

Radcliffe Chambers
11 New Square Lincoln's Inn
London WC2A 3QB

T: 020 7831 0081
E: clerks@radcliffechambers.com
W: radcliffechambers.com

Radcliffe
Chambers

Jurisdictional Gateways and Freezing Orders: *Gilbert v Broadoak* [2026] EWHC 153 (KB) and *Smithers v Persons Unknown* [2026] EWHC 207 (Comm)

2 June 2026



Matthew Tonnard

Call: 2015
Barrister

Matthew Tonnard is a leading junior barrister with a practice spanning the full range of commercial litigation and arbitration, with particular expertise in banking and finance disputes and civil fraud. He is regularly instructed in substantial domestic and cross-border matters.

Introduction

Two decisions from early 2026 together set the current limits of the court's power to freeze assets against defendants who are either outside the jurisdiction or wholly unidentified:

- *Gilbert v Broadoak Private Finance Ltd* [2026] EWHC 153 (KB) confirms that even a compelling Chabra case will fail without a valid PD6B gateway for service out.
- *Smithers & Anor v Persons Unknown* [2026] EWHC 207 (Comm); [2026] 3 WLUK 397 demonstrates that the courts remain robustly interventionist in crypto asset fraud, continuing freezing orders against unidentified defendants despite deficiencies in the initial tracing evidence.

Read together, they are essential reading for practitioners advising victims of fraud in 2026

Gilbert v Broadoak: The Limits of Post-Judgment Chabra Relief

Background and Facts:

The Chabra jurisdiction, derived from *TSB Bank plc v Chabra* [1992] 1 WLR 231, allows freezing relief against third parties whose assets are beneficially owned by, or traceable to, a cause-of-action defendant. *Gilbert* is the first case to examine directly what happens to that jurisdiction when the non-cause-of-action defendants ("NCADs") are based abroad and judgment has already been entered against the primary defendant.

The Claimants obtained judgment against Broadoak Private Finance Ltd ("Broadoak") for approximately £4.2m. Post-judgment investigations revealed that significant sums had been paid to or for the benefit of Mr Bleakley's separated spouse, Mrs Bleakley (a Spanish resident), and a connected Spanish company, King Street Capital SL ("KSL"), which appeared to have been funded by Broadoak. HHJ Bird granted a without-notice worldwide freezing order ("WFO") against both Respondents under the Chabra jurisdiction, with permission to serve in Spain. At the return date, the Respondents sought discharge on jurisdictional grounds.

The Decision

The judge found significant breaches of the duty of full and frank disclosure, however, declined to discharge on that basis alone. The substantive decision turned on whether any PD6B gateway permitted service out on the Spanish respondents.

All four gateways advanced by the Claimants failed:

- Gateway (2) (the injunction gateway) requires a claim for a **substantive**, final injunction as relief for the invasion of a legal right, a freezing injunction does not qualify, regardless of the Respondents' UK assets: *The Siskina* [1979] AC 210, as confirmed by *Broad Idea* [2023] AC 389;
- Gateway (3) (the necessary or proper party gateway) failed because final judgment had already been entered against Broadoak. There were no live issues between the Claimants and the anchor Defendant that were left to be determined;
- Gateway (10) (enforcement of judgment) was held inapplicable because a WFO is ancillary to enforcement, not an act of enforcement itself; and
- Gateway (20) (the enactment gateway), which had attracted obiter encouragement in *Commercial Bank of Dubai v Al Sari* [2024] EWHC 3304 (Comm), was decisively rejected: Section 37 of the Senior Courts Act 1981 provides for a remedial power within existing proceedings, not a free-standing right to bring proceedings against a foreign person. The WFO was discharged

Key Takeaways

- **Timing is critical.** Gateway (3) closes once judgment is entered against the anchor defendant. Chabra applications against foreign NCADs must be made while live proceedings remain on foot.
- **Gateway (20) is not a back-door.** Section 37 of the SCA 1981 does not satisfy the enactment gateway. Self-standing statutory causes of action (e.g. s.423 Insolvency Act 1986) may fare better and are worth exploring in future applications.
- **Disclose controversial gateway arguments proactively.** The duty of full and frank disclosure extends to flagging adverse authority and the contested nature of any novel jurisdictional argument.

Watch the appeal. The Court of Appeal will hear the gateway (20) point in late July 2026. Practitioners should monitor the outcome before treating the issue as settled

Smithers v Persons Unknown: Pragmatism in the Crypto Fraud Context

Background and Facts

The Claimants were victims of a sophisticated crypto asset fraud. A without-notice freezing injunction and information disclosure order was obtained on 31 October 2025 over assets traced by an expert. At the return date on 23 January 2026, the court faced two issues: whether jurisdiction over the persons unknown defendants had been established and, more unusually, whether the orders should continue despite the tracing methodology adopted carrying a risk of assets belonging to innocent parties being frozen.

The Decision

The Commercial Court continued both the freezing injunction and the information orders. Three findings deserve particular attention:

Jurisdiction: Damage in England. The court held there was a good arguable case that where crypto assets are taken from an English resident, the damage is sustained in England. This is a significant development: it provides a workable jurisdictional anchor for English-resident claimants whose crypto assets are taken by overseas fraudsters, easing the PD6B gateway analysis.

Conspiracy claims broaden the freezing order. The claims advanced included unlawful means conspiracy against persons unknown identified through expert blockchain analysis, not merely a proprietary claim confined to specific wallets. This illustrates how a conspiracy cause of action can extend freezing relief across all of the conspirators' assets, not just traceable proceeds, which is particularly powerful where the misappropriated assets have been mixed, converted or moved across multiple wallets.

Heightened dissipation risk is well established. The court found that the speed, portability, and cross-border transferability of cryptocurrency creates a structurally inherent risk of dissipation. In well-pleaded crypto fraud cases, courts will generally be satisfied on this point without requiring exceptional evidence.

As to the innocent parties point, the court's continuation of the orders despite the tracing methodology reflects a pragmatic, victim-focused approach. However, this should not encourage complacency. An expert tracing exercise that is quick but inaccurate creates disclosure obligations at the return date and risks the scope of the order being narrowed or challenged.

Key Takeaways

- **English residence grounds jurisdiction.** For English-resident crypto fraud victims, the fact that their assets were taken from England establishes a strong and pragmatic jurisdictional foundation
- **Pleading conspiracy.** *Smithers* illustrates that an unlawful means conspiracy can be pleaded against defendants identified only descriptively (through expert blockchain analysis) rather than by name. This allows the "persons unknown" route to carry the full asset-wide freezing relief, rather than being confined to specific wallets or addresses.
- **Commission accurate tracing from the outset.** The risk that an over-broad tracing exercise catches innocent parties must be assessed before the without-notice application. Accuracy avoids disclosure complications at the return date and reduces the scope for discharge.

The Two Cases Compared: A Framework for Practitioners

The contrast between *Gilbert* and *Smithers* is instructive. In *Gilbert*, meritorious underlying facts — dissipated assets, beneficial ownership, risk of further dissipation — were insufficient to overcome the absence of a PD6B gateway. In *Smithers*, the court continued a WFO over unknown defendants despite risks associated with the tracing exercise, treating the victim-focused policy of the crypto fraud jurisdiction as a significant consideration. The divergence reflects

a principled distinction between named, identified overseas parties (where international private law rules firmly apply) and unknown persons (where a more elastic, asset-and-victim-focused jurisdiction operates).

For practitioners, do not rely on post-judgment gateways — none currently work. Explore whether the cause of action includes a self-standing statutory claim that might satisfy gateway (20) more naturally than s.37 SCA 1981. Where wrongdoers are **unknown or partially identified**, a conspiracy claim against "persons unknown" where the victim is based in England provides a valid jurisdictional hook. In both cases, full and frank disclosure remains a non-negotiable foundation.

Conclusion

Gilbert v Broadoak and *Smithers v Persons Unknown* are important decisions in 2026. The former warns practitioners that jurisdictional infrastructure cannot be retrofitted to a meritorious case after the fact. The latter confirms that where fraudsters remain anonymous and their victims are English residents, the courts will deploy the full range of available tools pragmatically and with speed. Taken together, the message is clear: act early, plead strategically, trace accurately, and disclose completely.

This publication and its contents are not intended to provide legal or other advice and you must not treat them or rely on them as such. Any views expressed are those of the author and not of Radcliffe Chambers, its members or staff, or any of them and the contents do not necessary deal with all aspects of the subject matter to which they pertain.

Radcliffe Chambers is a barristers' chambers specialising in commercial, insolvency, pensions, banking and finance, private client, property and charity law.

Radcliffe Chambers and its barristers are regulated by the Bar Standards Board of England and Wales ("BSB"). When practising as barristers, they are self-employed. They are registered with and regulated by the BSB, and they are required to practise in accordance with the Code of Conduct contained in the BSB Handbook.

If you do not wish to receive further marketing communications from Radcliffe Chambers, please email events@radcliffechambers.com.