

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

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

Radcliffe
Chambers

Freezing Orders and the Enactment Gateway: the Court of Appeal in *Gilbert v Broadoak Private Finance Ltd* [2026] EWCA Civ 1172

29 September 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

In June I wrote about the first instance decision of David Quest KC in *Gilbert v Broadoak Private Finance Ltd* [2026] EWHC 153 (Comm) which discharged a post-judgment *Chabra* worldwide freezing order ("WFO") against two Spanish respondents for want of a PD 6B gateway. On 22 September 2026, the Court of Appeal (Foxton LJ, with whom Miles and Jeremy Baker LJJs agreed) dismissed the appeal on gateway (20) and refused permission to appeal on gateways (2) and (11). The position is now settled at appellate level: absent a live substantive cause of action or a self-standing statutory claim, there is no route by which a bare freezing application can be served on a foreign non-cause-of-action defendant ("NCAD") in aid of an English judgment.

Background

The Gilbert Claimants held judgments against Broadoak totalling c.£5.5m. Third-party disclosure showed that Mr Bleakley had removed some £5m from Broadoak's account, and a *Norwich Pharmacal* order against Moneycorp traced €2.55m to a Spanish account in Mrs Bleakley's name. HHJ Bird granted a without-notice WFO on *Chabra* grounds ([2], [12]). At the return date the Judge held that every substantive condition for *Chabra* relief was met – good reason to

suppose the payments were made for no proper purpose, a real risk of dissipation, and England as the clearly appropriate forum – however, the order was discharged as no gateway permitted service in Spain ([13], [16]). Gateways (3) and (10), rejected below, were not pursued on appeal ([14]).

Ground 1: the Enactment Gateway (PD 6B para 3.1(20)(a))

The position advanced was that an application for a WFO is a claim “under an enactment which allows proceedings to be brought”, the enactment being s.37 of the Senior Courts Act 1981 ([4]). It rested on three developments: *Orexim Trading Ltd v Mahavir Point and Terminal Private Ltd* [2018] EWCA Civ 1680 (an expansive reading of the gateway, extending to claims which invoke a discretion rather than assert a legal right) ([18]–[21]); *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24 (decoupling freezing relief from any cause of action and resting it on the “enforcement principle”) ([22]–[24]); and *Gorbachev v Guriev* [2023] EWCA Civ 1270 (applications of a procedural character under ss.33–34 SCA 1981 are “claims” and “proceedings” within the gateway) ([25]–[27]). Foxton LJ acknowledged that he had himself sketched the argument in a 2024 lecture, as a “highly surprising” but possible unintended consequence of those authorities, and that it had been raised but not decided in *Commercial Bank of Dubai v Al Sari* [2024] EWHC 3304 (Comm) ([29]).

The Court declined to decide the Respondents’ threshold point that the injunctive power is inherent and equitable, so that no claim is made “under” s.37 at all ([42]). Foxton LJ saw “force” in it but regarded the debate as too technical to resolve on the submissions received ([63]–[65]), noting that it would in any event not answer the question for the County Court, whose injunctive power under s.38 of the County Courts Act 1984 is wholly statutory ([67]).

The appeal was instead decided on the language of the gateway ([80]). “Under an enactment” connotes a strong legal connection: the principal requirements for bringing the claim should be found in the enactment itself ([81]). “Which allows proceedings to be brought” directs attention to “claim conferring” enactments, as opposed to those which merely define the powers or jurisdiction of courts ([82]). Section 423 of the Insolvency Act 1986 and ss.33–34 SCA 1981 are narrow, claim-conferring provisions whose conditions appear on their face ([84]). Section 37(1) is the opposite: a provision “of the most general kind”, addressed to the court rather than to applicants, under which the requirements for every species of injunction are found in the case law rather than the statute ([85]). Its history confirms that its purpose was to confirm and restate a pre-existing jurisdiction, not to create a statutory claim ([85(iv)]); and s.37(3) confirms the operation of s.37(1) rather than supplying a separate source of the freezing power ([38]–[41]). The Court therefore agreed with the Judge that s.37(1) does not “allow proceedings to be brought” ([88]).

One point went the Claimants’ way. The Court rejected the Respondents’ argument that the gateway’s proviso (“not covered by any of the other grounds”) would in any event have excluded the claim: where a statute permits claims broader than any other gateway, the proviso should not be read so as to frustrate that legislative choice, and no other gateway addresses injunctions which are not substantive relief ([95]–[96]).

Permission refused: the Injunction and Property Gateways

Injunction Gateway (para 3.1(2)). *The Siskina* [1979] AC 210 confines this gateway to injunctions sought as substantive relief for the invasion of a legal or equitable right ([98]–[99]). *Mercedes Benz AG v Leiduck* [1996] AC 284 and *Broad Idea* at [67]–[70] both declined to depart from it, holding that any lacuna is for the rule-maker ([100]–[103]). Foxton LJ accepted that *Broad Idea*’s reformulation of the freezing injunction, and the amended wording of the gateway, furnish an argument for distinguishing *The Siskina*, but held that Lord Leggatt’s reasoning on stare decisis and the proper role of the Rules Committee applied with equal force to the CPR ([102]–[104]). He also characterised the argument as “something of a stalking horse”: a domestic-only order would be of little value, and the real objective was to use gateway (4A) to bolt worldwide relief onto a domestic injunction – a point raised too late to be entertained ([105]–[107]).

Property Gateway (para 3.1(11)). The subject-matter of a claim is identified at a relatively high level of generality, and “relates wholly or principally” requires a relatively strong connection ([116]). The subject-matter of a *Chabra* WFO is the restraint of the NCADs’ dealings with their assets; the existence of the judgment is one condition of relief, not its subject-matter ([117]–[118]). To hold otherwise would convert the gateway into a general power to serve out all post-judgment applications – again, a matter for the Rules Committee ([119]).

Commentary for Practitioners

- **The point is closed at Court of Appeal level.** Five gateways have now been tried and failed: (2), (11) and (20) on appeal, and (3) and (10) below. A bare post-judgment freezing application cannot be served on a foreign NCAD. Reform is for the Rules Committee; Foxton LJ noted the “curiosity” that gateway (5A) permits service of freezing applications in aid of foreign judgments while no equivalent exists for domestic ones ([119], [125]).
- **Plead a substantive claim from the outset.** The practical answer is at [123]: the Claimants have since issued claims under s.423 IA 1986 and for constructive trust relief, which can be served out on established authority and can carry freezing relief, so the NCADs’ success “may yet prove to be pyrrhic”. Where the facts support a substantive cause of action against the recipient – s.423, knowing receipt, unlawful means conspiracy – that claim, not a free-standing *Chabra* application, should be the vehicle. Foxton LJ’s caution that s.423 “may not provide the necessary relief in every case” ([125]) is a reason to plead alternatives, not to omit them.
- **Timing remains critical.** Gateway (3) was lost because judgment had already been entered against Broadoak ([2026] EWHC 153 (KB) at [57] and [62], CoA at [14]). Third-party and *Norwich Pharmacal* disclosure should be pursued, and NCADs joined, while the anchor claim is still live.
- **Presentation still matters.** Nothing on appeal disturbs the Judge’s criticisms of the without-notice presentation ([13]). A novel jurisdictional argument must be identified as such, with the adverse authority drawn to the court’s attention.

Conclusion

The Court of Appeal has restored orthodoxy, but with a sting: the party who satisfied every substantive requirement for relief leaves without it, and Foxton LJ accepted that the outcome “might not be seen as entirely attractive” ([123]). For judgment creditors pursuing assets abroad, the first instance lesson is confirmed and sharpened. Jurisdiction cannot be retrofitted to a meritorious case. Identify the substantive claim first, serve it out on an established gateway, and let the freezing order follow it.

events@radcliffechambers.com.

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