Gateways for Chabra freezing injunctions: Gilbert v Broadoak

Authored by **Philippe Kuhn** (*Call: 2017*) · 26th February 2026

In the recent decision of *Gilbert v Broadoak Private Finance Ltd* [2026] EWHC 153 (KB), David Quest KC (sitting as a Deputy High Court Judge) had to decide on the application of various potential gateways on an application for permission to serve a worldwide freezing order ("**WFO**") out of the jurisdiction against *Chabra* respondents.[1]

The complexity in *Gilbert* arose from the fact that judgment against the anchor defendant (Broadoak Private Finance Ltd, "**Broadoak**") had already been entered prior to the WFO and service out application. The application was made solely under the *Chabra* jurisdiction against non-cause of action defendants ("**NCADs**"), Mrs Shahena Bleakley and King Street Capital SL ("**KSL**"), and not also

[1] See *TSB Bank v Chabra* [1992] 1 WLR 231.

Broadoak. The Judge held that none of the gateways relied upon were available on the facts and therefore revoked permission to serve out and discharged the WFO. The discussion of gateways (2), (3) and (20) in paragraph 3.1 of Practice Direction 6B ("**PD6B**") is of wider interest and therefore the focus of this article.

In relation to gateway (2) – the injunction gateway – it is submitted that while the implications of the Privy Council's seminal decision in *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24; [2023] AC 389 continue to be worked out, it is very difficult to see any court departing from the long-standing authorities that gateway (2) requires a *substantive* claim for an injunction. The scope of gateways (3) and (20) – the necessary or proper party gateway and enactment gateway respectively – is tolerably clear in light of the decision in *Gilbert* and prior authorities including *Commercial Bank of Dubai PSC v Al Sari* [2024] EWHC 3304 (Comm) and *Gorbachev v Guriev* [2022] EWCA Civ 1270; [2023] KB 1, though the outer limit of gateway (3) remains a matter of lively discussion.

Core facts

The cause of action defendant ("**CAD**"), Broadoak, is an English company which used to provide secured finance for commercial property developments. Its majority shareholder and principal director is Mr Jamie Bleakley. The first claimant, Mr Gilbert, is also a shareholder in and director of Broadoak, though he alleges exclusion from its management since 2019. The first respondent, Mrs Bleakley, is married to Mr Bleakley, but they have been separated for three years. The second respondent, KSL, is a Spanish company. Mr Bleakley is the sole shareholder and CEO of KSC and Mrs Bleakley is its sole director. The second claimant is a corporate investment vehicle owned by Mr Gilbert.

Between 2017 and 2019, the claimants made several loans to Broadoak to fund its business activities. However, Broadoak failed to repay those sums. On 23 July 2021, the claimants sent a letter before action and, on 14 November 2023, they issued this claim against Broadoak. They eventually obtained judgment, partly in default and partly after a trial in June 2025, which Broadoak did not attend. The claimants have been able to enforce their judgment to the extent of recovering about £600,000 but there remains an outstanding judgment debt that currently stands at about £4.2m with interest and costs.

The claimants' investigations into Broadoak's finances revealed that it received about £7m that cannot be accounted for and has not been retained in its bank accounts, and that it appeared that large amounts have been paid out by Broadoak to or for the benefit of Mr Bleakley and the *Chabra* respondents without a proper purpose: [7]. Following the grant of an *ex parte* WFO against the respondents by HHJ Bird, the asset disclosure provided by the respondents demonstrated *inter alia* that Mrs Bleakley owns luxury sportscars and a villa in Dubai which (on the claimants' analysis) appear to have been paid for by Broadoak's assets, while other sums

received by Mrs Bleakley from Broadoak remained unaccounted for: [8].

The procedural chronology is interesting and somewhat unusual. This was not a case in which the application for injunctive relief against the *Chabra* respondents was made as part of a wider WFO application against the CAD (Broadoak). The claimants made the application against Mrs Bleakley and KSL on 30 July 2025 without notice, having already obtained WFOs against Broadoak (on 25 September 2024, without notice) and against Mr Bleakley (on 7 February 2025, on notice). Neither Broadoak nor Mr Bleakley actively opposed the making or continuation of the orders. The application against the *Chabra* respondents was heard by HHJ Bird on 4 August 2025 and granted on an *ex parte* basis.

The *ex parte* application was presented *inter alia* on the basis that the threshold requirement for *Chabra* relief – namely that there was good reason to suppose that the respondents' assets would be available to satisfy the judgment against Broadoak – was satisfied because the claimants "*could bring a claim against the respondents in unlawful means conspiracy for entering into an agreement with Mr Bleakley to misappropriate Broadoak's monies and transfer them into their own hands*": [13]. As David Quest KC observed in his judgment following the return date, that is "*a strange way to justify Chabra relief*" because if a claimant has a claim in conspiracy against the respondents, a conventional WFO can be sought against them: [14]. The same remark was made in relation to the other possibility canvassed at the *ex parte* hearing, namely that Mr Gilbert (as a minority shareholder) could bring a derivative claim on behalf of Broadoak. In a surprising turn of events, the claimants did indeed commence a new claim against Broadoak, Mr Gilbert and the two *Chabra* respondents on 22 December 2025 (shortly before the adjourned return date held on 8 January 2026), claiming *inter alia* relief under section 423 of the Insolvency Act 1986 ("**IA 1986**"), damages for unlawful means conspiracy, and a declaration that Mr Bleakley, Mrs Bleakley and KSC hold funds received by Broadoak on constructive trust (the "**New Claim**"): [16].

Plainly, the making of the New Claim did not bode well for the continuation of the WFO on the *Chabra* basis against Mrs Bleakley and KSC. The Judge expressly did not consider whether a WFO was justified pursuant to the New Claim, it not having been served and no application for a fresh WFO having been made by the claimants.

Decision

The judgment focusses both on fair presentation in the context of full and frank disclosure ([17]-[49]) and the gateway issues under the heading of 'personal jurisdiction' ([50]-[87]).

In relation to full and frank disclosure, the respondents relied on 8 grounds. Briefly, the Judge concluded that there were significant breaches of the duty of fair presentation in relation to ground 1 (gateways for service out) and more minor breaches in relation to ground 2 (forum),

ground 3 (scope) and grounds 4 and 5 (terms of order), while he rejected the other grounds. However, he concluded that it was not appropriate to discharge the WFO on this basis, including due to the absence of a deliberate breach: [46]-[49].

The decision on the discharge of the WFO therefore turned on his analysis of the gateway issues. The Judge held that none of the gateways relied upon were available on the facts and therefore revoked permission to serve out and discharged the WFO: [102]. His decision involves detailed consideration of gateways (2), (3), (10), (11) and (20). I focus on gateways (2), (3) and (20).

Gateway (2): injunction gateway

Gateway (2) is discussed at [54]-[56]. It applies where "*a claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction*". The argument advanced was that this gateway applies because Mrs Bleakley has assets in the jurisdiction that are caught by the WFO (albeit very modest disclosed assets of £5,000 in a HSBC account).

The Judge gave short shrift to this argument at [56], essentially concluding that it was settled law in light of the decision of the House of Lords in *The Siskina* [1979] AC 210 (concerning the old RSC Order 11 rule 1(1)(i)), as affirmed on this point by the Privy Council in *Broad Idea*. He held, based on *The Siskina* and *Broad Idea*, that the term 'injunction' in the rule "*referred only to an injunction sought as final, substantive relief for the invasion by the defendant of a legal or equitable right of the plaintiff*" and not "*a freezing injunction or other interlocutory injunction*".

To elaborate, in *Broad Idea*, the provision under consideration was CPR 7.3(1)(b) of the Eastern Caribbean CPR (2000) ("**EC CPR**"), materially stating: "*A claim form may be served out of the jurisdiction if a claim is made … (b) for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction*". EC CPR 7.3(1)(b) was held by the Privy Council to be in materially the same terms as RSC Order 11 rule 1(1)(i). Applying *The Siskina* and also the Privy Council decision in *Mercedes Benz AG v Leiduck* [1996] AC 284 (concerning the equivalent Hong Kong rules), the Privy Council in *Broad Idea* considered itself bound to follow the same interpretation of 'injunction' for the purposes of the rule. The clearest discussion on this point is that of Sir Geoffrey Vos MR at [189]-[201]. The much-cited wider remarks of members of the Board in relation to the common law power to grant a freezing injunction independent of a cause of action in the jurisdiction were made without prejudice to this primary conclusion on the gateway issues. *The Siskina* survives on the injunction gateway, though not the wider point of principle.

It is hard to fault the Judge's conclusion. Insofar as the argument against it rests on very slight differences in the wording of the gateway in light of changes to the CPR over time, that does not pass muster. Lord

Leggatt in *Broad Idea* (at [66]) expressly considered the impact of such differences in considering EC CPR 7.3(1)(b). The Judge's conclusion in this case that the reasoning in *The Siskina* and *Broad Idea* continues to hold in relation to gateway (2) must – without more – be right.

The only other conceivable argument is that other changes to the CPR – as considered by the Court of Appeal in *Gorbachev v Guriev* [2022] EWCA Civ 1270; [2023] KB 1 – necessitate a fresh appraisal of gateway (2), noting that *Broad Idea* was decided before *Gorbachev* and strictly concerned the EC CPR. The likely argument would be that *Gorbachev* has expanded the meaning of 'claim' to include certain 'applications'. In that case, an application under section 34(2) of the Senior Courts Act 1981 ("**SCA 1981**") (and CPR 31.17) for a third party disclosure order against a foreign respondent was held by the Court of Appeal to fall within gateway (20), albeit on the basis that the documents were located within England and Wales. Incidentally, there is now a bespoke gateway for applications for information orders against non-parties: see gateway (25), as considered in *Scenna v Persons Unknown* [2023] EWHC 799 (Ch). The fundamental problem with this type of argument is circularity. Essentially, one would rely on the conclusion in *Gorbachev* that the CPR now allows certain applications to be treated as claims for the purposes of the gateways to argue an *application* for a freezing order is a *claim* for an injunction. The crucial and, in my view, fatal point is that the Rules Committee would have had the established meaning of the words in gateway (2) – as consistently interpreted since *The Siskina*, including in *Mercedes Benz* – well in mind when making the change to the CPR relied on in *Gorbachev*. *Gorbachev* turned on the width of the definition of "claim" in CPR 6.2.

Therefore, it is very difficult to see any court departing from the long-standing authorities that gateway (2) requires a *substantive* claim for an injunction. At any rate, another trip to the Supreme Court would in all probability be required.

Gateway (3): necessary or proper party gateway

The Judge considered gateway (3) at [57]-[62]. It is fair to say that the manner in which the case on this gateway was presented was unsatisfactory. The claimants relied on two points.

First, it was said that the New Claim raises many of the same issues as those going to *Chabra* relief. The Judge rejected this argument. He held ([59]) that "*[f]inal judgment has already been entered against Broadoak and there are no pending issues on the pleadings, whether substantive or procedural, that remain to be tried as between the Claimants and Broadoak*." This was consistent with authority that, for gateway (3) to apply, "*there must actually be a common issue to be investigated as against the anchor defendant and the NCAD… the mere possibility that such an issue might arise at some point cannot be sufficient*": per Foxton J in *Commercial Bank of Dubai PSC v Al Sari* [2024] EWHC 3304 (Comm) at [280](i).

Secondly, it was argued that there is an anchor issue arising between the claimants and Mr Bleakley in the application against *him* for Chabra relief (which was served on him within the jurisdiction) concerning the ownership of a property in Cartagena, Spain. The Judge was not prepared to entertain the argument on grounds of lateness and, in any event, expressed strong doubts about it on the merits. He held (at [61]): "*The ownership of the Cartagena property is not currently an issue in the proceedings between the Claimants and Mr Bleakley, and never has been. The Claimants sought and obtained Chabra relief against Mr Bleakley, including an order restraining dealings in the Cartagena property, on the basis that he was the owner. He did not contest that, indeed, he did not participate at all in the application. No further relief relating to the property is currently sought by or against Mr Bleakley, and the proceedings.*"

An interesting point left open by the Judge, which he held (at [62]) to be "*uncertain*" is whether gateway (3) can be invoked where permission is sought to serve an NCAD out of the jurisdiction on the basis that it is a necessary or proper party to procedural relief sought against another NCAD served in the jurisdiction. Foxton J also left that point open in *Al Sari* at [267].

I add that the law on gateway (3), while tolerably clear, is not free from doubt in other respects. The illuminating discussion of Foxton J in *Al Sari* at [246]-[280] demonstrates that there are at least four questions on which the authorities do not all speak within one voice, namely:

1. Whether gateway (3) requires *substantive* proceedings against the anchor defendant.
2. Whether the analysis differs as to *substantive* judgment enforcement proceedings or *substantive* proceedings for the enforcement of an award.
3. Whether gateway (3) requires a *substantive* claim in the jurisdiction and a *substantive* real issue which it is reasonable for the court to try, and what qualifies as *substantive*. The question left open by the Judge in *Gilbert* at [62] falls under this head.
4. Whether there has to be a *live* issue to be determined as between the claimant and anchor defendant or whether it is sufficient that proceedings have not come to a final end (e.g. where a judgment is still being enforced).

These questions go to the outer limits of gateway (3) and are for another day.

Gateway (20): enactment gateway

There is an in-depth discussion of the application of gateway (20) at [69]-[86] in the judgment. The Judge rejected the application of this gateway.

Gateway (20) applies where "*a claim is made under an enactment which allows proceedings to be brought and those proceedings are not covered by any of the other [gateways]*". In *Gilbert*, the argument was that the WFO application is a 'claim' (in light of *Gorbachev*), that it is made

under section 37 of the SCA 1981, and that section 37 is an enactment that 'allows proceedings to be brought' within the meaning of this gateway.

The Judge acknowledged that there has been some extra-judicial support for this argument by Foxton J (as he then was) in a lecture in Manchester ('*The Big Freeze: The Rise and Rise of the* Mareva *Injunction*'), as discussed in *Al Sari* at [243]-[245] where Foxton J left the point open. The Judge also referred to a lecture by Henshaw J ('*Frozen 2: An Update on Commercial Injunctions and Associated Jurisdictional Issues*'), in which the argument was described as an "*intriguing possibility*". The Judge accepted that this type of application can be classified as a 'claim' for the purposes of gateway (20) in light of *Gorbachev*. This much is uncontroversial. He considered the nub of the issue was whether section 37 of the SCA 1981 is an enactment that allows such proceedings to be brought.

He particularly considered the decision in *Orexim Trading Ltd v Mahavir Port and Terminal Private Ltd* [2018] EWCA Civ 1660; [2018] 1 WLR 4847 regarding section 423 of the IA 1986. There is an interesting discussion of the meaning of the word "*allows*" in gateway (20) at [74], with the Judge concluding that "*I do not think that the mere fact that a claim or application may be connected with or dependent in some way on an enactment can in itself be enough to engage gateway (20); that would widen the gateway enormously*." He also considered *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust- Kamenogorsk Hydropower Plant JSC* [2011] EWCA Civ 647, [2012] 1 WLR 920, where each member of the Court of Appeal expressed in *obiter dicta* the view that section 37 is *not* an enactment that allows proceedings to be brought: see per Rix LJ at [126], Wilson LJ at [192] and Stanley Burnton LJ at [207]. The Judge also reconciled *AES* with *Broad Idea* and *Gorbachev* at [76]-[80] on that basis that *Gorbachev* concerned section 34(2) SCA 1981 and *Broad Idea* concerned the injunction gateway, and on that footing treated the dicta in *AES* as "*persuasive authority that (unlike section 34) section 37 is not an enactment that itself 'allows proceedings to be brought' but is concerned only with remedies available in proceedings that are otherwise properly brought*." He added at [81]-[82] that a different conclusion would be surprising because (i) gateway 2 already covers claims for injunctions ordering the defendant to do or refrain from doing an act *within* the jurisdiction and (ii) once a claim for an injunction passes through gateway (20), that potentially opens gateway (4A) for "*any further claim (of any kind) against the same defendant arising out of the same or closely connected facts*".

As to these points, while *AES* is not binding authority, one can understand the Judge's instinct to follow the clear dicta from three Court of Appeal judges (albeit made in a case on anti-suit injunctive relief). Similarly, the principled objections at [81]-[82] have force. Despite the tentative extra-judicial support for the argument that gateway (20) does what gateway (2) does not allow in light of *The Siskina*, *Mercedes Benz* and *Broad Idea*, there is a real danger in construing the general words in gateway (20) without

regard to the established position as to the limits of gateway (2). The argument in relation to "piggy-backing" on gateway (20) via gateway (4A) is also a factor to weigh in the balance, though probably a weaker objection. The starting point has to be the language of gateway (20) itself and the Rules Committee could always adapt the scope of gateway (4A) in light of a wider interpretation of gateway (20). As Foxton J put it in *Al Sari* at [274], gateways (3), (4) and (4A) may be rationalised as being concerned with "*the efficient trial of disputes*", while the scope of the enactment gateway turns on the particular enactments in question. That was the bedrock of the reasoning in *Orexim* in relation to section 423 of the IA 1986 falling within it. In other words, if that is the effect of section 37 SCA 1981, gateway (20) should be available.

Concluding remarks

The decision in *Gilbert* touches on interesting issues in relation to gateways (2), (3) and (20) in particular. Applicants for *Chabra* relief which is free-standing, such as where judgment has been entered against the CAD, face real difficulty in overcoming these jurisdictional hurdles. In particular cases, there might be alternatives available for service *within* the jurisdiction (such as service under section 1140 of the Companies Act 2006 at the registered address of company directors of English entities) but the issue is a critical one when dealing with *truly* foreign respondents without such jurisdictional connections to England and Wales. It remains to be seen whether the Rules Committee will consider an expansion of the personal jurisdiction over such foreign *Chabra* respondents. The point does not seem to be as topical as the issues which led to the enactment of the new gateway (25) in recent years, popularised by 'hot pursuit' litigation in the crypto and digital assets context. The *Chabra* jurisdiction has existed for over 30 years and cases like *Gilbert* – at least at reported level – seem to be a rarity. Indeed, on the facts of *Gilbert* the pursuit of the New Claim and an application for a conventional WFO against Mrs Bleakley and KSL seems to afford a possible solution to the claimants.

Philippe Kuhn
26th February 2026