order under s 303Z4. Section 303Z5(2) specifies that such an exclusion may be made for the purpose of enabling any person to meet reasonable living expenses, to carry on a trade, business, profession or occupation or to meet legal expenses. An exclusion may be made subject to conditions: s 303Z5(4). By s 303Z5(8), the power to make exclusions must be exercised: "... with a view to ensuring, so far as practicable, that there is not undue prejudice to the taking of any steps under this Chapter to forfeit money that is recoverable property or intended by any person for use in unlawful conduct". The ultimate question for the Court to consider In deciding an application to make an exclusion to an account freezing order the ultimate question for the Court to answer is: has the subject of the account freezing order applicant shown that, in all the circumstances, it is just to permit him or her to use funds which are subject to a freezing order in order to pay for (materially) reasonable living expenses: *Serious Organised Crime Agency v Azam (CA)* [2013] 1 WLR 3800, [66(i)]; *NCA v. Shane Davies* [2019] EWHC 1282 (QB), [21]. The burden is formally on the applicant but the assessment of what is 'just' is not one that is susceptible to analysis in terms of burden and standard of proof. It involves a process of considering the facts, addressing the statutory criteria, weighing competing factors and exercising an evaluative judgment. Of course, the Court may need to make findings of fact which will require proof to the civil standard. As will be seen, however, the burden of proving relevant facts will shift depending upon the statutory criteria. The three statutory criteria 23. In answering that ultimate question the Court must consider three statutory criteria, some of which require a different approach in terms of burden and standard of proof. The exercise of the Court's power to make exclusions on an application to vary to an account freezing order were considered by Rice J in *NCA v Westminster Magistrates' Court* [2022] EWHC 2631. Materially, at [80-83] the judge said this:

80. The power to vary so as to make exclusions differs from the power to set aside in some important respects. The court is not being asked on an application for variation to address itself to the same threshold test as applies to original applications for AFOs and for applications to set aside (reasonable grounds for suspecting). The power is instead governed in key respects by s.303Z5 POCA.
81. First, on an exclusions application the court is directed, where appropriate, to the purpose of enabling a person by or for whom the account is operated (a) to meet the person's reasonable living expenses or (b) to carry on any trade, business, profession or occupation. And second, the court has a duty, under subsection (8) of that section, to exercise the power with a view to ensuring, so far Judgment Approved by the court for handing down *Eslami v. N. Tyneside Magistrates' Court* as practicable, that there is not undue prejudice to the taking of any steps under the forfeiture chapter of the Act.
82. These tests again require close attention to the factual matrix and an evaluative decision to be taken in all the circumstances, including giving careful attention to the scheme of the Act. What constitutes someone's reasonable living expenses? What, apart from the absence of a variation order, is stopping the person being enabled to meet those expenses? What would be the prejudicial effect of making exclusions on the taking of further steps towards forfeiture? And if there is a prejudicial effect, does the court assess it to be undue, and if so why?
83. So in the first place, these constitute another set of evaluative and fact-sensitive considerations which require a full examination of the evidence ... 24. To summarise, then: in determining an application for a variation under section 303Z5, the court is required to address three statutory criteria: i) ii) iii) whether the expenses for which access to the funds is sought constitute reasonable living expenses; whether the applicant has other assets available to meet those expenses; and whether granting the variation would unduly prejudice the ability of the enforcement authority to pursue forfeiture or other recovery proceedings in respect of the frozen funds. 25. There is further guidance in the case-law as to how a Court is to determine each of these three criteria, including the relevant burden and standard of proof. First criteria: whether the living expenses are reasonable
26. Whether the expenses are 'reasonable' for the purposes of POCA (the first question) is to be determined by reference to the same principles applied in the common law authorities governing freezing injunctions, namely those 'ordinary, recurrent expenses involved in maintaining [the individual] in the style of life to which he is reasonably accustomed': *R v Campbell* (CA) [2010] 1 WLR 650, [25-26]. In *R v Luckhurst* (CA) [2021] 1 WLR 1807, [33], the Court of Appeal gave a non-exhaustive list of factors that are relevant in assessing 'reasonableness'. These include the standard of living to which the individual was accustomed prior to the freezing order, although this is not determinative. Regard must be had to the fact that the subject of a freezing order has not and may never be charged with an offence. On the other hand, if there is a prima facie case that the previous standard of living is the result of criminal activity the Court should assess what is 'reasonable' in the absence

of that criminal activity. In finding relevant facts for the purposes of this question it is plain from the statutory context that the burden of proof rests on the applicant to show both that there is a need for payment to meet relevant expenses and that those expenses are reasonable. 27. Judgment Approved by the court for handing down *Eslami v. N. Tyneside Magistrates' Court* Whether there is prima facie case of criminal activity will be a matter for the enforcement agency to establish. Second criteria: whether other assets are available 28. Guidance as to how to answer the second question, namely whether the applicant has other assets available to meet their reasonable living expenses, was given in *NCA v. Shane Davies* [2019] EWHC 1282 (QB). The Court was concerned with the framework for making exclusions to property freezing orders under s 245C POCA, but the relevant statutory provisions are materially the same. Morris J set out the relevant principles at [23-24] which were, in turn, derived from those in *Serious Organised Crime Agency v Azam* (CA) [2013] 1 WLR 3800, [66], a case involving legal expenses rather than living expenses but which Morris J considered to be materially indistinguishable for these purposes. I draw from those cases the following summary of the approach to be taken by the Court when considering the availability of other assets: i) ii) iii) The Court must first ask, is it positively satisfied to the civil standard (i.e. likelihood) that there are other available assets which may be used for the purpose sought, to whomsoever they might belong? If so then the applicant will not be permitted to use the frozen assets for his living expenses. If the Court is not positively satisfied but does have 'specific grounds for suspicion that the applicant has not disclosed all that he could and should about his assets or other assets which may be available from other sources', the court may conclude that there are other assets available. If there are not such 'specific grounds for suspicion', then the court may not have an adequate basis for concluding that there are other available assets and should not refuse the application for this reason. 29. As regards this second question, then, it is implicit in the statutory context that there is an obligation on the applicant to make full disclosure of their available assets. If the enforcement authority does not accept that the applicant has made such disclosure, the burden is on the enforcement authority to establish the existence of alternative assets, or (failing that) of 'specific grounds for suspicion' that the applicant has not been candid about the availability of other assets: see per Lloyd LJ *Azam* at [66](iii) 'If the evidence does not provide any such specific indications or grounds for suspicion, then even if the court rejects the applicant's evidence as unreliable, it may not have an adequate basis for concluding that there are other available assets. In that case ... the court should not resolve the impasse against the applicant on the basis that it was for him to prove positively the absence of available assets. There may be objective factors which cast light on the probabilities one way or the other, as there were in the case of Mrs. Azam. But if there is nothing of the kind, and nothing which indicates the existence of unexplained or undisclosed available assets, then the fact that the applicant has previously concealed relevant assets is not sufficient by itself to show that he is still concealing such assets, and thereby to deprive him of the ability to Judgment Approved by the court for handing down *Eslami v. N. Tyneside Magistrates' Court* use his own assets I would therefore reject the proposition that there is a specific burden of proof on the applicant which requires him to prove that there are no other

available assets which could be used for the relevant purpose, such that if he does not discharge that burden his application must fail'. Third criteria: whether payment would cause undue prejudicial effect 30. In answering this third question the Court should ask whether and to what extent allowing the exclusion would be prejudicial to the taking of steps to forfeit money that is recoverable property or intended by any person for use in unlawful conduct; and, if so, whether that prejudice is 'undue': s 303Z5(8). The making of any exclusion for living or other expenses will inevitably cause some prejudice to the statutory objective because it will dissipate the frozen assets to the extent of any payment. The requirement in s 303Z4(8) requires the Court to ensure, so far as practicable, that such prejudice is not 'undue'. This requires a balance to be struck between the needs of the applicant and the statutory objective of forfeiting money that is recoverable property or intended for use in unlawful conduct. This requirement militates against the making of large, open-ended or unbudgeted payments and favours tight spending caps and short review periods; direct payments to landlords/schools/utilities rather than to the applicant; itemised budgets, invoices, and receipt/reporting conditions; and the furnishing of evidence addressing other available assets. Summary of the correct approach 31. Accordingly, the following approach is required for each step of the legal test to be applied by the Court: i) ii) iii) iv) First question, whether the expenses are 'reasonable': the burden rests on the applicant to demonstrate, to the civil standard, that she has living expenses that need to be met and that these are reasonable. Second question, whether other assets are available to meet those expenses: provided the applicant has made a statement setting out their available assets, if the enforcement authority (here, the HMRC) does not accept that statement the burden is on it to establish either that there are other assets available or, failing that, that there are 'specific grounds for suspicion that the applicant has not disclosed all that he could and should about his assets or other assets which may be available from other sources'. Third question, whether it would unduly prejudice the ability of the enforcement authority to pursue forfeiture or other recovery proceedings in respect of the frozen funds. This question mandates a tight budgetary approach to the making of an exclusion to not 'unduly prejudice' the statutory objective of forfeiting the frozen assets while still meeting the applicant's needs. Fourth question (the ultimate question), whether it is 'just' to permit the applicant to use the frozen funds for living expenses. The burden of proof rests on the applicant but the question of what is 'just' is not susceptible to any particular standard of proof. It requires consideration of the facts found, the Judgment Approved by the court for handing down Eslami v. N. Tyneside Magistrates' Court answers the Court has reached on the three statutory questions, a balancing of the competing factors and an evaluative judgment. The procedure for making an application to vary an account freezing order There is some dispute between the parties as to the correct procedure for making an application to vary an account freezing order, in particular whether the application must be accompanied by a 'statement of assets'. As this has some relevance to the grounds of challenge I briefly set out the relevant provisions. The Magistrates' Courts (Freezing and Forfeiture of Money in Bank and Building Society Accounts) Rules 2017/1297, r. 4 provides that an application to vary under s 303Z4 'must be made in writing to the court

before which the applicant wishes to make the application'. There is no express requirement to provide a 'statement of assets'. That requirement is only to be found in paragraph 7.3(3) of the High Court Practice Direction on Civil Recovery Proceedings, which sets out the evidence required in support of an application in the High Court for exclusion from a property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal costs under Part 5 POCA. That provides that the applicant must produce a statement of assets containing the information set out in paragraph 7A.3, namely 'all the property which the maker of the statement owns, holds or controls, or in which he has an interest, giving the value, location and details of all such property'. The Claimant's Grounds of Review The Claimant's Grounds of review, which are admirably succinct, are threefold: the Magistrates' Court failed to apply itself to the correct test for a variation of an order to make exclusions (Ground 1); their decision was irrational (Ground 2); and/ or they failed to give adequate reasons for their decision (Ground 3). She seeks an order quashing the decision and either an order substituting the Court's own decision for the decision in question so as to allow the variation in the terms sought 'because on the basis of the facts accepted by the court, had the court applied the correct legal test there would have been only one decision which the court could have reached, namely to allow the variation'. Alternatively, she seeks an order remitting the matter for reconsideration by the Magistrates' Court. The Interested Party's Defence HMRC contest the claim. As to the first ground they submit that the Court 'was made aware and directed on the issue of law and the correct legal test', and that although the reasons for refusing the application were 'sparse' there is 'no evidence' that they did not apply the correct legal test. 32. 33. 34. 35. 36. 37. In response to the second ground they raise several reasons why the decision was not Wednesbury irrational: i) ii) The Claimant did not provide a statement of assets. The frozen account was not the Claimant's day to day account, she was working full time with her income being paid into that account which had not Judgment Approved by the court for handing down Eslami v. N. Tyneside Magistrates' Court been frozen. iii) iv) v) There were unexplained amounts being paid into her accounts which raised concerns of undisclosed assets. £50,000 + had been collected from an agent in 2024 which raised concerns that there were further undisclosed assets. The Claimant had provided no evidence to substantiate that her mother had been paying her rent since 2017. vi) The freezing order was due to expire in June 2026. vii) 'The Court has a broad discretion when deciding and balancing what is reasonable living expenses. They considered all evidence and heard submissions. The decision was not made in an arbitrary, capricious or irrational manner'. So far as ground 3 is concerned, HMRC accept that the reasons were 'sparse' and 'expressed ineptly' but the failure to give adequate reasons 'does not necessarily invalidate the decision'; even if unlawful, the decision need not be quashed if the court it satisfied it was right; alternatively this Court should seek a further statement of reasons from the Court. The application to set aside the decision on permission The permission decision was made before the expiry of the period set down by Lang J for service of HMRC's AOS and SGD and, although those documents were in fact filed and served a day before the expiry of the deadline, Coppel J did not have them before him when he reached his decision on permission. Although by CPR 54.13 neither a defendant nor any

other person served with the claim form may apply to set aside an order giving permission to proceed, the Court retains an inherent jurisdiction to set aside such a decision in precisely these circumstances in the interests of justice: see the White Book 2026, 54.13.1 and *R (Webb) v Bristol City Council* [2001] EWHC Admin 696. HMRC's application to set aside the decision on permission is allowed. I will consider both the questions of permission and, if I grant permission, the substantive claim as a rolled-up hearing. Discussion and decision

It is appropriate to consider Ground 3 (the reasons challenge) first. As with any judicial decision affecting rights or interests, a Magistrates' Court determining an application under section 303Z5 is required to give reasons which are sufficient to explain why the application has been granted or refused, particularly where a refusal has serious consequences for the applicant. A court must give sufficient reasons for the parties to know 'why one has won and the other has lost' otherwise 'justice will not be done': *English v Emery Reimbold (CA)* [2002] 1 W. L. R. 2409, [16]. The Court of Appeal continued at [19]: '... the judgment must enable the appellate court to understand why the judge reached his decision. That does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated his recollection could not be relied upon'. In my judgment the reasons given by the Magistrates' Court were plainly inadequate to meet this test. It is not possible to understand why the Magistrates reached the decision they did. While I reject the Claimant's complaint that they misdirected themselves by addressing themselves to the 'interests of justice', which is the ultimate question they had to determine, I accept that the reasons do not reveal whether they addressed themselves to any of the three criteria required by the statute. We therefore do not know whether they considered, or what their conclusion or reasoning was as to: whether the Claimant's proposed living expenses were reasonable; whether they were satisfied the Claimant had other assets that were available to her to meet those living expenses; if not, whether there were 'specific grounds for suspicion that the applicant has not disclosed all that [s]he could and should about [her] assets or other assets which may be available from other sources'; and whether the proposed exclusion would cause undue prejudice to the statutory objective of forfeiture. Nor is it possible to deduce whether the Magistrates' Court applied the correct burden and standard of proof, an issue which is of particular relevance to the second criteria. HMRC cites several reasons why the Magistrates' Court could rationally have reached the conclusion that it did, see paragraph 37 above, but nowhere in their reasons are these factors addressed. Some of these factors were contentious and required the Magistrates' Court to consider the evidence and make relevant findings of fact: see in particular factors (ii), (iii) and (iv). No such findings are recorded in the reasons. As to factor

(i), whether a 'statement of assets' was required, this was a contentious issue of law which the Magistrates' Court was required to resolve. The question of law is: does a failure to provide a 'statement of assets' that complies with para 7.3(3) of the Practice Direction on Civil Recovery Proceedings justify the dismissal of an application under s 303Z5 in circumstances where it is not expressly required by r. 4 of the 2017 Rules? That issue is not squarely before me so it is not appropriate to answer it definitively. It will be obvious from my judgment that an applicant seeking an exclusion from an account freezing order is required to make full disclosure of all the assets that are available to them. The precise form in which they do so may not be material. But if the argument was made before the Magistrates' Court that 'a statement of assets' within the meaning of para 7.3(3) was required then they needed to grapple with it and make a ruling. There is nothing in their reasoning to demonstrate that they did so. I do not consider it appropriate, as HMRC suggested, to ask the Magistrates' Court to supplement their reasons now. While I accept in an appropriate case that power is available, the risks of a decision-maker giving ex post facto reasons that, consciously 41. 42. 43. 44. Judgment Approved by the court for handing down *Eslami v. N. Tyneside Magistrates' Court* or unconsciously, defend or bolster the original decision are well known. The authorities make a distinction between ex post facto reasons that elucidate those originally given, which can be admitted, and those which contradict the original reasons or constitute wholly new reasons, which generally should not be admitted: *Inclusion Housing Community Interest Co v Regulator of Social Housing* [2020] EWHC 346 (Admin), [78], Chamberlain J, citing *R v Westminster City Council ex p. Ermakov* [1996] 2 All ER 302, pp. 325-6 and *R (Nash) v Chelsea College of Art and Design* [2001] EWHC 538 (Admin). In the present case any reasons from the Magistrates' Court would be wholly new and therefore inadmissible. I reject this submission. HMRC further submits that the fact the reasons were inadequate does not vitiate the decision, referring to the cases of *Glasgow District Council v Secretary of State for Scotland* (1980) SC 150 and *Crake v Supplementary Benefits Commission* [1982] 1 All ER 498. In the first case the Second Division of the Scottish Court of Session held that the decision of the Secretary of State 'being correct in law' would not be quashed despite the reasoning by which it was reached being 'in part erroneous'. In the latter case Woolf J (as he then was) held that legally inadequate reasons did not amount to an error of law which vitiated the decision. In his judgment from 506f the judge described how the state of administrative law at that time was rather 'confused' as to when inadequate reasons would constitute an error of law sufficient to render a decision unlawful. He referred to the Divisional Court case of *Mountview Court Properties Ltd. v Devlin* (1970) 21 P & CR 689 for the proposition, which he considered binding, that a failure to provide sufficient reasons does not of itself give rise to a right to quash the decision. The law has moved on since then. If there was any doubt in 1982, there is now no such doubt that a duty to give reasons is 'an independent and enforceable legal obligation and hence a ground of nullity where it is violated': *R v. Higher Education Funding Council, ex p. Institute of Dental Surgery (CA)* [1994] 1 WLR 242, 257F-258A and the cases cited in Sir Michael Fordham's *Judicial Review Handbook*, 7th ed., 64.5. In any event, in the present case I am satisfied the reasons were not just 'scarce' or 'inept', but so inadequate as to be unlawful. This is a case

where 'the defect in the reasons goes to the heart of the justification for the [decision] and undermines its validity': R (CPRE Kent) v Dover DC [2017] UKSC 79, [68]. Justice was not done or seen to be done. I also reject HMRC's submission that the decision, though unlawful, should not be quashed because it was 'right'. The Court must refuse to grant relief if it appears to be 'highly likely' that the outcome for the Claimant would not have been substantially different even if the conduct complained of had not occurred: s 31(2B) Senior Courts Act 1981. But that is a counter-factual question that in this case I cannot answer. I have no idea what the Magistrates' Court's decision would have been in the absence of any reasons because I do not know whether they directed themselves correctly in law, what factual findings they made or how they reached their ultimate conclusion. In those circumstances I propose to grant permission to apply for judicial review, to allow the claim on Ground 3, to quash the decision and remit the application to the Magistrates' Court for reconsideration in accordance with this judgment by a different bench of justices or judge as a matter of urgency. 45. 46. 47. 48. Judgment Approved by the court for handing down Eslami v. N. Tyneside Magistrates' Court 49. I do not need to determine Grounds 1 and 2. Although the absence of reasons can found an inference that a decision-maker did not address the correct legal test or failed to take into account relevant considerations, in view of my conclusion on Ground 3 this neither necessary nor appropriate. 50. HMRC will pay the Claimant's costs of the application, to be assessed if not agreed. 13

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