Neutral Citation Number: [2024] EWHC 2674 (Ch)

Case No: BL-2022-000913

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 25/10/2024

IN THE MATTER OF HARRINGTON & CHARLES TRADING COMPANY LIMITED, BRAMHALL & LONSDALE LMITED, HOLDWAVE TRADING LIMITED, OC305234 LLP, OCEANROAD GLOBAL SERVICES LIMITED, CONNECOR (UK) LIMITED AND DOCKLANDS INVESTMENT LIMITED (EACH IN LIQUIDATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Before:

MASTER KAYE SITTING AS A DEPUTY HIGH COURT JUDGE

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Between:

(1) HARRINGTON & CHARLES TRADING COMPANY LIMITED (IN LIQUIDATION) **(2) BRAMHALL & LONSDALE LIMITED (IN LIQUIDATION)** **(3) HOLDWAVE TRADING LIMITED (IN LIQUIDATION)** **(4) OC305234 LLP (IN LIQUIDATION)** **(5) OCEANROAD GLOBAL SERVICES LIMITED (IN LIQUIDATION)** **(6) CONNECOR (UK) LIMITED (IN LIQUIDATION)** **(7) COLIN DISS (AS JOINT LIQUIDATOR OF THE FIRST TO SIXTH AND NINTH CLAIMANTS)** **(8) NICHOLAS STEWART WOOD (AS JOINT LIQUIDATOR OF THE FIRST TO SIXTH AND NINTH CLAIMANTS)** **(9) DOCKLANDS INVESTMENT LIMITED (IN LIQUIDATION)**	**Claimants**

- and –

(1) JATIN RAJNIKANT MEHTA **Defendants**
(2) SONIA MEHTA
(3) VISHAL JATIN MEHTA
(4) SURAJ JATIN MEHTA
(5) HAYTHAM SALMAN ALI ABU OBIDAH
(6) IIA TECHNOLOGIES PTE LIMITED
(7) POLISHING TECHNOLOGIES PTE LTD
(8) APURVA KOTHARI

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Ian Wilson KC, Philip Hinks, and James McWilliams (instructed by **Hogan Lovells International LLP**) for the **Claimants**
Jonathan Dawid, Stephen Ryan, and Mark Baldock (instructed by **Gardner Leader LLP**) for the **First to Fourth and Sixth Defendants**
The Fifth, Seventh and Eight defendants did not attend or participate in the hearing.

Hearing dates: 10, 11, 12 June 2024
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Approved Judgment

This judgment was handed down remotely at 10.30am on 25 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER KAYE SITTING AS A DEPUTY HIGH COURT JUDGE

Master Kaye sitting as a Deputy High Court Judge :

1. These proceedings concern a complex high value multi-layered multi-jurisdictional Alleged Fraud. The claimants put its value at about US$1bn.

2. The background can be found in the judgments of Edwin Johnson J and Miles J[1]. The parties are familiar with the background, descriptions, terms, and definitions used in those judgments. Where appropriate I shall use those terms and definitions without further explanation.

3. The First to Sixth Claimants are all Layer 2 companies and the Ninth Claimant is the Layer 3 company forming part of the Transactional Services Unit within the Amicorp Group structure ("**the claimant companies**"). Following the events which gave rise to this claim, the claimant companies were dissolved: the Layer 3 company in 2016 and the Layer 2 companies between 2019 and 2020. All of them were subsequently restored to the register between 2021 and 2022 and are now in liquidation. The Seventh and Eight Claimants are the Joint Liquidators of the claimant companies ("**the JLs**") (together "**the claimants**").

4. The First to Fourth Defendants, Jatin and Sonia Mehta and their sons Vishal and Suraj are referred to as the **Family Defendants**. When referring to them individually I will refer to them by their given names to avoid confusion. No disrespect is intended.

5. The Fifth Defendant, Mr Obidah, together with the Family Defendants are described as **the Alleged Principal Conspirators** in the Consolidated Amended Particulars of Claim dated 30 May 2023 ("**the CAPOC**").

6. Although prior to the issue of this claim, English lawyers had made enquiries in respect of the restoration of the claimant companies on behalf of Mr Obidah, he is not an active participant in these proceedings. He is believed to be based in the UAE. In September 2022 (following service of the claim on Mr Obidah) UAE lawyers filed a statement together with numerous documents on his behalf. Those documents related to litigation in the UAE concerning Layer 1 companies. Apart from those filings he has not otherwise engaged with these proceedings.

7. The claim was commenced by the First to Eighth Claimants against the Alleged Principal Conspirators on 31 May 2022. They had already obtained a Worldwide Freezing Order ("**WFO**") against the Family Defendants on 27 May 2022. The WFO included an extended definition of assets. A second claim in similar terms was issued by the Ninth Claimant against the Alleged Principal Conspirators on 24 June 2022. Corresponding Insolvency Act applications were issued in the Insolvency proceedings by which the claimant companies had been restored.

8. A third claim was issued by the claimants against the Sixth to Eighth Defendants on 23 September 2022. The Sixth and Seventh Defendants, IIA Technologies PTE Limited ("**IIA**") and Polishing Technologies PTE Limited ("**Polishing**") are Singaporean

[1] (Continuation and discharge or the Worldwide Freezing Order) [2022] EWHC 2960 (Ch) (22 November 2022); (Jurisdiction Challenge Applications) ([2023] EWHC 307 (Ch) (14 February 2023); [2023] EWHC 609 (Ch); (Joinder Application) [2023] EWHC 998 (21 April 2023); and (Abuse, Strike out and Summary Judgment applications) [2023] EWHC 2420 (Ch) (3 October 2023).

companies said to be owned and controlled by some or all of the Alleged Principal Conspirators. Polishing has not participated in the proceedings, but IIA is an active participant and is represented by the same legal team as the Family Defendants. Vishal was the CEO of IIA when the original claim was commenced in 2022.

9. I shall refer to the Family Defendants and IIA together as **the active defendants** when context allows.

10. The claimants say that the Eighth Defendant, Mr Kothari introduced some or all the Alleged Principal Conspirators to Amicorp and subsequently provided instructions on their behalf. In August 2023, his Indian lawyers sent the claimants' solicitors Hogan Lovells International LLP ("**HL**") an acknowledgment of service indicating an intention to challenge jurisdiction and defend, together with a substantive defence asking them to upload it to the court file, which they did. Mr Kothari has not since participated in the proceedings.

11. On 21 April 2023, the three claims and the corresponding Insolvency Act applications were conjoined and consolidated.

12. Given the nature of the current applications and the history and complexity of the claim and the previous applications it is helpful to understand who represented the parties and when and in broad terms what the previous substantive applications were and the current procedural position.

13. The claimants have been represented by HL since September 2022. Prior to that they were represented by Eversheds Sutherland (International) LLP, who obtained the WFO. There has been in large measure of consistency in their counsel team. Mr Wilson KC, Mr Hinks, and Mr McWilliams, who appeared for the claimants at this hearing, were also the counsel who obtained the WFO. Some or all of them have participated in each hearing since then.

14. The same cannot be said for the Family Defendants. Jatin, Sonia, and Suraj were initially represented by Jones Day from about May 2022, then from about November 2022, they were represented by Withers. Since October 2023 Gardner Leader LLP ("**GL**") have represented the Family Defendants. For Jatin, Sonia, and Suraj each change of solicitors coincided with a complete change of counsel team. Each change of representation largely coincided with the conclusion of a substantive application.

15. Vishal was separately represented by Howard Kennedy and his own counsel team from June 2022 until May 2023 when he also instructed Withers. He retained one of his junior counsel team in May 2023 who joined the Family Defendants' counsel team. Since October 2023 he has had the same solicitor and counsel representation as the rest of the Family Defendants.

16. This is not a criticism of the Family Defendants; these are choices for the Family Defendants to make and fresh eyes can be helpful. However, whilst fresh eyes can be helpful it also risks a lack of continuity of approach and a risk that there would be a loss of knowledge and understanding in relation to some of the issues raised in the applications to which this judgment relates. It is a factor that did not assist the active defendants. It bears on whether the review by those fresh eyes should entitle the Family Defendants to revisit matters which had previously been determined in a particular way

(whether by judgment, order, consent order or agreement) and whether such a course of action would be consistent with the overriding objective or good case management.

17. IIA were joined to the claim in April 2023 and were subsequently served in June 2023. GL have represented them since at least July 2023. The counsel team who were assisting IIA prior to October 2023 appear to have become the active defendants' counsel team in about October 2023.

18. This claim has been under sustained attack by the Family Defendants since it was issued. They have brought applications to discharge the WFO on the basis there was not a good arguable case amongst other grounds. They have challenged the jurisdiction. These applications were heard in October and December 2022 but were unsuccessful as set out in Edwin Johnson J's judgments in November 2022 and February 2023. During the course of the joinder and consolidation hearing in April 2023, the Family Defendants advanced a number of complaints about the substance of the claim, how it was pleaded and objected to the then proposed amendments. This is summarised at [1] to [9] of [2023] EWHC 4220 (Ch). The Family Defendants' applications to strike out and for summary judgment in which they again sought to challenge the basis and merits of the claim were dismissed in October 2023 by Miles J and I following a hearing in July 2023. The Family Defendants have not been successful in disposing of the WFO or the claim in whole or part.

19. I heard the First CMC and the applications identified below over three days between 10 and 12 June 2024. The date for the CMC had been fixed in October 2023 to enable the parties to fully prepare for it given the complexities of the issues involved in this claim. Although the Family Defendants had actively opposed the claim since its inception in 2022, the nature of their defence to the claim itself was still not known. The 12 October 2023 order provided a timetable for statements of case sufficiently in advance of the CMC to allow for proper preparation for it including full engagement with PD57AD.

20. At the CMC I determined various case management issues between the parties including the outstanding issues relating to section 1 of the DRD. I gave directions and set a timetable for the future conduct of the claim to a trial which is now listed to commence in April 2026. The timetable provided for disclosure (6 December 2024), witness evidence (30 June 2025) and a Second and Third CMC (now fixed for April 2025 and October 2025). The nature and extent of any expert evidence will be considered at the Second CMC in April 2025. I was satisfied that the timetable was a realistic one taking into account the nature and extent of the issues with which the parties would have to grapple.

21. However, despite the time allowed for preparation for the CMC it was clear that the active defendants had taken few if any steps to collect in or understand the nature and extent of their own disclosure. The idea that in a claim such as this that by the time of the First CMC, despite having had 8 months to prepare, the active defendants did not know the extent of their data and were not in a position to engage constructively with the court and the claimants was unsatisfactory. They were simply unable to engage in a discussion about what might be reasonable, proportionate, or possible in respect of the scope of disclosure. It informs my consideration of the applications to which this judgment relates, and the approach adopted by the active defendants. The explanation

that the current legal representatives were a regional firm and the Family Defendants were individuals was nothing to the point.

22. The Family Defendants have been incurring the costs of substantial legal teams challenging the basis of the claim since 2022 and appear to intend to continue to do so. As set out later in this judgment it appears they had drawn down sums in excess of £6 million for their living expenses and legal fees by May 2023 and that they had continued to notify sums of between US$200,000 and US$250,000 per month (US$2.4m to US$3m per year). There is no obvious reason why the fact that they are individuals or have chosen to instruct a regional firm should limit their ability to engage fully with the court process should they choose to do so.

23. It is not a choice to only engage with some aspects of case management, the proceedings, or applications at any one time and/or to do so only sequentially. Disputes such as this are not linear and nor are they pick and mix. They involve complex overlapping issues and procedural requirements. If the active defendants intend to continue to fully participate in these proceedings, there will continue to be multiple workflows which it will be necessary for them to undertake at the same time. They will need to engage with the court's case management processes in a timely manner consistent with the overriding objective including cooperating with the claimants and the court. There is no different standard or set of procedural rules or practice directions applicable because the active defendants have chosen to instruct less well-resourced legal representatives. That is particularly so in this case when one considers the extent and apparent ease with which the Family Defendants are able to access funds through the Ahli Receivables and otherwise to continue to fund themselves and their legal representation to make the substantive applications seeking to dispose of the claims on a summary basis over the last two years.

24. The approach of the active defendants and the lateness with which they have engaged on some of the issues to which this judgment relates form part of the background to the applications.

25. The parties each issued applications which were heard at the CMC. The claimants' applications all sought disclosure/information as a means of policing compliance with the Family Defendants' obligations under the WFO.

26. The following claimants' applications had been listed for hearing:

    i) The claimants' restored application dated 14 July 2023 for an order that the Family Defendants provide disclosure in relation to what the parties refer to as the Ahli Receivables ("**the Ahli Application**");

    ii) The claimants' application dated 1 March 2024 for an order that Jatin provide an affidavit and information about the funding of his Indian proceedings ("**the Indian Funding Application**") and ("**the Indian proceedings**");

    iii) The claimants' application dated 20 May 2024 restoring the Ahli Application and seeking further or related relief and disclosure in relation to both the Ahli Application and the Indian Funding Application and particularly further disclosure/information about payments routed through an intermediary in the

UAE, Shouq Al Kathiri Advocates and Legal Consultants ("**Shouq Al Kathiri**"). ("**the additional disclosure application**")

27. These three applications are compendiously described as the **Disclosure Applications**.

28. The claimants' evidence in support of the Disclosure Applications consists of the application notices themselves, the sixth witness statement of Colin Diss dated 13 July 2023 ("**Diss 6**") and the eight witness statement of Colin Diss dated 1 March 2024 ("**Diss 8**"). Diss 8 includes information about the Indian proceedings. The exhibit was primarily copies of the statements of case from the Indian proceedings, much of which had been prepared by Jatin's own Indian legal teams. There are at least four different claims in India in respect of which Jatin is either claimant or a defendant/respondent.

29. The Family Defendants' evidence in response to the Disclosure Applications is very limited. They filed no evidence in response to the Ahli Application at any stage. They filed no evidence in response to the additional disclosure application.

30. The parties agreed to extend time for Jatin to file evidence in response to the Indian Funding Application initially to 26 April 2024 and then to 7 May 2024 and finally to 10 May 2024.

31. Despite taking 10 weeks, Jatin's third witness statement dated 10 May 2024 ran to just 7 pages, two of which were taken up with the case heading and the opening paragraphs. It was accompanied by the second witness statement of Mr Felton, a partner at GL. His witness statement was 5 pages of which two pages were taken up by the heading and the opening paragraph. The exhibits ran to 16 pages for each statement. Jatin's exhibited a copy of the WFO and two letters between HL and GL in March 2024. Mr Felton's exhibit did not provide much more assistance. Other than a letter from SS Hora, Jatin's Indian legal representatives, and a letter from Shouq Al Kathiri both dated 10 May 2024 (3 pages) it consisted of more inter partes correspondence. This evidence raised more questions than it answered as set out below. It added credence to the doubts raised by the claimants about the approach adopted by the Family Defendants to compliance with the WFO and their disclosure obligations.

32. The extent and nature of the Family Defendants' evidence, and its timing is a factor to be considered in relation to all the applications including the active defendants' own RFI application. That is particularly so when part of the explanation for the timing of the RFI application was the weight, nature and extent of the work being undertaken by the active defendants in relation to other aspects of the claim including the Disclosure Applications.

33. The active defendants' application for further or better answers to a Request for Further Information ("**RFI**") was only filed after hours on 31 May 2024 ("**the RFI application**") and not processed by the court until Monday 3 June 2024, a week before the start of this hearing. Other than the contents of the application notice which amounted to 6 paragraphs setting out the chronological history of the RFI it was not supported by any additional evidence. Whilst the timing of the RFI application was no doubt driven by the active defendants' desire to seek to have it listed at the First CMC it seemed to me that it was issued both late and prematurely which again reflects poorly on the active defendants. It was not surprising that the claimants had not had an opportunity to respond other than in submissions.

Summary of the Alleged Fraud

34. The details of the Alleged Fraud are set out more fully in the CAPOC, and the previous judgments referred to above. The active defendants have now filed an extensive and detailed defence and counterclaim ("**DCC**") and that too has been defended. This brief summary is not intended to detract from the full extent of the statements of case nor the fuller description of the Alleged Fraud set out in the judgments, however, a brief simplified summary of the Alleged Fraud, as set out in the CAPOC, is a helpful starting place for understanding at least some of the RFI application.

35. It starts with a sum of US$1.2bn which was received by Al Mufied (a Layer 1 UAE distributor company) from Emirates Gold DMCC (a UAE based refinery) between April 2012 and April 2014. This money should have been returned to and have been available to be used by Winsome and Forever Precious to repay the Bullion Banks. Various explanations were given as to why this did not happen. The claimants' investigations have identified that some of the monies did in fact make their way to Winsome and Forever Precious but even those monies were not used to repay the Bullion Banks. The failure to repay the Bullion Banks resulted in a call on the Standby Letters of Credit issued by the Consortium Banks and ultimately caused the default and insolvency of both Winsome and Forever Precious. The US$1.2bn is said to be the source of the monies used in the Alleged Fraud.

36. In very simple terms there are two strands/parts to the Alleged Fraud. The first part is said to have been used to obscure, conceal or distract from the second part.

37. The first part of the Alleged Fraud is described in some detail in the CAPOC at sections C2, and C4 to C7A and [59] to [60B]. It involves the recycling of US$440m of unique or new funds through the Amicorp Group structure layers. The claimant companies are at Layer 2 of this structure. The claimants say that this routing through the Amicorp Group structure was pre-determined and orchestrated by the Alleged Principal Conspirators with the intention that the funds would eventually be extracted for the benefit of the Alleged Principal Conspirators/the Family Defendants.

38. The claimants say that they have been able to map the route of at least some of the monies as they passed through the claimant companies and then moved up and down and around the Amicorp Group structure layers. That recycling process is said to have been used to give the impression that the full US$1.2bn had passed through the Amicorp Group structure rather than just the US$440m, thus concealing the other part of the fraud. This first part of the Alleged Fraud is said to be supported by various allegedly sham transactions and documents including the July TAF, the August TAF, and the OTC derivative transactions. The claimants' say that the monies passed through the layers with the allegedly sham transactions taking place between the layer companies to document the movements of the monies. The claimants assert that the transactions did not take place at all and/or are shams and seek to set them aside. The claimants assert proprietary claims in relation to the US$440m of unique or new funds which passed through the claimant companies. They assert amongst other things that, wherever the US$440m ended up, those funds in whatever form are held on constructive trust for the benefit of the claimant companies.

39. Where the claimants have not yet been able to identify the ultimate destination of the monies which passed through the claimant companies, and out of the Amicorp Group structure they ask the court to draw inferences as set out in C8 of the CAPOC that some or all of the proceeds of the Alleged Fraud have been received by or for the benefit of some or all of the Alleged Principal Conspirators whether directly or indirectly through companies owned and controlled by them.

40. For the purpose of the RFI application I note that the CAPOC [97] pleads a transaction which the claimants say is a sham transaction by which approximately US$163.05m was transferred to Marengo Inv Group, a Layer 4 company, owned and controlled by the Family Defendants ("**Marengo**"). The transaction and subsequent movement of monies appears to have taken place between November and December 2012. The Family Defendants admit that both Sonia and Vishal held shares in Marengo and were directors of it at the relevant time and they admit receipt by Marengo of the US$163.05m but say it was as a result of genuine transactions (DCC [157] and [167], [169]-[175]).

41. The claimants plead that monies which passed through the claimant companies and through the Amicorp Group structure ended up with IIA and Polishing. They provide particulars of some specific amounts that they say have been received by IIA and Polishing. The claimants seek to recover the sums so received on various bases as set out in the CAPOC.

42. The second part or strand of the Alleged Fraud is said to involve the extraction of US$875m. The CAPOC pleads that the US$875m was simply paid away to entities said to be connected to the Alleged Principal Conspirators as set out in section C3A of the CAPOC. In [60C] to [60E] the claimants plead that US$875m was transferred away by a complex layering process using various entities including the 13 Layer 1 UAE distributor companies. The JLs say they are continuing to trace those onward payments but infer that the transfers were for the benefit of the defendants. The claimants plead that the US$875m used in this part of the Alleged Fraud was not returned to or paid to Winsome or Forever Precious to enable them to meet their obligations to the Bullion Banks [60E]. As set out above the claimants say that the failure to do so eventually resulted in the default and eventual insolvency of Winsome and Forever Precious. The claimants do not make any proprietary claims in relation to the US$875m because they say that the monies did not pass through the claimant companies. They do not therefore need to trace the monies through the layers. Rather they seek to infer that it was paid away by some means ultimately for the benefit of/to the Alleged Principal Conspirators.

43. As a consequence, there is not the same detail in the CAPOC about the layering process in respect of this part/strand of the Alleged Fraud. The claimants set out what they know so far about the sums of money which they say are involved in the Alleged Fraud, who received what amount and the accounts/entities to which it was paid. The claim is in some ways simpler than the first part/strand of the Alleged Fraud. For this part of the claim the claimants simply ask the court to draw inferences that the proceeds were paid away for the benefit of some or all of the Alleged Principal Conspirators based on the pleaded misappropriation, and the overall circumstances, facts and matters relied on.

44. The active defendants all deny the claims on a multiplicity of grounds which include a plea that the active defendants are also victims of the Alleged Fraud and that the

claimant companies were participants in it themselves. They counterclaim for damages on that basis. This counterclaim is also the basis of Jatin's claims against multiple defendants in the Indian proceedings in which he asserts that he is a victim of the same Alleged Fraud. He is also a co-defendant with the claimants in other proceedings in India brought by the shareholders of Winsome on a similar basis.

45. There is a potential pleading issue in these proceedings between the parties as to whether the way in which the DCC is advanced amounts to an admission of the existence of the Alleged Fraud. The active defendants/Jatin say that the DCC does not include such an admission and rather that any such admission is conditional: if there is a fraud as alleged that they are also victims. Any proposed amendments in this claim can be considered on their own merits in due course.

46. This overlaps with issues that arise in the Indian proceedings where Jatin advances a positive claim on the basis that he is the victim of the same fraud. Mr Dawid understands that the Indian proceedings brought by Jatin are premised upon the correctness of the position the claimants adopt in these proceedings such that they too are essentially issued on a conditional basis. For English litigators that may seem surprising and is not obvious on the face of the relevant Indian proceedings. It is not something to be determined on these applications.

47. I gave my determinations in relation to the various CMC issues at the hearing in June 2024. Any outstanding issues in relation to disclosure will come back on a disclosure guidance hearing, as necessary. That leaves the Disclosure Applications and the RFI application to be determined. The applications were heard over 2 ½ days.

RFI Application:

48. The submissions for the RFI Application were advanced by Mr Ryan for the active defendants and Mr McWilliams for the claimants. I had the benefit of their oral submissions and, in the case of the active defendants, a separate 18-page skeleton argument. The claimants included their written submissions within their CMC skeleton argument. Neither party had filed any evidence in support or opposition to the RFI Application beyond the contents of the RFI Application itself. I have taken into account all of the written and oral submissions and arguments even if I do not set them all out in this section of the judgment.

49. There was no real difference between Mr Ryan and Mr McWilliams about the approach to the RFI Application. CPR 18.1(1) provides that:

> "The court may at any time order a party to-
>
> (a) clarify any matter which is in dispute in the proceedings; or
>
> (b) give additional information in relation to any such matter,
>
> whether or not the matter is contained or referred to in a statement of case."

50. An RFI must relate to a matter in dispute. Unsurprisingly, the starting point for determining what is "a matter in dispute" are the statements of case. Arguably it is also

the end point. But not every point or issue raised in the statements of case is either in dispute or a matter or issue on which clarification is reasonably necessary or proportionate. Any response should be verified by a statement of truth.

51. Practice Direction 18 ("PD 18") provides so far as relevant:

> 1.1 Before making an application to the court for an order under Part 18, the party seeking clarification or information [the active defendants] should first serve on the party from whom it is sought [the claimants] a written request for that clarification or information (a Request) stating a date by which the response to the Request should be served. The date must allow [the claimants] a reasonable time to respond.
>
> 1.2 A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable [the active defendants] to prepare [their] own case or to understand the case [they have] to meet.

52. Ultimately, whether to order a party to comply with a request made pursuant to CPR 18 is an exercise of the court's broad discretion consistent with the overriding objective and good case management.

53. What is reasonably necessary and proportionate and the manner in which the court should exercise its discretion will be case specific. Some general considerations can be found in the notes to the White Book 2024 at 18.1. 3 and 18.1.10. Mr Ryan referred me to *Al Saud v Gibbs* [2022] EWHC 706 at [35] to [43].

54. For the reasons set out in this judgment and in the exercise of my discretion and consistent with the overriding objective and good case management I dismiss the RFI Application.

55. It seemed to me that the discretionary factors weighed so overwhelmingly against granting the RFI application that it is helpful to consider them first.

56. To put the RFI Application in context it is helpful to understand the genesis of the CAPOC and the level of scrutiny to which it has been exacted and a little of the history of the claim.

57. The particulars of claim were subject to intense scrutiny by Mr Justice Edwin Johnson both when the Family Defendants sought to discharge the WFO and challenged jurisdiction. This resulted in his detailed and substantive judgments in November 2022 and February 2023 followed by a further consequential judgment in March 2023. The Family Defendants undertook a detailed critique of the substance of the claim. Edwin Johnson J considered all the causes of action advanced by the claimants in detail. The substance of Edwin Johnson J's decision was that he was satisfied that there was a good arguable case both as to the existence of the Alleged Fraud and each of the causes of action that had been advanced against the Alleged Principal Conspirators. The WFO was not discharged but continued and the jurisdiction challenge was unsuccessful.

58. The Family Defendants sought permission to appeal raising many of the same grounds/arguments that had been considered and rejected by Edwin Johnson J. Permission to appeal was refused. The Family Defendants had also issued applications to strike out and/or for summary judgment on the same grounds.

59. In April 2023 Miles J and I allowed the claimants' application for joinder and consolidation which brought the claimants' claims against the defendants into one consolidated claim and merged in the associated Insolvency Applications. At that hearing the claimants' proposed draft CAPOC came under scrutiny from the Family Defendants' legal teams and the court. There were what might be termed uncontroversial amendments relating to the consolidation and joinder itself and then more fundamental disagreements about the underlying claim and how it was pleaded. Many of those disagreements reflected arguments advanced by the Family Defendants in the prior applications seeking to dispose of the claim. The proposed amendments did not seek to advance any new causes of action that had not already been considered by Edwin Johnson J. No CAPOC was approved at that hearing. The claimants produced a further draft of the CAPOC and sought permission to amend by an application dated 28 April 2023.

60. The parties sought to reach agreement on the proposed amendments. I was taken to some of the extensive detailed correspondence between the claimants and the Family Defendants' then legal representatives. The Family Defendants continued to challenge the basis of the Alleged Fraud and how the causes of action were pleaded on numerous grounds, many of which had already been advanced unsuccessfully before Edwin Johnson J. The correspondence covered many of the issues which the active defendants were later to advance as part of the RFI in February 2024. Indeed, one might say no stone was left unturned.

61. Notwithstanding the Family Defendants' continued opposition to the claim, the parties reached agreement on the form of the CAPOC and by a consent order dated 30 May 2023 (which included certain caveats that are not relevant to this application) the Family Defendants consented to the final form of the CAPOC. The CAPOC was sixty pages excluding signature pages. The claimants rely on both the granular detail with which the Family Defendants investigated and challenged the CAPOC (including on issues in respect of which the active defendants now seek further information) and their ultimate consent to the CAPOC in support of their submissions that there is simply no need for the further information sought now or at all.

62. The claimants effected service of the claim form and the CAPOC on IIA, Polishing and Mr Kothari. IIA were served on 16 June 2023. GL filed IIA's Acknowledgment of Service on 7 July 2023. GL therefore had the CAPOC from at least July 2023.

63. The time for any of the active defendants to file a defence was extended until after the determination of the Family Defendants' strike out and summary judgment applications.

64. The strike out/summary judgment applications were dismissed following a hearing before Miles J and I in July 2023, in a judgment handed down in October 2023.[2]

[2] [2023] EWHC 2420 (Ch)

65. By an order dated 12 October 2023 but sealed on 20 October 2023 the time for the service of any defence by the active defendants was set for 30 November 2023 ("**the 12 October order**"). Mr Dawid made written submissions on behalf of the Family Defendants as well as IIA in respect of the 12 October order prior to GL filing a notice of change the following week.

66. The active defendants did not make any request for further information in respect of the CAPOC in October 2023. They did not seek an extension of time for service of their DCC on the basis of some inadequacy in the CAPOC.

67. The DCC was served on 14 December 2023. Whilst the DCC itself identifies parts of the CAPOC where it was said further particulars were needed, it is a comprehensive, detailed, and extensive document. It runs to 105 pages (excluding signature pages) and 268 paragraphs. It advances a positive case in respect of many aspects of the claim including some in respect of which the RFI Application is now advanced.

68. Despite the length of time the active defendants, and particularly the Family Defendants, had had in which to consider the CAPOC and prepare the DCC, no RFI was served with the DCC. When a summary of the DCC was served on 16 January 2024, no RFI was made.

69. The active defendants finally served the RFI dated 2 February 2024, the genesis of the RFI application. This was the same day on which they responded to the claimants on questions about the funding of the Indian proceedings that was to form the basis for the Indian Funding Application. This was 7 weeks after the DCC had been served and nearly 4 months after the 12 October order. It consisted of one hundred separate requests some with sub-paragraphs covering 56 different paragraphs of the CAPOC. Many of the RFI advanced had been the subject of the extensive granular inter partes correspondence in May 2023.

70. The claimants served their Reply and Defence to Counterclaim on 16 February 2024.

71. The claimants raised the issue of delay both in relation to when the RFI was made on 2 February 2024 and when the RFI Application was then issued at the end of May 2024.

72. Mr Ryan sought to argue that there had been no delay in pursuing the RFI in the context of the progress of the claim since October. His alternative submission was that one had to consider any delay in context. He argued that if the RFI was well founded delay of itself should not be a relevant factor.

73. Neither of these submissions was persuasive. I consider the delay in advancing the RFI to be significant. It was either far too late or far too early.

74. Mr Ryan's explanation for the timing did nothing to improve the position. He sought to justify the timing by reference to competing work streams. This was not a good answer. If the active defendants were content to put the RFI on the back burner until February 2024 whilst they focussed on other aspects of the claim it is very difficult to see any basis on which it might be said that any of the information sought was reasonably necessary or proportionate to enable the active defendants to prepare their case or understand the claim. It seems to me that the delay and choice to prioritise other work streams significantly undermines the need for any answers to the RFI or the RFI

application. It is further undermined by the subsequent delays and very late (and premature) issue of the RFI application as set out below.

75. Furthermore, given the process by which the amendments for the CAPOC were agreed in 2023, the timing and extent of the RFI was surprising. Had there been such a wholesale inadequacy in the CAPOC as the active defendants now suggest one might have expected the Family Defendants to refuse to consent to the CAPOC. It was now nearly 10 months after the CAPOC was first in circulation and over 8 months after the consent order giving permission to amend in the form of the CAPOC. GL themselves had had the CAPOC for at least 7 months. In all that time no RFI had been advanced. It was as plain as it could be that the Family Defendants fully understood the claim against them given the nature of the previous applications and their involvement in them. The nature and detail of the DCC strongly suggested that they had not been under any illusion about the claim they had to meet or had any difficulties in responding.

76. It seems to me that the delay in making an RFI until 2 February supports the claimants' submissions that the information sought is not reasonably necessary now. Further I take into account the extensive nature of the RFI and its overlap with issues that were argued out in correspondence before the CAPOC was consented to. This adds to my concerns that this is not only not reasonably necessary, but it seems to me falls well outside a range of what could be considered concise or strictly confined or proportionate. I am concerned that it is a device intended to cause the claimants to waste their resources and costs on an exercise that appears at least at this stage in the claim entirely unnecessary.

77. The claimants responded to the RFI on 13 March 2024 ("**the RRFI**"). The active defendants complain that some of the responses included "*Not entitled. This is not a matter reasonably necessary and proportionate to enable the [active defendants] to prepare their own case or understand the case they have to meet*." A number of the responses then recorded that the claimants considered that the request was a matter of evidence, disclosure or that the claimants considered that the claim was adequately pleaded. It is said that these are not proper responses but that depends on the content of the request.

78. Mr Ryan argued that there was a pressing need for a fuller response to enable the active defendants to know the case they have to meet particularly to enable them to address issues of evidence in due course. Since evidence is not due to be served until June 2025 that is hardly a pressing need. And it certainly does not appear to have been a pressing need in March 2024 when the active defendants seem to have again put the RRFI on the back burner choosing to prioritise other matters.

79. There was no reaction, response or complaint about the RRFI. No extension of time was sought in which to serve a Reply to the Defence to Counterclaim due to any perceived deficiency in the CAPOC. The active defendants served a 19-page Reply to the Defence to Counterclaim on 16 April 2024. There was no suggestion that any alleged inadequacy in the CAPOC prevented the active defendants from preparing for the CMC.

80. On 10 May 2024, a month before the CMC, the active defendants returned to the RRFI. 10 May 2024 was another busy day for the active defendants as will be seen when I

consider the Disclosure Applications. Mr Ryan explained that the reason the active defendants had not responded until 10 May 2024 was the competing workflows as a result of the extensive nature of the work being undertaken in relation to the CMC and the Disclosure Applications and other issues that had been raised in correspondence. This does not help the active defendants. Even if one accepts that a competing workflows argument has any merit at all, what it demonstrates is that a choice was made about which workflow to prioritise and it was not the RRFI. This undermines any possible basis for saying that any further answers were reasonably necessary and proportionate at this stage, far less that there was a pressing need for them.

81. The consequence of this approach to prioritising workflows and resources seems to pervade their approach to the CMC and the Disclosure Applications. It is a further additional factor to take into account when considering the exercise of discretion and how the court should manage the claim consistent with the overriding objective.

82. It is apparent from Mr Ryan's submissions and the inter partes correspondence that the active defendants were finding the timing, scale and extent of the work that needed to be undertaken to prepare for the CMC and to deal with the various outstanding disclosure issues both in relation to the WFO and the CMC challenging.

83. At the CMC it was apparent that they had much still to do in many areas of case management. This appeared to be particularly so in relation to the scope of disclosure where little progress appeared to have been made.

84. GL's correspondence is replete with requests for short extensions of time, comments that GL had not yet had the opportunity to take instructions and/or that documents, evidence, or instructions were still being finalised or that GL would respond when they were in a position to do so. Each of the short delays adds up. The overall effect was greater than its parts. It put unnecessary additional pressure on all parties generally and particularly in the week before the hearing.

85. The active defendants' delays in responding would then be offset by GL setting artificially short timelines for responses by the claimants. This was not reasonable or proportionate. It is another factor to take into account when considering the RFI application and the claimants' late agreement to provide some additional information on two requests.

86. GL wrote to HL about the RRFI on 10 May 2024 ("**the 10 May Request**") two months after it had been received and only a month before the CMC. 10 May 2024 was the same day on which Jatin's evidence was served in respect of the Indian Funding Application as noted above.

87. The 10 May Request advanced a series of twenty-six requests over a 7 page letter. It reformulated the original requests and grouped them together. Whilst some of the twenty-six new requests were just a repeat of the RFI, others were not. Given the now very short time before the CMC this was unhelpful. The 10 May Request did not for the most part explain why the active defendants considered that the further information was necessary. It relied primarily on a form of words derived from CPR PD18 simply asserting that the information was reasonably necessary and proportionate to enable the Family Defendants to understand the case they had to meet and to prepare evidence. It

was not until 5 June 2024 that an explanation was provided in the form of the skeleton argument for this hearing.

88. Several of the 10 May Requests grouped a large number of original RFIs and reformulated the requests. For example, new requests 13 to 15 were said to relate to original requests 42, 52, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 73 and to be about the flow of funds and the receipt thereof by the Alleged Principal Conspirators and/or Related Entities.

89. Responses were said to be required to new requests 13 to 15 (3 broad questions rather than the 12 original requests) as " *…the particulars requested… are required to enable [the active defendants]to prepare their evidence in due course, and to advance a case on the applicable law in respect of the claimants' knowing receipt claim".* The first part of this request was repeated in many of the 10 May Requests.

90. Of course, that evidence is not due to be served until 30 June 2025 and the very fact that the request itself identified that the information was requested to allow the active defendants to prepare their evidence in due course should perhaps have identified for the active defendants a shortcoming in the arguments advanced about why the responses were reasonably necessary and proportionate at this stage. This repeated phrase that the answer was required to enable the active defendants to prepare their evidence in due course only emphasised that the requests were premature. It also seemed to me that there must be some doubt about the extent to which the documents and information could properly be said to be reasonably necessary to assist the active defendants in preparing their evidence given the nature of the active defendants' defence and the requirements of PD57AC. In light of the decision I have reached, I did not explore that issue further with Mr Ryan, but should he make any further requests after disclosure on that basis I will want to understand why such particulars go to the ability of the active defendants to prepare their evidence.

91. Even if it were conceivably necessary to answer requests 13 to 15 it would not be proportionate for them to be answered now. They are not just three broad questions but three broad questions in relation to each of 12 different underlying RFI requests. It is difficult to see how that could be considered to be concise and strictly confined. Grouping the new requests in this compendious way did not reduce the extent of the original requests or the work that might be necessary to answer them.

92. The 10 May Request was in fact seeking further or better responses in relation to forty-two of the original requests within 14 days, by 24 May 2024. This just highlights the consequences of the cumulation of all the short delays and extensions to which I have referred. It must have been apparent to the active defendants that this was unreasonable and unrealistic. Even if the 10 May Request had been made much earlier only allowing 14 days to respond given the extent and detail of it would have been unrealistic.

93. The parties agreed a short extension to 29 May and HL in fact responded by letter on 31 May ("**the HL Response**"). The HL Response provided responses to 10 May Requests 5, 6, 7, 8, 9, 10, 19 and 26. The claimants considered that a number of the complaints about the CAPOC were ones that had previously been ventilated and/or rejected by the court.

94. The active defendants did not consider the HL Response to be adequate but did accept that in principle that the responses to requests 5 to 8 would have been adequate if they had been provided with a statement of truth rather than in a letter. Rather than simply asking for a statement of truth to be provided, the RFI application was issued seeking responses to the equivalent of requests 5 to 8 of the 10 May Request. I have no doubt that this was because the active defendants had run out of time. The CMC was by then only 10 days (5 working days) away, but it was unhelpful and feeds into the approach the court should be taking having regard to the overriding objective and good case management. These issues about timing, delay, conduct and proportionality all weigh heavily against the active defendants.

95. As I say it seems to me that the RFI and the RFI Application were both too late and too early. I do not consider that answers to the 10 May Request were reasonably necessary at all, and it does not appear to me that it would be proportionate to require them.

96. The RFI application was filed after hours on 31 May 2024 (a Friday) and processed on 3 June 2024. By email timed @ 11.41 I advised the parties that it would be listed on an if time permits basis. Unhelpfully, the RFI application retains neither the RFI numbering nor the 10 May Request numbering and nor does it completely overlap with the earlier compendious requests. Instead, the RFI application sets out in a renumbered annex to the proposed draft order the compendious requests which the active defendants still intended to pursue. There was no supporting evidence explaining why the active defendants considered the answers were reasonably necessary now particularly when the formulation used again referred to evidence.

97. On 5 June 2024, the active defendants filed their skeleton argument. This was the first time the claimants had reasonably been able to understand the active defendants' position in relation to the RFI. By that skeleton argument, the active defendants confirmed that they did not intend to pursue RFI application requests 13 and 14 (20 and part of 13 to 15 of 10 May Requests).

98. Having been provided with the explanation for the requests included in Mr Ryan's skeleton argument, on 7 June 2024 HL agreed to provide responses to RFI application requests 7 and 18 (11 and 24 of 10 May Requests) within 14 days. The active defendants still sought an order in relation to these RFI application requests. HL also provided the HL Response again, this time with a statement of truth which appeared to resolve RFI application requests 2 to 5 (5 to 8 of the 10 May Request).

99. It seems to me that had the active defendants not issued the RFI Application prematurely at least these requests would have been dealt with without the need for any application. This reduced the number of RFI application requests which were actively being pursued to twelve.

100. Drafting an RFI by simply identifying all those issues in the CAPOC on which the active defendants could identify a potential shortcoming in the drafting and the detail is not a proper basis for a request. CPR 18 and PD 18 make it clear that requests must be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the active defendants to understand the case against them or prepare.

101. The starting point of one hundred requests several months after the DCC had been served was never likely to have been considered to be concise or strictly confined. Nor given the detail in the DCC was it at all obvious why it was said that further information was reasonably necessary or proportionate at least prior to disclosure. And whilst the RFI application pursues only 12 requests they are far from concise or strictly confined given the compendious nature of some of those requests. Not every issue in dispute can be or will need to be unpacked in full detail before disclosure and evidence or at all.

102. Mr Ryan's submission that some of the answers were required to enable the active defendants to identify whether they were in a position to advance a currently unpleaded applicable law argument seemed to arise from a misunderstanding of the claim as advanced (see below). But even if it had some merit as a basis for requesting further information it does not appear it is needed now. The nature and scope of expert evidence will be considered at the Second CMC in April 2025. There is no prejudice to the active defendants in waiting until December for disclosure. They will then have nearly 4 months in which to consider the issue, make any amendments to actually plead it and make any application they consider appropriate. It seems to me that this was not an issue that it was necessary or proportionate to address now.

103. Mr Ryan argued that some of the responses were necessary to enable the active defendants to undertake disclosure. I had by this stage determined the list of issues for disclosure. No party had argued that the RFI Application would affect the scope of disclosure or that there should be a deferral of the issues for disclosure until it was determined. Given the nature of the issues for disclosure it did not appear to be a sustainable argument.

104. The approved DRD identified those issues in the statements of case on which some measure of disclosure is required, in this case that was to be undertaken by the active defendants by reference to Model D search-based disclosure which will include known adverse documents. The RFI Application where it sought disclosure of documents did it by reference to the statements of case. Mr Ryan was unable to explain to me why the answers to the RFI Application requests would or should change the scope of the disclosure exercise that the active defendants already had to undertake.

105. The claimants are continuing to uncover information about the nature and the extent of the Alleged Fraud and are continuing to trace the monies as they flow through the Layers. Much of the claim is based on inference and if in due course the claimants are not able to persuade the trial judge to draw the inferences they rely on from the documents and evidence they will fail.

106. Both the claimants and the active defendants are now due to give their Model D disclosure on the agreed issues for disclosure on 6 December 2024. There must be a real likelihood that that process will uncover more information and documents or put into context other information and documents both for the claimants and the active defendants. Disclosure is likely to clarify the mechanisms by which the Alleged Fraud was conducted, and it may provide further clarity about which of the Alleged Principal Conspirators were involved at what stages and/or greater clarity on the flow of funds through either the Amicorp Group structure and the claimant companies or otherwise.

107. The active defendants' own disclosure is likely to provide some clarity on the very issues on which they seek answers. If the claimants are right, the active defendants are uniquely placed to be able to answer the requests for themselves, which does not mean that the claimants do not need to prove their claims but does put into perspective whether further responses are reasonably necessary now.

108. The claimants candidly accepted that this was the type of case in which there would be likely to be a very substantial round of amendments following disclosure. Indeed, they even highlight it in the CAPOC. The claimants accept that they are likely to need to amend, particularise, refine, or clarify some of their claim after disclosure. Indeed, their overarching position is that if there is any need for further clarification of the CAPOC that should be done after disclosure. Without accepting that the CAPOC as pleaded requires amendment now, they tacitly acknowledged that in the absence of such amendments after disclosure they might be susceptible to an RFI on some aspects of the CAPOC prior to the service of evidence. But they do anticipate being able to amend to include additional matters which become apparent through the process of disclosure.

109. It seems to me to be equally likely that the active defendants will want to amend following disclosure, if not before. Despite Mr Ryan's submissions I was unable to discern any prejudice to the active defendants in having to wait until after disclosure (and any amendment) to see if they obtain the clarification they are seeking. And indeed if they do not consider that the amendments go far enough it may be that there will be a contested amendment application. But it seems to me that is the appropriate time to review this claim and not before.

110. After disclosure and amendments either the claim will be clarified quite considerably or if it does not then that might be an appropriate time for the active defendants to pursue a further concise, focussed, strictly confined RFI and/or the time for the claimants to say this is all we know.

111. I take into account that prior to disclosure the majority of the outstanding requests can properly only be answered generically repeating what is currently in the CAPOC and that is of no benefit to the active defendants and appears to me to be a waste of time and costs for both parties.

112. A further significant discretionary factor is the timing of the requests in the context of the claim as a whole. This covers several issues. The court has to consider whether the requests are requests for advance fragmentary or piecemeal out of sequence evidence or disclosure. This should be considered both from a costs and benefits perspective for the parties but also against the existing court timetable. For the reasons set out below these discretionary factors weigh firmly against the RFI Application.

113. Here much of the RFI Application is seeking an explanation and documents which will primarily be derived from disclosure. All parties should now be focussed on their disclosure obligations with a view to meeting the 6 December 2024 deadline. The active defendants still appeared to have a lot of work to do.

114. It is in no party's interests for them to have to run two separate disclosure work streams covering the same issues side by side on different timelines. It cannot possibly be thought to be consistent with the overriding objective or good case management.

115. Here the active defendants seek to rely on having instructed a regional firm with more limited resources and the consequent difficulty with managing too many different workflows as a reason why the RFI Application and the RFI were delayed. Whilst I do not accept those are good reasons for the delay it adds a further factor when considering discretion.

116. It seems to me that adding a further workflow when the active defendants are already having to prioritise is neither reasonable nor proportionate or consistent with the overriding objective. It has a significant risk of distracting or diverting the active defendants and their resources from their own disclosure obligations and risks delaying the overall trial timetable.

117. For the claimants, asking them to invest further resources to engage in the detailed work on for example flow of funds when any answer can and will only be partial or interim pending disclosure is precisely the type of out of sequence piecemeal approach that is to be deprecated.

118. I do not consider that redirecting the parties' resources to the production and consideration of out of sequence piecemeal and fragmentary disclosure and evidence is reasonable or proportionate, nor do I consider it necessary. It is likely to make the disclosure exercise more complex and risks delaying it. Disclosure is due to take place on 6 December 2024; focussing the parties' resources on undertaking that exercise once only consistent with the DRD and meeting that deadline seems to me a far better use of their time at this stage.

119. In any event it seems to me that, given the extent of the challenges to the claim and the CAPOC and the successive failures of the Family Defendants to dispose of the claim, the RFI and the RFI application and the nature of the requests might be considered in large part to be trying to have another go.

120. The RFI and the RFI Application were both too late and/or too early and are likely to instead cause both parties to incur unnecessary costs and waste both the parties' resources and time.

121. For all these reasons in the exercise of my broad discretion and my case management powers and consistent with the overriding objective, I refuse the RFI Application. I am not satisfied that the outstanding requests are concise, strictly confined or reasonably necessary or proportionate to enable the active defendants to understand the case they have to meet or prepare their own case for the reasons set out above.

122. Consequently, I will only deal briefly with each of the twelve requests.

123. The main purpose of many of the requests was to elicit information or clarity about particular parts of the CAPOC which it was said to be necessary to assist with the preparation of evidence which for the reasons set out already was not a basis on which I was prepared to order responses now. Any such request in the context of this claim has been made too early.

124. However, Mr Ryan also argued that if the claimants were not going to be in a position to provide further information now, they should be required to say so. This did not seem to me to be a helpful, necessary, or proportionate exercise given that the parties are

already preparing for disclosure, and I remain unclear what it would add if on disclosure further information were to be uncovered which would then permit of a further or clearer explanation. It seemed to me an exercise designed to increase costs for no good reason at this stage in the case.

125. One of Mr Ryan's primary complaints about the CAPOC and the focus of some of the requests was the formula used in the CAPOC when making allegations against the Alleged Principal Conspirators. The formulation used in the CAPOC is "the Alleged Principal Conspirators or some of them" and variations on it. Mr Ryan says that the active defendants are entitled to know who the particular allegation is directed towards. The main focus of this complaint was that the Family Defendants were entitled to know if the relevant Alleged Principal Conspirator was Mr Obidah.

126. If prior to disclosure the claimants can only say the Alleged Principal Conspirators or some of them then that is all they can say. They are not going to limit themselves to a specific Alleged Principal Conspirator unless or until they have the evidence to do so. The claimants say that where they have specific information already, they have pleaded it. Otherwise, the CAPOC pleads more generically; for example IIA was at all material times ultimately beneficially owned by all or some of the Alleged Principal Conspirators.

127. The Family Defendants can only proceed now on the basis that the Alleged Principal Conspirators or some of them includes some or all of the Family Defendants and/or Mr Obidah. It will not change the active defendants' disclosure obligations.

128. If it turns out after disclosure, and further particularisation and amendment that some of the causes of action are only then to be advanced against Mr Obidah the active defendants can take such action as they deem appropriate. This may include opposing any proposed amendments or seeking further information at that stage. But that is in the future. The active defendants have comprehensively defended the claim and advanced a counterclaim. The DCC does not merely deny claims but provides their positive case on many of the allegations advanced against them.

129. **Request 1** relates to CAPOC [11A] and [11B]. It covers four requests from the RFI. In simple terms the active defendants seek clarity as to which of the Alleged Principal Conspirators' knowledge is attributed to which. At present, the CAPOC pleads that knowledge is to be attributed to those of the Alleged Principal Conspirators who in fact owned and controlled each of IIA and Polishing such that the plea of attribution is based solely on ownership and control.

130. Mr Ryan argues that the CAPOC leaves it unclear whether the Family Defendants need to answer a case that Mr Obidah had anything to do with the IIA or Polishing. This did not seem to be a fair characterisation of the CAPOC nor did it appear to me to reflect the position in the DCC.

131. The claimants' case is that some or all of the Alleged Principal Conspirators owned and controlled IIA and Polishing or IIA and Polishing were under the Alleged Principal Conspirators' ultimate control and consequently, that the attribution of knowledge is that of the Alleged Principal Conspirators as owners or controllers.

132. The Family Defendants were able to and did plead to that ownership and control at [39] and [40] of the DCC. Without any further information the active defendants pleaded which of the Family Defendants were in fact shareholders and/or directors of IIA and Polishing and when but to otherwise deny those paragraphs.

133. There is already a broad issue for disclosure on ownership and control. It will inevitably address this issue, and documents relevant to the issue of attribution would fall to be disclosed either under the existing issues for disclosure or as known adverse documents. No further clarification is needed for the purposes of disclosure and indeed one might consider that no further clarification were needed for evidence in due course.

134. A refinement of the CAPOC now is not going to make any difference to the scope or focus of that disclosure. If the disclosure results in the need to amend by either party for any reason whether to focus and refine or clarify any plea about attribution, knowledge or ownership and control or to particularise any existing plea more fully, such proposed amendments can be considered on their own merits at that time.

135. I was not persuaded there was any need for any further refinement or more extensive response now.

136. **Request 6** relates to CAPOC [44.2] and RFI 28. The active defendants seek identification of the Group Insurance Policy said to have been taken out by Winsome.

137. The active defendants say they need an answer to this request to enable the active defendants to prepare evidence. They say that it goes to the issue of control of the Layer 1 companies.

138. The claimants have explained that they do not have copies of the Group Insurance Policies and have nothing more to say. Mr Ryan says that the claimants should be required to positively say that now. The active defendants have positively denied that such policies existed in the DCC. An answer that pending disclosure the claimants do not have a copy did not seem to me add anything. And indeed, if the Family Defendants' position is that there was no such policy of insurance it is not immediately clear how any answer would inform their evidence.

139. There is no purpose to this request pending disclosure, if at all, and I can see no purpose in requiring any further response to it.

140. **Requests 8 and 9** relate to the layering process and the flow of funds in relation to the US$875m as set out in CAPOC 60C and 60D, 97, 105, 107, 119-119A and also twelve different RFI 41, 42, 52, 60 - 68. This had been the 10 May Requests at 12 to 15.

141. The requests sought full particulars of the layering process which the claimants say was undertaken in relation to the US$875m including the flow of those funds through the layers and all the transactions relied on to demonstrate that flow of funds. The request asked the claimants to identify each and every bank account used and to identify the sums said to be received by the Family Defendants and to provide that information in tabular form. If one were seeking to identify an onerous request that was not reasonably necessary, this would be such a request. It appeared to be designed to seek to put the claimants to considerable effort and cost and not to be reasonably necessary in advance of disclosure and amendment where the claim is one of inference.

142. Although I listened carefully to Mr Ryan's submissions it appeared to me that this request may have stemmed from a misunderstanding of the two different strands of the Alleged Fraud. This request was focussed on the part of the Alleged Fraud in respect of which no proprietary claims are made, and the monies did not pass through the claimant companies. It relies on inference and misappropriation based on the plea of conspiracy by the Alleged Principal Conspirators and not on proving each step in the flow of funds through the structures. Mr McWilliams accepted that in due course following disclosure there might be amendments but that the claim as pleaded was sufficient for the active defendants to know the case they had to meet.

143. In relation to these requests Mr Ryan also sought to argue that the answers to these requests were reasonably required to enable the active defendants to consider whether there was a legal argument available to them about the applicable law based on where it was said that the Family Defendants received the funds.

144. Again, this appeared to be based on a misconception about the nature of this part of the claim as pleaded. As Mr McWilliams explained as the monies did not pass through the claimant companies, there is no claim in respect of those monies in knowing receipt. Further as Mr McWilliams pointed out there is in fact no plea in the DCC that a different applicable law might apply nor even a reservation of rights to plead such a defence within the DCC. There does not therefore appear to be any basis for the request in any event.

145. I am not persuaded that there is any basis for requiring the claimants to answer this request now and indeed unless the applicable law point is pleaded, at all.

146. **Requests 10 and 11** relate to what is called the claimants' tracing analysis and refers to CAPOC 61, 63, 97 and 120A or RFI 43, 51 and 71. These were 10 May Request 16 to 18.

147. Mr Ryan submitted that Request 10 was not an attempt to relitigate matters that had already been determined in the judgments. Instead, he said that the active defendants were confused about the claimants' case on proceeds. Request 10 is very generic and high level; it is neither concise nor strictly confined and can be dealt with shortly. Further it appears to me there is a real risk that it is another attempt to cut across the previous judgments.

148. CAPOC 61 and 63 set out the claimants' case on the transfers between Layer 1 and Layer 2. CAPOC 97 relates to the onwards transfers into Layer 5 with the Request focussing on Marengo (the focus of Request 11 see below). CAPOC 120A essentially says this is where we have got to at the time the CAPOC has been pleaded but the investigations are continuing. The tracing analysis is not complete.

149. The DCC pleads that the active defendants have no knowledge of and do not admit the claimants' explanation of the layering and recycling process and/or the tracing set out in CAPOC 61 to 82. They positively deny that it would in any event lead to the legal conclusion that the claimants have reached.

150. The answer to this request is neither reasonably necessary or proportionate in advance of disclosure and any subsequent amendments. Why increase the time and costs of both parties by getting an inevitably incomplete update from the claimant now in advance of

disclosure? That is particularly so given the submissions about the active defendants' use of a firm with more limited resources.

151. In relation to Request 11 this relates primarily to [97] of the CAPOC and the claims made about transactions involving Marengo (a Layer 4 company) and the transfers on to Layer 5 and beyond and in particular to Oriental Expressions DMCC. Both companies are associated with the Family Defendants. It is said by the claimants that monies passed through Marengo into Layer 5 to Oriental Expressions DMCC and then through several other entities. They set out the position based on the tracing exercise undertaken by the time of the CAPOC which was then continuing. They set out where they believe the monies had ended up including pleading that the known recipients of the Alleged Fraud include Jatin and Sonia. However, the claimants also positively plead that they do not yet know the ultimate destination of the funds and rely on the inferences they have invited the court to draw as set out in section C8 of the CAPOC.

152. The active defendants have pleaded a positive case about the monies received by Marengo and their purpose as set out above. On that basis I agree with Mr McWilliams that the information the active defendants seek is unnecessary at this stage. The active defendants' positive case is within their own knowledge and does not appear to need or justify a fuller explanation of the claimants' claim at this stage. It cannot possibly be necessary to enable the active defendants to undertake disclosure or even to prepare their evidence. Their positive case must be within their own knowledge.

153. **Request 12** relates to a Mr Mubarak and CAPOC 96, RFI 47 and 10 May Request 19.

154. The active defendants seek clarification of whether any of the Alleged Principal Conspirators other than Jatin and Sonia were said to be known associates of Mr Mubarak. This is another request where the real complaint is that the CAPOC pleads the Alleged Conspirators or some of them. Mr Ryan submits that the active defendants do not know whether this part of the claim is focussed only on Jatin and Sonia or whether their sons or Mr Obidah are also said to be known associates.

155. But this seems to me to be another request where there is no need for anything further. The DCC pleads to CAPOC [96] at DCC [177] to [179]. The DCC positively pleads the Mr Mubarak was not known to any of the Family Defendants and that he was not the general manager of Green Points. The Family Defendants have been able to understand, respond to and set out their position on this issue. No response is required.

156. **Requests 15 and 16** relate to CAPOC [137] and RFI 81 and 82 and 10 May Requests 21 and 22. It relates to the claims by the claimant companies as both trustee and beneficiary. These issues were ventilated before Edwin Johnson J and will be considered further at trial.

157. This relates to the constructive trust claims where depending on whether money was moving up or down the Amicorp Group structure at a particular point the claimant companies were either trustees or beneficiaries or once it had passed both ways – both. Indeed, it appears to me that given the recycling it is not impossible for the claimant companies conceptually to be both and in relation to different trusts.

158. Mr Ryan seeks clarification because the claimant companies sit at both Layer 2 and Layer 3 and may have received the monies passing through the structure in different

capacities for which there will be a different legal analysis. He says it is important that the claimants clarify the position. He argues that even if the claimant companies can be both trustees and beneficiaries at the same time there needs to be further clarity about what the claimants say are the terms of the trusts on which the monies are held, and which sums are held on which trusts for the benefit of which beneficiaries. He wants the claimants to clarify what duties they say the constructive trustees had.

159. He points to the possibility of the claimant companies making their claims as constructive trustee pursuing recovery of monies for a recipient or having knowingly received them and holding them on constructive trust for the beneficiary of the monies.

160. Of course, a claim against a trustee and a knowing recipient can commonly arise in the same proceedings but Mr Ryan's submission is that here they may be the same party to the claim which is why he says that the "and/or" needs to be clarified. He wants the claimants to fix their position as to whether they are saying that the claimant companies are trustees or beneficiaries and in relation to which particular sums passing through the structure and whether at Layer 2 or Layer 3. He says the active defendants want to understand what the claimants mean.

161. These issues were considered by Edwin Johnson J having heard submissions from the Family Defendants' counsel and are dealt with in his judgment. This very much had the feel of having another go and seeking to cut across Edwin Johnson J's judgment even though it was couched in terms of further information.

162. Mr McWilliams explained that the reason why the CAPOC refers to both trustees and/or beneficiaries was in part because the claimant companies are at two layers with the monies passing from Layer 2 to Layer 3. And as I have noted there is also the issue of recycling.

163. Mr McWilliams accepts that an issue to be determined at trial will involve consideration of who is a beneficiary and who is a trustee but that those are legal issues for trial. He argues that the claimants' position is clear from the CAPOC. He submits that all the arguments on this issue had been ventilated both in correspondence and at the various hearings. The Family Defendants understand the points but just do not agree with the claimants' claim that they can assert proprietary claims. There is therefore no need for any further clarification.

164. It did seem not seem to me that there was anything further needed. The fundamental difference of legal analysis about whether a proprietary claim can arise in the hands of the claimant companies when the monies moved down the Amicorp Group structure with the claimant companies sitting at Layer 2 and Layer 3 will be at the heart of the trial in due course. It is a matter of legal argument and analysis.

165. **Request 17** is focussed on the dishonest assistance claims and relates to CAPOC [141] and [143], RFI 85 and 10 May Request 23.

166. This is a request which has formed part of the underlying complaints about the claim at each stage that the claim has been challenged. It is not a new complaint. It was a live issue between the parties when the CAPOC was agreed by consent. Edwin Johnson J set out his conclusion that if there was a good arguable case, as he had found, in relation to the Family Defendants' involvement in the Alleged Fraud and the claims for breach

of trust and breach of fiduciary duty then it followed that the claimants had a good arguable case in relation to the dishonest assistance claim. It was raised again as part of the unsuccessful strike out applications.

167. At present the CAPOC does not identify which of the defendants are alleged to have assisted with the breaches of duty or trust. At some point this will have to be more fully pleaded and so this request is in principle one which should be answered but it does not need to be answered now.

168. Mr McWilliams submits that the claimant companies are victims of a sophisticated fraud and have pleaded what they know and what they have been able to uncover. This includes as set out at CAPOC [124] to [131] details of the directors of the claimant companies, their alleged breaches of fiduciary duty by causing the transfer of funds through the claimant companies on the basis of the alleged sham transactions for a fraudulent purpose resulting in the claimant companies being balance sheet insolvent.

169. He explains that the CAPOC identifies the assistance as taking two forms, firstly the giving of instructions for those transfers by some or all of the Alleged Principal Conspirators and secondly in concealing the proceeds received as a consequence. The claimants argue that the assistance is devising and commencing the scheme that gives rise to the Alleged Fraud and then concealing the proceeds. The dishonest Assistance claim therefore relies on those matters pleaded in the CAPOC; the breaches of fiduciary duty as set out in CAPOC section D1. He says that the claimants cannot go any further pending disclosure.

170. The lack of further particularisation has not prevented the Family Defendants from responding. They have denied any involvement in the Alleged Fraud and positively denied giving any instructions at DCC [228] to [230]. They clearly understand the claim as advanced against them and their response addresses the assistance point.

171. However, that is not a complete answer to the request for more particulars of who dishonestly assisted and the details of that dishonest assistance which will need more clarity and detail at some stage. But I am not persuaded that prior to disclosure any more is needed. If the anticipated amendments do not provide more or better particulars about the assistance the claimants rely on this part of the claim may be susceptible to a concise and focussed request for further information.

172. **Request 19** relates to Creditors: CAPOC [151] and RFI 92 and 10 May Request 25. This relates to the S213 claim. In simple terms the claimants say that as a consequence of the Alleged Fraud and the actions of the Alleged Principal Conspirators the claimant companies were left balance sheet insolvent to the detriment of all the creditors. As Mr McWilliams put it the entire premise of the claim is that the claimant companies have creditors and have been exposed to their claims. Those creditors are said to be the Consortium Banks whose claims as creditors are set out in the CAPOC [163].

173. The Family Defendants have raised issues about the plea that the transactions which are said to give rise to the Alleged Fraud were carried out with the intention to defraud the creditors of the claimant companies and/or Winsome and Forever Precious. There is a fundamental difference between the claimants and the active defendants as to whether the claimant companies carried on any business at all with the active defendants

pleading that the claimant companies were mere conduits for the proceeds of the Alleged Fraud DCC [239].

174. That has now been debated extensively in correspondence and was addressed by Edwin Johnson J. The Family Defendants consented to the CAPOC. The claim has not been struck out in its current form. The Family Defendants fundamentally disagree with the way in which the claim is advanced, but it is clear that they understand it and do not need any further particulars at this stage to be able to respond to it.

175. Finally **Request 20** relates to the Proofs of Debt: CAPOC [153], [156] and [158] and RFI 94,96 & 98 and 10 May Request 26.

176. This appears to me to arise from a misunderstanding. The claimants do not say and nor is there any reason to assume that the Proofs of Debt that are currently known, amount to all or any of the liabilities of the claimant companies. This was addressed by Edwin Johnson J in the November judgment at [106] and [398]. A Proof of Debt is a mechanism by which a creditor advances its claim within the insolvency process. If that Proof of Debt is eventually accepted in whole or in part it will form part of the liabilities of the relevant claimant company, but it is neither evidence of the extent of the liabilities of the claimant companies themselves and nor does it set an upper limit on them. It is as Mr McWilliams described it part of a process by which creditors of an insolvent company seek to have their debts included as a liability of the insolvent company. It is for the JLs in due course to establish the full extent of the liabilities of the claimant companies. They may not be able to do so until after this claim has been resolved.

177. Thus a request that seeks confirmation that only the alleged liabilities to which the claimant companies are exposed are those set out in the proofs of debt is one that the active defendants ought to know the answer to without any response from the claimants, leaving aside the fact that it has already been canvassed before Edwin Johnson J at length.

178. For the reasons set out above, I consider that a small number of the requests though they are neither concise nor strictly confined in their current form, may have some merit and should be addressed following disclosure as part of any amendments. If they are not then that may be the time for a concise and strictly confined RFI.

179. However, as set out above my overarching conclusion is that in the exercise of my discretion having regard to the various discretionary factors set out above, the RFI Application should be refused. Any new application advanced after disclosure and/or amendment can be considered on its own merits at that stage.

180. Finally, to address the only outstanding point on the RFI Application. Mr Ryan sought orders to require the claimants to respond to those requests they had agreed to respond to prior to the hearing. This appeared to be a bootstraps argument.

181. To the extent that the claimants have already offered to provide some further information in advance of disclosure they should do so promptly but given that I intend to dismiss the RFI application I do not intend to order them to do so.

182. The short reason for that is that but for the active defendants' own delay and lack of explanation I am satisfied that the claimants would have agreed to provide the additional responses in any event. They provided the 31 May Response with a statement of truth when requested and agreed to provide additional responses once they received the active defendants' counsel's skeleton and understood the basis for it.

183. Had the active defendants revisited the RRFI earlier these aspects of the RFI could have been dealt with without the need for an application at all. Making an order in respect of those outstanding points is an exercise in futility and will not save the RFI Application from being dismissed.

The Disclosure Applications

184. These were advanced by Mr Wilson for the claimants and Mr Dawid for the Family Defendants. I have taken into account all of their oral and written submissions and have considered the evidence even if I do not set it all out in this judgment.

185. The purpose of the Disclosure Applications was to seek the court's assistance to police the Family Defendants' compliance with the WFO. The claimants say that there are credible grounds to believe that there is a real risk that the WFO is being breached and/or that the Family Defendants have further undisclosed assets that ought to fall within the scope of the WFO.

186. Pursuant to the disclosure obligations in the WFO the Family Defendants disclosed assets with an ascribed value of approximately US$146 million. However, over US$90 million of that total was said to be receivable loans due from Mohammad Ali Abdulla Ahli ("**Mr Ahli**") ("**the Ahli Receivables**"). As Edwin Johnson J noted at [293][3] there had been evidence before him that the Family Defendants' wealth had been estimated at the much higher value of US$425million. The Family Defendants do not accept that this evidence is accurate.

187. The main source of the funds which the Family Defendants say they are using to pay their living expenses and English legal fees (in combination currently said to be running at US$200,000 to US$250,000 per month) and the source of the funding for the Indian proceedings are considered by the claimants to be opaque.

188. All of these funds, both the living expenses, English legal fees and the funding for the Indian proceedings are routed through Shouq Al Kathiri as an intermediary. The claimants say there is no visibility or transparency about the ultimate source of those funds. The claimants submit that the lack of transparency raises a real risk that the arrangements have been put in place to obscure the real source of the funds.

189. The claimants say the court should approach the Family Defendants' evidence on funding and assets with some caution. They point to the concerns expressed by HHJ Hodge KC and Edwin Johnson J about the adequacy of the Family Defendants asset disclosure[4] and Edwin Johnson J's findings about shortcomings in relation to Sonia's evidence in respect of Al Noora and Sonia, Jatin's, and Suraj's instructions to their

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[3] [2022] EWHC 2960 at [293]
[4] [2022] EWHC 1810 (Ch) at [26] and [2022] EWHC 2960 at [293]

solicitor[5]. The active defendants submit that this point would only go to Sonia's asset disclosure not Jatin's asset disclosure if relevant at all and further that Sonia continues to deny any role in Al Noora as set out in the DCC.

The history of the Ahli Application:

190. Jones Day provided initial asset disclosure on 1 June 2022. They identified that each of Sonia, Vishal and Suraj had assets which were described as receivable loans due from Mr Ahli. Approximately US$ 10million of the Ahli Receivables were said to be receivable by Sonia, just over US$80m were said to be receivable by Vishal and the balance by Suraj. Affidavits followed on 10 June. Sonia provided more details about the Ahli Receivables at paragraph 10.10 and explained that "*the arrangement was (and remains) that I could draw on the loan receivable when required*". She further explained that the Ahli Receivables were secured and then quoted from Article 4 of the loan agreement. "*In order to secure the Principal Amount, interest and other payments obligations arising under this Agreement, thereby including existing and future claims of the Lender, the Borrower shall create a security interest in favour of the Lender in the Borrower's cash flow.*"

191. Sonia, Vishal, and Suraj all say similar things about the Ahli Receivables. What one can draw from those affidavits and accompanying evidence is that the loans had been assigned to Mr Ahli by way of a written deed and that the maturity dates for the loans have passed but that Sonia, Vishal and Suraj have not demanded immediate repayment and did not intend to do so. Vishal appeared to say that the reason for not having demanded or received repayment arose from limits placed on the amount of funds he could receive into his bank account due to negative publicity. He did not suggest there was any other limitation on his ability to call in repayment of the loans. Based on this evidence the claimants say they were entitled to believe that the Ahli Receivables were immediately repayable debts. Various contractual documents were produced which appeared to support the existence of loans and assignments to Mr Ahli which appeared to support what was being said in the affidavits.

192. In March 2023, when seeking more time to pay adverse costs orders, Jatin explained that the Ahli Receivables were the main source of the Family Defendants' living expenses and legal expenses. He explained that the monthly notified drawdowns had to cover the Family Defendants' living expenses and legal expenses as well as any adverse costs orders. Similar points were again relied on in late 2023 when the Family Defendants sought further time to pay adverse costs orders.

193. In Diss 6, Mr Diss explains that by May 2023, the sums notified under the WFO amounted to in excess of £6 million of which £2.95 million came from the Ahli Receivables. At the rate of US$200,000 to US$250,000 per month the Family Defendants are drawing down in the region of US$2.4 million to US$3 million per annum for their daily living expenses and English legal expenses. By any measure these are substantial sums.

194. The JLs were concerned that assets of the scale of the Ahli Receivables to which the Family Defendants appeared to have relatively free access should be called in and the

[5] [2022] EWHC 2960 at [289]

proceeds brought within the jurisdiction. They represented a very substantial proportion of the US$146 million of disclosed assets.

195. From about December 2022 the claimants sought further information and disclosure in relation to the Ahli Receivables.

196. On 3 February 2023, Withers explained that although Sonia, Vishal and Suraj could request funds when required; receipt of funds from the Ahli Receivables depended on Mr Ahli's lab grown businesses producing proceeds from which he could make any payments. Withers further explained that the Ahli Receivables were not the totality of the commercial arrangements with Mr Ahli. Despite this they said that the Family Defendants were not in a position to comment on Mr Ahli's financial position, net worth, or assets. Howard Kennedy provided a similar response for Vishal.

197. This understandably raised doubts about the accuracy and fullness of the asset disclosure given by the Family Defendants. Mr Wilson noted the effect of this correspondence was that the contractual arrangements by which the Ahli Receivables were repayable as set out in the Affidavits in June 2022 should be ignored. Howard Kennedy explained that it was understood between the parties that Mr Ahli would pay when he had the cashflow to do so. A sort of paid when paid clause. Consequently, whether, when and how the Ahli Receivables were repayable depended on Mr Ahli's diamond business and his willingness to make the payments. And yet the Family Defendants appeared to be and continue to rely on monthly receipts from the Ahli Receivables and appeared to be unable to provide information about Mr Ahli's financial ability to meet his obligations to them.

198. Mr Dawid argued that since the security interest was in the cashflow there was nothing inconsistent with the position adopted by the Family Defendants – the loans were always to be repaid through cashflow. However, as Mr Wilson notes that despite Article 4 of the contractual documents, Sonia had said: "*The arrangement was (and remains) that I could draw on the loan receivable when required.*" Neither she nor the other Family Defendants sought to suggest prior to February 2023, that the obligation was contingent on the performance of the underlying business. It was only when the claimants asked the Family Defendants to call in the Ahli Receivables that this explanation was provided.

199. It does appear to me that explanations given by the Family Defendants have altered. It does not just appear to be the infelicities of language given Vishal's evidence appears to be that one should ignore the written agreements entirely.

200. The claimants sought further information and disclosure to understand how secure the Ahli Receivables were. Given the extent to which the Family Defendants were reliant on the Ahli Receivables and the proportion of their total disclosed assets which they represented, their apparent lack of information about the underlying strength of Mr Ahli's businesses was odd. Mr Wilson submits that it provides credible reasons to doubt the explanation provided. He posits that the Family Defendants' lack of concern could either be because the Family Defendants in fact had easy access to other assets and funds and/or easy access to the assets underlying the Ahli Receivables.

201. In March 2023, the Family Defendants explained that they were having difficulties with delays and limits being placed on transfers through their bank accounts including

Sonia's UCB account. In April 2023 Withers explained that to overcome this, Jatin, Sonia, and Suraj had engaged Shouq Al Kathiri to facilitate payments the ultimate source of which were said to be the Ahli Receivables.

202. The claimants queried why Mr Ahli could not simply pay Withers direct. Withers said they had not undertaken any due diligence for Mr Ahli so could not accept the funds directly and in any event Shouq Al Kathiri received a single overall sum which they then divided up and remitted on to third parties including Withers. They suggested that as Mr Ahli was also in the UAE this would reduce the difficulties with international transfers. As Mr Wilson noted this explanation did not in fact answer the point as there would have to be an international transfer at some point.

203. HL asked the Family Defendants to obtain and disclose a copy of the due diligence documentation which Shouq Al Kathiri had in respect of Mr Ahli. Withers responded saying nothing in their correspondence could lead to any inference about their knowledge of what if any due diligence processes were required in the UAE. Not an entirely satisfactory answer.

204. Thereafter, the Family Defendants' living expenses and English legal expenses were routed through Shouq Al Kathiri and that continued up to the date of the hearing. The claimants remained concerned about the Ahli Receivables in light of the changing nature of the explanations provided. The introduction of Shouq Al Kathiri as an intermediary was not properly explained. They did not get any further clarity or disclosure.

205. The Ahli Application was issued on 14 July 2023. The claimants sought:

i) the provision of information relating to Mr Ahli and his businesses.

ii) disclosure of "*all documents representing or evidencing direct or indirect communications between any of the Family Defendants (on the one hand) and Mr Ahli (on the other) in connection with any of the Ahli Receivables*."

iii) a direction that the Family Defendants instruct Shouq Al Kathiri to provide them with copies of any due diligence documentation prepared by, or obtained from Mr Ahli by, Shouq Al Kathiri.

206. After the Ahli Application was issued and following some correspondence between Withers and HL, the Family Defendants provided the information sought in paragraph (i). It was not until February 2024 that GL confirmed that the Family Defendants had made a request of Shouq Al Kathiri in accordance with (iii).

207. By the time of this hearing no response had been received from Shouq Al Kathiri and it did not appear that GL had chased a response. This should be viewed in the context of Shouq Al Kathiri's provision of the 10 May 2024 letter for the purpose of the Indian Funding Application over the same time period.

208. The Family Defendants did not file any evidence in response to the Ahli Application in 2023 nor did they respond to (ii) (or (iii)).

209. The claimants' concerns about Mr Ahli and the Ahli Receivables were exacerbated by the position in relation to Jatin's funding of the Indian proceedings to which the Indian Funding Application relates. These concerns were increasing in tandem with what the claimants considered to be a lack of engagement in relation to the Ahli Receivables Application.

210. At the end of November 2023 the Ahli Receivables Application was listed for hearing on 25 April 2024. No evidence in response was filed by the Family Defendants.

211. On 22 February 2024, GL responded saying that they considered that the Ahli Application was an inappropriate attempt to obtain information about Mr Ahli in advance of disclosure.

212. They confirmed that the Family Defendants had provided the information in (i). In respect of (iii) they explained that the Family Defendants had now made an appropriate request to Shouq Al Kathiri and were awaiting a response. They explained that the Family Defendants had given an undertaking to provide any due diligence received from Shouq Al Kathiri as soon as practicable after receipt.

213. Mr Dawid relied on GL's letter of 22 February 2024 and the annexed schedules to explain the nature and extent of the disclosure which the Family Defendants had already provided in respect of the Ahli Receivables and other assets to demonstrate that the Family Defendants had engaged with the claimants in relation to asset disclosure.

214. Schedule 1 relied on Withers' letter dated 19 September 2023 and an email sent by Mr Felton to Shouq Al Kathiri on 22 February 2024. Schedule 2 set out in tabular form, the requests made by the claimants on 15 December 2022 and 6 March 2023 and the responses provided on 3 February 2023 and 29 March 2023. The information in Schedule 2 all pre-dated the Ahli Application. The Ahli Application had been issued because the claimants were not satisfied with the responses, simply providing that information in a different format was never likely to satisfy them. Had the Ahli Application not been compromised it may have been necessary to consider whether the requests for further disclosure were reasonably necessary or whether it was just and convenient to direct further disclosure. The Family Defendants would have been significantly hampered by the lack of evidence in response.

215. Following GL's 22 February 2024 letter HL confirmed that they would pursue only (ii) of the relief sought. The parties agreed a timetable for the service of evidence by the Family Defendants which was eventually extended to 6 March 2024.

216. On the 6 March 2024 rather than serving any evidence in response, the Family Defendants agreed to provide the disclosure sought at (ii) but without prejudice to their position that the claimants were not entitled to it. The Family Defendants then disclosed some documents on 27 March 2024. They produced 114 documents (not in native format) of which the claimants say that only nine documents consisted of communications between the Family Defendants and Mr Ahli, and these covered a period from February 2023 to February 2024. The Ahli loans which made up the Ahli Receivables were said to date back to 2018.

217. This disclosure appeared to be incomplete. It covered an inappropriately limited date range, did not include native format documents where they might have been available,

and did not include communications between parties who were known to have been involved in the arrangements between the Family Defendants and Mr Ahli. The disclosure did include apparently original documents to which the Family Defendants were not parties with no explanation. The disclosure appeared to be inconsistent with the information provided previously about the extent to which the Ahli Receivables had been used to fund the Family Defendants. In addition, it revealed a further loan which had not been disclosed as part of the asset disclosure.

218. HL wrote to GL on 12 April 2024 ("**the 12 April letter**") setting out their concerns about the limits of the disclosure and seeking further disclosure and information. It seems to me it ought to have been self-evident to the Family Defendants that the information and disclosure provided on 27 March 2024 was inadequate whether or not they accepted all the points raised by HL. On 19 April 2024, the Ahli Application was adjourned with permission to restore on 14 days' notice.

219. I have considered the issues of limited resources, prioritisation and responsiveness of GL and the Family Defendants earlier in this judgment. As I noted it infects both the RFI Application and the Disclosure Applications. On 18 April 2024, GL were taking instructions, on 24 April 2024, GL were actively taking instructions and anticipated providing a substantive response in the next five working days and on 3 May 2024, GL said that the preparation for the CMC was taking up time and had diverted their attention from the Ahli Application, but they would respond as soon as possible the following week. They did not respond the following week or at all.

220. One might have expected more urgency and attention to the 12 April letter given that it had identified what appeared to be an omission from the asset disclosure given in respect of the WFO.

221. No substantive response had been received before the Ahli Application was restored and amended by the issue of the additional disclosure application on 20 May 2024. The additional disclosure application refined the relief sought in the Ahli Application in light of the progress made and the discovery of the additional loan such that it sought:

> "By 4pm on [*date to be inserted*], the Family Defendants shall disclose and provide the Claimants with copies of all documents (in native format in a manner which preserves metadata) representing or evidencing direct or indirect communications between any of the Family Defendants (on the one hand) and Mr Ahli (on the other) in connection with any of the Ahli Receivables (as defined in the sixth witness statement of Colin Diss) or the loan originally made to Eco Diamonds FZE on 30 June 2016."

222. The Family Defendants still did not respond and did not file any evidence in response to either the restored Ahli Application or the further disclosure application.

223. Instead on the afternoon of 3 June 2024, two weeks after the additional disclosure application was issued and nearly 8 weeks after the 12 April letter, the Family Defendants agreed to an order substantially in the terms sought by the claimants subject only to clarification in relation to the position on native documents and privilege. The Family Defendants proposed to provide any additional disclosure within 28 days of any

order although by the hearing they appeared to want longer. The proposed order only addresses disclosure. It does not address the outstanding requests for information in the 12 April letter to which there has yet to be a response.

224. Mr Dawid says that he is not in a position to address the Ahli Application because it was compromised. However, the Family Defendants did not think they needed to put in any evidence. The Family Defendants had known since the 12 April letter what the issues were (although many of them should have been apparent at the time they gave disclosure on 27 March 2024) and had known since 20 May 2024 that the Ahli Application had been restored. They had chosen not to file any evidence but had instead taken the decision to compromise the Ahli Application on the afternoon of 3 June 2024 on terms that they would have another go. In order to make that decision they must have considered the disclosure they had given and the 12 April letter. That Mr Dawid was not in a position to say anything about the Ahli Application and whether there was any further disclosure to give simply fed into the unsatisfactory position of the active defendants in relation to disclosure more generally.

225. Questions of timing and privilege seemed to me to be matters of detail which I will determine as necessary when the form of order is determined. Any timetable will take into account the significant time which the Family Defendants have had to engage fully on these issues.

Background to the Indian Funding Application:

226. Jatin is a party to four sets of ongoing legal proceedings in India arising out of or connected with the Alleged Fraud. I will adopt the titles given to them by Mr Wilson for convenience but refer to them compendiously as the Indian proceedings.

227. A claim is a chose in action and is an asset belonging to Jatin. A claim or cause of action vested in Jatin would appear to me to constitute an asset for the purposes of the WFO and would need to be disclosed, protected, and not diminished or dissipated without permission of the court unless it fell within the exceptions to any WFO pending resolution of these proceedings.

228. Diss 8 sets out the information the claimants have about the Indian proceedings. Jatin's own description of the Indian proceedings is limited to two paragraphs, but he does not appear to challenge Mr Diss's understanding of them. SS Hora represent Jatin in each of the De Beers Claim, the WIWA Application and Claim 1243 and are also representing him in an appeal arising from the Personal Insolvency Case. Vikram Sutaria is also retained by Jatin in respect of the Indian proceedings.

229. In August 2021, the Personal Insolvency Case was commenced against Jatin by the State Bank of India. There have been fourteen hearings so far and the proceedings are ongoing. According to the court orders and court documents Jatin is represented by leading and junior counsel. At least ten of the hearings took place after the WFO was granted. SS Hora explains that he is currently representing Jatin in respect of an appeal against an order made in March 2024.

230. Jatin is the claimant in the De Beers Claim which was filed on 13 June 2022 approximately two weeks after the WFO. The De Beers claim is a conspiracy claim against De Beers, Standard Chartered Bank and Kroll said to have a value of US$ 5

billion. There had been fourteen hearings by the time of Diss 8 with a further hearing scheduled.

231. The particulars of claim run to 209 pages with the defendant parties having filed three substantial defences/responses between October and December 2022. Jatin filed a rejoinder/reply to each defence document between February and April 2023. To give a sense of the work involved his own rejoinders/replies are 83 pages, 179 pages and 179 pages.

232. The WIWA Application are Indian proceedings brought by the Winsome Investor Welfare Association. The WIWA Application is an application to remove the Indian liquidator of Winsome. It names multiple respondents including Jatin, Mr Obidah, and the claimants. It was commenced in May 2023. Jatin filed a substantive response to the WIWA Application in August 2023 extending to 180 pages and appendices with a combined length of over 3,800 pages.

233. Claim 1243 was filed by Jatin on 21 October 2023. Jatin claims that he is the victim of the same fraud that is asserted against him in this claim. He advances a positive claim that there was a fraud. The curiosity of Jatin's position is not lost on the claimants as noted earlier in this judgment. There are thirty-eight defendants including Mr Obidah, Layer 1 companies and entities and individuals connected with the Amicorp group. The particulars of claim are 114 pages and Jatin claims US$1.5 billion. The types of claims advanced in the particulars of claim bear a striking resemblance to the claims against the defendants in this claim save that Jatin says he is a victim and denies any involvement in the fraud.

234. There is nothing in evidence before me to explain how it can be said that that claim is somehow conditional on the claimants proving fraud in this claim. It is difficult to conceptualise how Jatin can make a conditional positive claim of fraud in India where the condition is the claimants succeeding against him in these proceedings. For present purposes, these inconsistencies add to the overall sense that one has to adopt a cautious approach when considering Jatin's evidence and explanations.

235. Despite the WFO Jatin had not notified the claimants of any payments in respect of the legal costs of the Indian proceedings. In about August 2023 Withers explained that no legal fees had been paid to Jatin's Indian lawyers but that when fees were due, they would provide the necessary notification. No such notifications were made. On 4 November 2023 GL reconfirmed that the Family Defendants were complying with the notification provisions of the WFO, and that GL were instructed that no payments had been made to the Indian legal representatives. With the issue of Claim 1243 it appeared that Jatin was continuing to incur legal costs in India, but no notifications had been made. HL queried the position again on 12 December 2023 but received no response and no notifications, despite chasing GL three times.

236. On 2 February 2024, the same day on which the Family Defendants issued their RFI, and nearly 8 weeks after HL's letter of 12 December 2023, GL responded on the issue of the funding of the Indian proceedings ("**the 2 February letter**"). They reconfirmed that no payments had been made to the Indian legal representatives and so no notifications had been made. Further they maintained that all notifications required

under the WFO had been made and consequently there was no right to the information requested. They continued:

> "In the hope that a line can now be drawn under this matter, and without prejudice to the contention that your clients are not entitled to this information, we have been further instructed to confirm that since our second letter dated 4 November 2023 the First Defendant has obtained third party funding in respect of the Indian proceedings.
>
> As you will appreciate, the terms of the third-party litigation funding arrangement are confidential and commercially sensitive, and our client is under no obligation to disclose them to you. Having reviewed the terms of the third-party funding agreement, we consider that there is no basis on which it could be suggested that the arrangement falls within the scope of the notification provisions of the WFO; our clients have no control over monies advanced for the purposes of the Indian proceedings and there is no basis on which it could be said that such monies are our clients' "assets" as defined in paragraph 7 of the WFO."

237. This did not allay the claimants' concerns and in particular they had concerns about the nature and extent of the work that had been undertaken in relation to the Indian proceedings prior to the third-party funding agreement/arrangement ("**TPFA**") entered into sometime after 4 November 2023. HL responded on 6 February 2024 raising a number of queries in respect of the TPFA including seeking information about its terms ("**the 6 February letter**").

238. They found the idea that the Indian legal representatives had not been paid since May 2022 in circumstances where there had been no TPFA difficult to accept. They questioned how Jatin had been paying his Indian legal representatives prior to the WFO and if the payments stopped with the WFO whether the new third party funding was retrospective.

239. On 13 February 2024 GL reconfirmed their instructions that the Family Defendants had not made any payments to the Indian legal representatives in relation to the Indian proceedings since the WFO. They did not otherwise provide any further explanation or information about the TPFA.

240. Mr Dawid submitted that the Family Defendants had not hidden the existence of the Indian proceedings. He says that the claimants had not been concerned about the Indian proceedings and how they were funded until February 2024. It is right that the claimants did not chase the Family Defendants as frequently on this issue as they did on other issues. But they did keep questioning how the Indian proceedings were funded. The trigger for the application was quite obviously and understandably the discovery on 2 February 2024 that a TPFA had been put in place.

241. Mr Dawid argued that the trigger for the Indian Funding Application was the WIWA proceedings issued in about May 2023 and the concern that the claimants have about the bona fides and/or the potential impact of the WIWA proceedings on these claims. The claimants certainly had views about those Indian Proceedings which they had expressed to this court in July 2023. But there is nothing to support Mr Dawid's submission. Quite the opposite, it seems to me on the evidence and in any event that the more obvious, natural, and understandable trigger for the Indian Funding Application was the discovery, by the 2 February letter, that Jatin had entered into a

TPFA. The timing of the Indian Funding Application is entirely consistent with that discovery and the absence of any response to the 6 February letter.

242. The Indian Funding Application was issued on 1 March 2024 supported by Diss 8. In summary it sought information about the way in which the Indian proceedings had been funded before and after the TFPA and disclosure of information about the TPFA. The claimants sought details of the identity of the third-party, the bank accounts they used to pay for the Indian proceedings, and details of the amounts paid. From Jatin directly the claimants sought all his communications with the third party and between their respective agents, and all written agreements and documents evidencing the funding. By the additional disclosure application this disclosure was expanded to include Shouq Al Kathiri following the disclosure that they were being used as an intermediary in relation to the TPFA. It was a wide-ranging application underscored by the claimants' concerns about what they considered to be an opaqueness about the arrangements that had been put in place.

243. The Indian Funding Application is perhaps a misnomer. The Indian Funding Application and the additional disclosure application so far as it related to the Indian proceedings was not really about the TPFA itself but about whether the TPFA was a device to conceal assets. It might be that as a corollary of any disclosure it would become apparent that the effect of the TPFA was that Jatin had dissipated assets without obtaining permission. But the claimants were seeking further disclosure and information to try to ascertain whether Jatin had undisclosed assets. The obfuscation, and general resistance to providing clear unambiguous answers, the lack of clarity around the Ahli Receivables and the use of a third-party intermediary had all only fuelled their concerns that Jatin and/or the Family Defendants had something to hide. And whilst not accepted by the Family Defendants the apparently significant differential between the disclosed assets and the Family Defendants' reported wealth only added to the concerns.

244. Jatin's evidence in response to the Indian Funding Application provided on 10 May 2024 (so after the 6 February letter) was remarkably short, uninformative, and unsupported. In my view it failed to address what ought to have been obvious issues and understandably exacerbated the claimants' concerns about Jatin's asset disclosure.

245. Jatin explained that he had obtained litigation funding from an unidentified individual third-party funder on 10 November 2023. He confirmed that the terms of the funding agreement were "confidential and commercially sensitive." This was the same vague and unilluminating phrase used in the 2 February letter and repeated in Mr Felton's evidence. Jatin said that he had no control over the monies advanced by the third party and as a consequence they did not fall to be notified under the WFO (paragraph 10 and 11). He reconfirmed that he had made no payments for legal expenses for the Indian proceedings since the WFO (paragraph 12). This was a misunderstanding of the focus of the Indian Funding Application and perhaps also the extended definition of assets in the WFO.

246. Jatin explained that all payments from the third-party funder were routed through Shouq Al Kathiri directly to the Indian legal representatives. This was the first time that the claimants had been told this.

247. Thus, all payments and receipts whether from the Ahli Receivables or the TPFA were now being routed through a third-party intermediary, Shouq Al Kathiri, the effect of which was to obscure the ultimate source of those funds and/or remove any ability to interrogate/corroborate or check any information provided for the purposes of the WFO including the ability to verify what was said about the TPFA. There was no explanation about why it was necessary to route the payments under the TPFA through Shouq Al Kathiri. There was no explanation why the third-party funder could not make payments directly to the Indian legal representatives.

248. If as Jatin says, the third-party funder is a genuine third party there would, in principle, be no need to notify under the WFO and presumably no difficulties for that third party in making international payments. I say in principle because it would depend on the precise terms of the TPFA.

249. Jatin speculated about the effect of disclosure of the TPFA. It was not clear that he had any idea about the terms on which he had apparently entered into the TPFA. He said that he feared that the third-party individual might withdraw their support. Although he asserted the TPFA was confidential, he did not explain the nature of the confidentiality nor even if there was a confidentiality clause and if so what if any limitations it placed on his ability to disclose the TPFA. He did not explain whether there were provisions that entitled the third-party to terminate the TPFA if it was disclosed. He did not say whether he had any basis to suppose that the third-party might withdraw their support. He said that the third-party might have a legal right to terminate if he disclosed their identity but did not explain why that was. He did not say that he had spoken to the third-party funder about disclosure of the TPFA or the Indian Funding Application. He did not explain what their position was. One might have expected some evidence which included some understanding and clarity around the nature of the confidentiality provisions, the terms of the TPFA and the third-party funder's rights and attitude to disclosure to assist the court and the claimants to understand any legal or factual basis for the concerns he expressed.

250. He speculated that the TPFA might be subject to UAE law but did not explain why. He did not say that it had a law and jurisdiction clause. He did not seek to explain why that would make a difference. There was no (expert) evidence about what the effect of UAE law would be, if relevant, to the issues to be determined on the Indian Funding Application. He said that the third-party funder had not consented to disclosure, but he did not say that he had asked the third-party funder to consent or whether he needed to. As for the commercially sensitive nature of the TPFA he did not explain what about the TPFA could be commercially sensitive or whether he had asked the third-party funder whether they would consent to disclosure with or without a court order.

251. Jatin is an experienced and successful businessman. The flimsiness of his evidence and his apparent lack of knowledge about the terms on which he had entered into the TPFA or what the court or the claimants might reasonably want to know about it added to my concerns about the genuineness of the arrangements and the lack of evidence.

252. Jatin did offer to disclose the TPFA on a confidential lawyer only basis. Mr Dawid submitted that had the claimants agreed to the limited disclosure offered they would have the answers to some of the questions they had raised. This was not really an answer. And indeed, many of the queries were ones that Jatin could have addressed

either in correspondence or evidence but had failed to do so. Had he done so in a clear and transparent way, the application may not have been needed at all.

253. It appears that central to Jatin's resistance to disclosure of the TPFA is his belief that the claimants are seeking the information for the collateral purpose of stifling his claims in India. He believes that if information were disclosed it would reach Standard Chartered Bank amongst others, and/or it would cause his funder to withdraw. If that were a genuine concern it would be a reason to simply fund the claim from known and disclosed assets.

254. This underlying distrust on the part of the Family Defendants no doubt informs their approach to the claims, but it is not helpful. There is no evidence of any breach of the implied undertakings in these proceedings to suggest there is any basis for the concerns expressed by the Family Defendants or that any disclosure given would be shared with Standard Chartered Bank or others who would not be entitled to it in the course of this claim.

255. The claimants did not accept the offer of disclosure on a lawyer only basis and continue to reject such a limitation on disclosure. It is the claimants' position that such limited disclosure would not assist and that it was reasonable for the claimants' wider team to be able to review the TPFA. They had explained to GL that they would need to be able to take instructions and that disclosure was not merely about the ability to look at the provisions of the TPFA but to consider them in the wider context. Essentially the claimants wanted to be able to review the TPFA against what they already knew about the active defendants and the evidence already available to satisfy themselves that it was not simply a device being used to obscure undisclosed assets.

256. If Jatin considered that there was a genuine risk of stifling it was for him to evidence that risk. That evidence would also have to address a number of difficulties including: (i) some credible evidence that the third-party funder would withdraw and could withdraw from the TFPA if disclosure were ordered; (ii) Jatin's evidence is that he has pursued the Indian proceedings since at least May 2022 to November 2023 with no funding at all and without paying his Indian legal representatives. He does not explain why that arrangement could not have continued for the duration of the Indian proceedings, and (iii) he would have to explain why the Indian proceedings could not be funded through the use of disclosed assets and appropriate notification in the same way as these proceedings are funded. There is no such evidence.

257. Whilst Jatin has not disclosed that he is the beneficiary of any of the Ahli Receivables, he currently benefits from the proceeds of those loans which provide the Family Defendants' living expenses and the funding for these proceedings. Indeed, it was Jatin's own evidence that those assets were the source from which adverse costs orders were to be paid on behalf of the Family Defendants. But in any event the Ahli Receivables are not the only disclosed assets and not the only source of notified spending. According to Diss 6 the notifications and withdrawals from the Ahli Receivables amounted to only about half of the total sum notified by the Family Defendants in the first year of the WFO.

258. Jatin's concerns about the claimants may be genuinely held, but the resistance and/or delay in providing information only exacerbates the perception that he is not being

entirely straightforward about the funding for the Indian proceedings which adds to the suspicion about the genuineness of the arrangements and whether they are a device to hide information and or assets from the claimants.

259. Mr Felton's evidence about the TPFA was as follows:

> "… I confirm that [GL] have reviewed this, and have written to the Claimants to confirm that …: (i) the terms are confidential and commercially sensitive; and(ii) under the terms of the funding agreement, [Jatin] does not have any control over the monies advanced for the purposes of funding the Indian proceedings and therefore the payments are not [the Family Defendants] "assets" requiring notification under the WFO."

260. Mr Felton did not appear to have taken any steps beyond reading the agreement to satisfy himself that it was genuine and/or that the underlying source of the payments was not an asset of Jatin's. Like Jatin, he asserted that its terms were "confidential and commercially sensitive". Like Jatin he had not explained what he meant by that phrase. Neither he nor Jatin appear to have spoken to the third-party funder about whether and on what basis confidentiality needed to be maintained and or whether the TPFA could be disclosed on some basis. Like Jatin his evidence provided no evidence that there was in fact a confidentiality clause or the nature of its terms whether by way of a redacted version or otherwise. There was no evidence of why or what about it might be commercially sensitive nor whose commercially sensitive information it was.

261. On instructions during the hearing Mr Dawid was able to confirm that Mr Felton said there was in fact a confidentiality clause/provision but no more. There was no evidence about the nature of the confidentiality clause, whether it was absolute, or whether it contained the common type of exceptions that might permit it to be disclosed in say court proceedings or for regulatory purposes. The evidence was plainly inadequate and there were obvious gaps which neither Mr Felton nor Jatin had addressed at all.

262. It was for Jatin to provide evidence that there was in fact a confidentiality clause or a jurisdiction clause which might prevent or limit the court's power to order disclosure in this jurisdiction and/or a basis for maintaining confidentiality and refusing disclosure. Neither Mr Felton nor Jatin's evidence come close to addressing these points.

263. Mr Wilson accepted that if confidentiality were established it was a factor that the court would have to take into account in the exercise of its discretion, but it was not a bar to disclosure. See for example *Gee on Commercial Injunctions* (7th Ed) @ 23-011:

> "A disclosure order invades a defendant's privacy. Before judgment, a defendant is normally entitled to keep his financial affairs confidential. But this confidentiality may be overridden. Disclosure may be required if the information is relevant to the resolution of the issues in the case, or if it is needed to make Mareva relief effective. Confidentiality may have to give way to doing justice between the parties or to the advancement of the public interest."

264. Even if there was some evidential basis for arguing that disclosure of the TPFA might give rise to an offence in a foreign jurisdiction, and there was not, that would not prevent an order for disclosure either: see *Bank Mellat and Her Majesty's Treasury* [2019] EWCA Civ 449 Gross LJ at [61] to [63] and *Tugushev v Orlov* [2021] EWHC 1514 (Comm) at [33].

265. On the question of commercial sensitivity matters were even more opaque. There was no clue as to what might be commercially sensitive about the terms of the TPFA. Mr Dawid submitted that it might express views on the merits of the claim. That seemed to me to be highly unlikely (and would have been unconventional) but if that were the case firstly there should have been evidence in support of such a submission and secondly it would not prevent disclosure but might be a basis for redaction. But it did seem to me to be very unlikely indeed given that Jatin had offered to disclose the TPFA to the claimants' lawyers.

266. To add to the general unsatisfactory nature of Jatin's evidence about the funding of the Indian proceedings, Mr Felton exhibited correspondence dated 10 May 2024 from both Shouq Al Kathiri and SS Hora. SS Hora provided a client ledger in the name of Shouq Al Kathiri. Mr Felton records that SS Hora had confirmed that they had not received any payments from Jatin for legal fees since the WFO. Further that any payments had come from the third-party funder via Shouq Al Kathiri. It was not clear to me on the evidence available how either Mr Felton or SS Hora would in fact know that the payments had been made by a third-party if they are made through an intermediary. The payments to SS Hora would be received from Shouq Al Kathiri. Ms Shouq's letter of 10 May 2024 says that the payments Shouq Al Kathiri made to SS Hora have been received from the third-party funder not from Jatin but again that is not a complete answer to the question. There are a number of gaps.

267. On 7 June 2024 GL provided a letter dated 7 June 2024 from Vikram Sutaria in almost identical terms to that provided by SS Hora accompanied by a client ledger in the name of Shouq Al Kathiri. The phrasing and terms of part of both letters bear a marked resemblance to Jatin's witness statement dated 10 May 2024. The same points arise.

268. Both Mr Dawid and Mr Wilson sought to make sense of the ledgers provided by both SS Hora and Vikram Sutaria. However, without either an explanation and/or the rest of the ledgers (see below) there is a limit to the progress that anyone could make even if one assumes for present purposes that the Solicitors' Accounts Rules in India are similar to those in England & Wales.

269. It appears to me that the ledgers raise yet more questions about the arrangements around the funding of the Indian proceedings.

270. Both client ledgers identify the client as Shouq Al Kathiri. This highlights the lack of transparency and why Jatin's very limited evidence on the Indian Funding Application is not sufficient to satisfy me that he should not be asked to do better. There is no explanation for the provision of the Shouq Al Kathiri client ledgers by SS Hora and Vikram Sutaria.

271. Doing the best I can. The first obvious point is that there is one client account ledger for Shouq Al Kathiri for each of SS Hora and Vikram Sutaria. The TPFA is said to be dated 10 November 2023. SS Hora's ledger is said to cover the period 1 April 2022 to

1 May 2024, Vikram Sutaria's covers a similar period. It is not clear how there can be client ledgers for Shouq Al Kathiri which pre-date the TPFA and/or their involvement.

272. Given Jatin is the client it is surprising that there are not client ledgers for each client matter dating back to the inception of the Indian proceedings. It is not clear why there would only be one client ledger for up to four different claims even if in India it were possible to have Shouq Al Kathiri as the client.

273. In general terms whilst there might be a single payment from Shouq Al Kathiri one might conventionally have expected to see that single payment to the client ledger on one of Jatin's client matters with journal transfers to other Jatin client matters.

274. One might expect to see invoices raised to Jatin as client (even with the benefit of a TPFA) on each of those client matters with the payments made from the receipts from Shouq Al Kathiri. There is no explanation for the sales receipts and invoices being recorded on a single client ledger in the name of Shouq Al Kathiri. There are no office ledgers to cross check the journal transfers on the ledgers that have been provided and indeed very few journal transfers.

275. For the year from April 2022 the ledger shows an invoice covering the period 1 May 2022 to 31 May 2022 raised on 12 July 2022. That invoice remained outstanding at the end of the financial year and was carried over. This all pre-dates the TPFA and on the basis of the evidence the involvement of Shouq Al Kathiri. For the year from April 2023 the ledger shows invoices raised in January 2024 covering the period 1 August 2022 to 31 January 2024 for fees and an invoice in March 2024 for expenses. No funds were received before 30 January 2024. On the face of it therefore no funds were received into this ledger after the WFO and before the TPFA was entered into.

276. Two receipts in January and March 2024 reduced the indebtedness and part paid the first two invoices leaving a balance outstanding. This suggests that the TPFA might have retrospective effect but there is no evidence to explain that. Again, it raises questions about the nature of the funding and the terms of the TPFA. The details of the bank from which the funds were paid have been redacted. Mr Dawid suggested that the redactions related to SS Hora's bank account details. It is not immediately obvious to me that an entry intended to show the receipt into SS Hora's client ledger would be their own bank account details; more likely I would have expected it to show the source of the receipt. But there is no evidence to explain it either way.

277. In the financial year from April 2024 up to the date of the ledger two further invoices were issued; one for fees and one for expenses and two further payments were received but those were less than the total outstanding fees. As at 1 May 2024 on the basis of the ledger SS Hora still had outstanding fees and had not received any monies into the Shouq Al Kathiri client ledger prior to January 2024. The total sums passing through this ledger appear to be about £82,000.

278. The sums passing through Vikram Sutaria's client ledger were slightly larger: something around £110,000. The client ledger appeared to show a receipt in February 2022 prior to the WFO. It is not at all clear to me why that would feature on a client account ledger for Shouq Al Kathiri. There is no explanation or evidence.

279. The ledger does not provide details of invoices but rather records receipts and sales. Although sales are recorded after May 2022 no further receipts are recorded until 16 November 2023. The source of the receipts is redacted. It is unlikely to be Vikram Sutaria's bank details. There are however journal transfers which may represent funds moving between ledgers. The sales are said to be for Professional fees save for the largest one dated 17 November 2023. The nature of that sale is unknown as it has been redacted. That is odd if it is intended to represent payments of legal fees for the Indian proceedings even if it is to other legal representatives, such as, say, counsel. There is an entry of the same date said to be for cash. These two particular entries are not immediately obviously funding for the Indian proceedings, and one might have expected an explanation given it was bound to raise queries having been provided with a view to persuading the court that there was nothing to see.

280. None of this evidence was particularly helpful and as was to become apparent when Mr Dawid made some supplemental submissions after Mr Wilson's reply it was rather economical.

281. Mr Dawid submitted that when considering whether to order any disclosure and what was proportionate, just and convenient, the court should take into account that (i) the sums spent on the Indian proceedings are trifling by comparison to the money the Family Defendants can and have accessed and notified under the WFO and (ii) Jatin would be entitled to use his own assets to fund the Indian proceedings. He argued that it makes no sense to construct some elaborate scheme using the TPFA. There had been no notification because there had been no payments but in any event any failure to notify would only be a technical failure.

282. This seemed to me to be the answer to the wrong question and or to highlight exactly why some measure of disclosure was necessary.

283. The sums paid to the Indian legal representatives may be modest but that begs the question why Jatin had not just used his own assets and notified under the WFO. There is no explanation about the reason for seeking third-party funding rather than paying using disclosed assets. It is the very nature of the elaborate scheme, and the absence of any proper explanation for it, that provides credible material and evidence for the Indian Funding Application. Jatin could have used disclosed assets and notified under the WFO but has not done so but yet has notified the use of much greater sums of money on a regular basis. Despite the Indian Funding Application, he has not provided any coherent explanation or evidence about the Indian funding.

284. It is this juxtaposition coupled with the lack of transparency, and the resistance to providing any information and the inadequate evidence that raises concerns and creates the impression (the claimants would say suspicion) that something is being hidden from the court and the claimants.

285. The claimants seek disclosure because they are concerned that the sums being paid to the Indian legal representatives may represent the proceeds of an undisclosed or unidentified asset. They are concerned that the TPFA is a device being used to obscure Jatin's access to and use of those assets. As it turns out the TPFA may also represent evidence that Jatin has dissipated his assets (see below).

286. This is about the amount and value and extent of any underlying assets and not the modest amount that has apparently been paid to the Indian legal representatives so far. The WFO has a very wide definition of assets which would include any assets held or controlled by a third party which ultimately even if only indirectly Jatin had power to give directions about.

287. It may be that further evidence, and disclosure will demonstrate that the TPFA is genuine but on the evidence available it is a curious arrangement which does not appear to make sense and about which the claimants are entitled to know more. The additional submissions from Mr Dawid made that even more critical and made the existence of the TPFA even more inexplicable without further evidence.

288. During the course of the hearing Mr Wilson made submissions about what appeared to be the unusual nature of the TPFA noting that unless the third-party funder were a pure funder (or a generous benefactor) the third-party funder would usually expect a return on their investment and in addition would often require some form of security. He submitted that a TPFA which allowed for a commercial return and/or which had been secured against an asset of Jatin's was likely to have required specific notification or permission under the WFO.

289. I agree. Jatin places a very significant value on his claims. They are in principle disclosable valuable assets. Jatin considered that the claims had sufficient merit that he has been able to persuade a third-party to fund them. If the TPFA is genuine then the third-party funder must also have considered that the claims had some value. If Jatin has in some way diminished, dissipated or encumbered his assets it appears to me that would be likely to require at a minimum some form of notification.

290. An additional curiosity in respect of Jatin's TPFA is that on the evidence it appears there is only one TPFA for four sets of proceedings when one might have considered there would be different treatment or terms for each. Mr Dawid suggested it would make sense for a funder to fund the defence of the WIWA and Personal Insolvency Case to protect the claims. But there is no evidence about any of this and Mr Dawid's submissions did not even appear to be on instructions.

291. The position in relation to the terms of the TPFA changed after Mr Dawid's supplemental submissions following Mr Wilson's reply. Given the nature of those submissions and the potential issues that arose Mr Wilson indicated that the claimants would consider what action to take separately.

292. Mr Dawid confirmed on instructions that the TPFA did in fact have a provision by which the third-party funder was to receive a modest undisclosed share of the proceeds of the Indian proceedings. He argued that this should not come as a surprise as that was how funding worked. That of course was precisely the point that the claimants were making. It seems to me to be central to understanding the nature of the TPFA.

293. Mr Dawid argued that offering a funder a share of a future judgment debt was not dealing with a current asset. I do not agree. Subject to the precise terms of the TPFA it appears to me that Jatin may have given up, diminished or dissipated a valuable asset – his claims. And since the TPFA is said to provide for a modest return it must be the case that if genuine the third-party funder also considers that the claims are valuable – why else would a third-party who is not a pure funder, or a generous benefactor provide

funding. None of this has been addressed in any evidence at all. There was no explanation as to whether any security had been provided in support of the TPFA.

294. Mr Dawid's alternative argument was that it did not matter because if Jatin was found to be a fraudster, then the claims in India would fail and if he were not, the WFO would be discharged. This was not a particularly edifying submission but I assume this argument was on the basis that if the claims fail the TPFA will fall away but of course that still does depend on its precise terms and is another reason for it to be disclosed.

295. What is particularly bizarre about the funding of the Indian proceedings is that there has never been anything to stop Jatin pursuing those claims using notified assets. Even the Indian Funding Application is not about stopping him from pursuing his claims should he wish to but about protecting his assets pending the determination of this dispute.

296. Irrespective of the relevance of this late revelation to the Indian Funding Application itself, it reinforced yet further the need for some disclosure. It seemed clear that there could be little confidence in the evidence advanced on behalf of Jatin in relation to the Indian Funding Application.

Applicable Legal Principles:

297. It is an essential part of the Civil Procedure Rules that parties should comply with rules, practice directions and orders. The court has a broad inherent jurisdiction and discretion when seeking to police compliance with its own procedures. Ultimately whether and how to do so is an exercise of its discretion consistent with the overriding objective.

298. Here the court is considering compliance with the WFO and the associated asset disclosure. At its core, the approach is no different. The court is considering how to ensure that the WFO is effective, and the purpose of the claim is not defeated whilst at the same time seeking to manage the balance between the parties pending a final determination of the disputed issues. It is essentially a protective jurisdiction.

299. However, where the court is considering the provision of information and disclosure in relation to the WFO it also has a specific power to make an order under CPR25.1(1)(g) to require a party to provide information about property or assets including those which may but do not currently fall within the scope of a freezing order.

300. Popplewell J explained the importance of the jurisdiction in *Angola v Perfectbit Limited* [2018] 3 WLUK 76 at [8]:

> "The importance of disclosure in rendering freezing orders effective has often been emphasised. … Unless proper disclosure is given, it is impossible to police the freezing order, and if it cannot be policed, then fraudulent defendants are able to ignore the order and to breach it with impunity. Disclosure is, in almost all cases, essential in order to render effective a worldwide freezing order. The importance of disclosure is reinforced where a claimant has a proprietary claim and is seeking to recover specific sums or their traceable proceeds. Again, an order freezing such sums will be ineffective if the claimant cannot know what has happened to them. It is essential to the protection of the claimant's rights to pursue its proprietary claim that full disclosure is given of what has happened to the money so that the claimant may take steps to freeze the proceeds

and then to establish its right to recover those traceable proceeds. That is all part of the substantive claim which has to be adjudicated on in the proceedings."

301. In *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139 at [49] to [50] Lewison LJ considered the jurisdictional requirements for the exercise of the power in CPR 25.1 (1)(g) citing Gabriel Moss QC in *Parker v CS Structured Credit Fund Ltd* [2003] 1 WLR 1680 and Henderson J in *Lichter v Rubin* [2008] EWHC 450 (Ch) for the proposition that some credible material or evidence on which the application might be based would be sufficient to found an application.

302. Mr Dawid submitted that where a WFO had already been made, as here, the approach was different. He argued that CPR 25.1. (1) (g) was prospective and concerned with obtaining information about assets which a party may want to freeze, rather than an application made after a freezing injunction had been obtained and on the basis that there were grounds to believe there was a real risk that the injunction may have been broken.

303. Mr Dawid did accept that the court had a discretion to make orders for further disclosure or for the provision of information in support of and to police compliance with a WFO, so this submission did not appear to advance the Family Defendants' case.

304. Zacaroli J helpfully summarised the authorities setting out the scope of the jurisdiction to make orders for further disclosure or the provision of information in support of a WFO in *HMRC v Malde* [2020] EWHC 100 (Ch) at [26] to [32]

> "26. First, it is trite law that the court can make orders ancillary to a freezing injunction, for example for disclosure of information or documents, to ensure the freezing injunction is effective.
>
> 27. In *JSC BTA Bank v Ablyazov* [2011] EWHC 2664 (Comm), Christopher Clarke J described, at [47], the jurisdiction to order disclosure as "essentially protective: its purpose is to ensure that assets are not disposed of in (disguised) breach of the freezing order. The order may be made if it is just and convenient to make it in order to ensure that the injunction is effective." The purpose has been expressed, in numerous cases, as "policing" the injunction: see, for example, *PSJC Commercial Bank Privatbank v Kolomoisky* [2018] EWHC 482 (Ch), per Joanna Smith QC (as she then was) sitting as a deputy High Court judge, at [33], citing Steyn LJ in *Grupo Torras SA v Sheikh Fahad Mohammed Al-Sabah*, unreported, 1994.
>
> 28. Where, as here, a further disclosure order is sought subsequent to the date of the original freezing order, the reasons why an order may be justified, under the umbrella of "policing" the order, include:
>
> (1) So as to ensure that there are no *continuing* breaches of the order, as in *JSC BTA Bank v Ablyazov* [2014] EWHC 2788 (Comm), per Popplewell J at [53] to [54], where the purpose was

to ensure that the frozen funds were not being used to fund the legal fees of a party in breach of the order;

(2) Where there is an obvious discrepancy between assets which were at one time held by the defendant and the current assets disclosed in response to a freezing order, which might indicate a real possibility that there are further assets to which the freezing order may apply: *Public Institution for Social Security v Al Rajaan* [2020] EWHC 1498 (Comm), per Jacobs J at [25];

(3) Where further information might reveal that assets currently outside the scope of the freezing order ought to be included within it: *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139, at [58].

29. Hildyard J, in a subsequent decision in the *Pugachev* case ([2015] EWHC 1694 (Ch)), in the context of an application for further evidence in relation to a non-proprietary freezing order, said:

"As it seems to me, the court must be persuaded that there is practical utility in requiring such evidence and that it is necessary to enable the freezing order properly to be policed. It will be vigilant to prevent the abuse of seeking further evidence for some other purpose: such as to expose further inconsistencies, unduly pressurise a defendant who has already been cross-examined, yield ammunition for an application for contempt, or provide further material which might be of assistance, even if not actually deployed, in the main (foreign) proceedings."

30. At [23] of *Al Rajaan* (above), Jacobs J noted a debate between the parties as to whether the test was that further disclosure was "necessary", as in Hildyard J's formulation in *Pugachev* (above) or "just and convenient", as in Christopher Clarke J's formulation in *Ablyazov* (above). In reality I do not think there is a material difference between requiring the claimant (to quote the full sentence from Hildyard J's judgment) to establish a "practical utility" in requiring the evidence "necessary" to police an injunction, and a requirement that it is just and convenient to order the further evidence to ensure that the injunction is effective.

31. As Hildyard J noted in the paragraph from *Pugachev* set out above, the court will not order further evidence if the purpose of obtaining it is to establish past breaches of the order so as to found an application for contempt: see *Bhimji v Chatwan (No.2)* [1992] 1 WLR 1158, per Knox J at 1166 to 1169, citing *Bekhor v Bilton* [1981] QB 923. In that case, Stephenson LJ, at p.955 said:

> "Parker J. described the plaintiffs' application and his order for discovery as in aid or support of the Mareva injunction and so in a sense they were. But in so far as they relate to the defendant's assets at past dates as distinct from their present whereabouts their purpose seems to be not so much to help the court or the plaintiffs to locate and freeze particular assets now, as to open the way to incriminating and ultimately punishing the defendant for contempt of court in formerly disobeying the Mareva injunction and/or breaking his undertaking. This purpose emerges not only from the wide terms of the order but from the judge's comments at the end of his judgment. To that extent the order goes beyond the legitimate purpose of an order for discovery in aid of a Mareva injunction and Robert Goff J.'s order in A v. C and is not necessary for the proper and effective exercise of the Mareva injunction."
>
> 32. Second, while there is no particular threshold for a claimant to cross in order to obtain a disclosure order, at least where an order is sought subsequent to the making of the original order on the grounds that there was a concern that the defendant was committing breaches of it, there must in general be "grounds to believe that there is a real risk that the injunction may be being broken. Whether the order is in fact made is likely to depend on the strength of those grounds and the considerations which militate in favour and against making such an order": *Ablyazov* (above), per Christopher Clarke J at [47]."

305. Mr Dawid emphasised that the WFO was simply an order to prevent dissipation of assets pending determination of the claim, consequently the claimants had no greater claim over those assets than any other creditor. Whilst he accepted that in the case of a non-proprietary injunction, as here, the court had jurisdiction to permit disclosure if it was required to police the WFO (see *Malde*) he emphasised the formulation of the test for further disclosure in *Pugachev* as being *necessary* in order to make the freezing order more effective at [38] and that the court must be satisfied that the requirement for further evidence *is proportionate* at [40].

306. In *Jennington International v Assaubayev* [2010] EWHC 2351(Ch) at [58] Vos J said:

> "There is a fine line between a genuine scepticism about the veracity of asset disclosure and a refusal to accept the truth of any statements made by a mistrusted defendant. This case has epitomised that line. The claimants in this case have seemingly refused to accept the truth of anything the defendants have said, querying everything and demanding documents to support every point."

307. Mr Dawid argues that this is a case in which the claimants have refused to accept Jatin's evidence and are using the Alleged Fraud and the sham transactions as a bootstraps argument to justify seeking disclosure of the TPFA. He cautioned against a mini trial. However, whilst there may be a fine line between genuine scepticism and the refusal to

accept the truth of anything Jatin says, the problem in this case is that Jatin has not really said anything at all. Having been given ample opportunity to explain the TPFA, the unexplained and in many cases obvious gaps in the evidence coupled with the use of a Shouq Al Kathiri, appears to me to substantially cross the line allowing for genuine scepticism in this case.

308. Mr Dawid argued that disclosure should be limited to and go no further than information genuinely required to enable the claimants to take any necessary steps to preserve assets. I do not disagree with him. The question will be what that disclosure should be.

309. He distinguished this from the court's broader power to direct disclosure where there was a proprietary claim arguing that a disclosure application such as the Indian Funding Application could not and should not be used to enable the claimants to undertake a tracing exercise. Further that such an application could not be used to seek further information in relation to past breaches or to bolster and application for contempt. These did not appear to be controversial statements in the abstract, but their application can sometimes be more difficult.

310. As Mr Wilson noted one can only seek disclosure of documents and information that already exist whether they are about past, present or future events. Mr Dawid's argument that the disclosure should only be forward looking seemed to me to present some difficulties. Where the disclosure sought is reasonably necessary to investigate and locate undisclosed assets it will overlap. The purpose of the disclosure may be to identify assets and police compliance with the WFO but in providing that disclosure it may uncover as an adjunct past failings which may amount to breaches. Indeed, one can already see the risk for the Family Defendants in this claim with the 27 March disclosure apparently identifying a previously undisclosed loan, and the TPFA appearing to have provided for a return on the investment which may raise issues about dissipation. In neither case does that mean that some measure of disclosure should not be ordered if there is a "*practical utility" in requiring the evidence "necessary" to police an injunction*", or "*that it is just and convenient to order the further evidence to ensure that the injunction is effective*".

311. Mr Dawid drew my attention to *Abu Dhabi Commercial Bank PJSC v Shetty* [2021] EWHC 1532 (Comm) in which Butcher J declined to order the defendant to provide further disclosure because it was *"not necessary… for the purposes of policing the freezing order"* (para. [9]). He *"consider[ed] there may well be an element of the Claimant's looking to bolster its case as to the substantive merits … or at least to put [the Defendant] under pressure at this stage"*.

312. He submitted that the approach in *JSC Commercial Bank Privatbank v Kolomoisky* [2021] EWHC 403 (Ch), in which Trower J considered the adequacy of the initial asset disclosure given by the defendant including the disclosure of "*claims against third parties described variously as a debt or a chose in action"*, including a contractual right to receive "*the lesser value of 50,000 Bitcoin or USD 1bn"* in the context of an application for cross examination provided useful guidance. He directed me in particular to [88] and [60] and then [100] to [101] on the scope of any disclosure. However, *Kolomoisky* concerned the adequacy and extent of the initial information to

which the applicant was entitled as part of the respondent's initial asset disclosure following the making of a freezing order. Indeed, a similar concern arose in this claim.[6]

313. However, if the court is satisfied that there is credible evidence or material that there is a real risk that undisclosed assets may be being used in breach of the WFO an order for disclosure may be justified. It may be reasonably necessary and have practical utility, or it may be just and convenient. But in any case, where the court is satisfied that an order for further disclosure is justified for the purpose of policing compliance with the WFO it should be carefully calibrated in its scope and no wider that the court considers reasonably necessary. Trower J's criticism of the wide-ranging requests for disclosure in *Kolomoisky* simply emphasises the need for the court to view the requests for further information with a critical eye.

314. I keep in mind (i) that any order would be an order for provision of information only and does not of itself prevent someone from dealing with assets, unless of course they properly fall within the scope of any freezing injunction and (ii) that the court has jurisdiction to order disclosure where there is a 'real risk' that assets are being used contrary to the terms of a WFO, or to enable the claimant to identify the true nature of the defendant's interest in such assets, and to allow the claimant to decide whether or not further steps should be taken to protect its position: see for example *Allergy Therapeutics (UK) Limited v Patel* [2019] EWHC 2526 (Comm) at [29]. The issues around the funding of the Indian proceedings and the nature of the evidence seem to me to meet the "real risk" threshold.

315. Further that the jurisdiction can extend to the disclosure and information about payments made for a defendant's benefit by an alleged third-party funder if these fall within the extended definition of assets which includes third parties (as here) and thus may fall within the scope of the terms of the WFO. See for example *JSC BTA Bank v Ablyazov (No10)* [2015] UKSC 64.

316. In *Tonstate Group Limited v Wojakovski* [2021] EWHC 1122 (Ch) Zacaroli J considered an application to require Mr Wojakovski to disclose information and documents relating to the funding of solicitors acting for him in other proceedings. Zacaroli J distinguished *Ablyazov* on the basis that he was satisfied on the evidence that Mr Wojakovski had no entitlement to direct the funds being used to pay his legal representatives at [95] to [96]:

> 95. In the present case, Mr Wojakovski has no entitlement to direct that the funds be used for any purpose at all. He could not, for example, direct that they be paid to him or to anybody else. Mr Fulton accepted that if the solicitors' retainer was terminated leaving a surplus in the funds held on account, then the funds would be returned to the relevant third-party funder. Insofar as the funds were to be used to discharge the solicitors' fees, that was not at the direction of Mr Wojakovski, but was at the direction of the third party who provided the funds: the funds had been provided for that sole purpose.

[6] [2022] EWHC 1810 (Ch) at [26] to [32]

> 96. I reject the submission that because the solicitors would only do work, and thus incur an entitlement to payment, if Mr Wojakovski instructed them to do work, that was sufficient to demonstrate that the funds were held, even indirectly, in accordance with his instructions. That conflates Mr Wojakovski's ability to direct what work his solicitors carry out with the ability to direct to what use the funds are to be put.

317. Although Mr Dawid sought to rely on these paragraphs it did not appear to me that assisted him given the paucity of evidence from Jatin about the arrangements with the third-party funder and the Indian legal representatives and its shortcomings as set out above.

318. Zacaroli J then considered whether to order further disclosure in that context:

> 102. The court has a discretion to order further disclosure, whether from a respondent to a freezing order or a third party such as the respondent's solicitor, if it is just and convenient to do so in order to ensure the effectiveness of the order: see *JSC BTA Bank v Solodchenko (No.3)* [2011] EWHC 2163 (Ch), per Henderson J at [26]. At [38], Henderson J set out six considerations to be taken into account. Those included, where disclosure was sought from a solicitor, the importance of confidentiality and legal professional privilege. That is of less relevance here, however, where the order sought against Mr Wojakovski is for details relating to payments made by third party funders (as to which no legal professional privilege attaches) and the orders sought against the solicitors merely mirror that which is to be ordered against Mr Wojakovski.
>
> 103. The essential reason for seeking further disclosure is in order to ensure that none of the monies being used to fund Mr Wojakovski's solicitors are in fact subject to the WFO or are the proceeds of monies wrongfully extracted from the Tonstate group of companies, over which the applicants have a proprietary injunction (dated 16 January 2020).

319. The claimants say that as in *Tonstate* the purpose of the disclosure is to ensure that none of the monies being used to fund the Indian proceedings are in fact subject to the WFO or are the proceeds of the Alleged Fraud.

320. Zacaroli J identified particular concerns about Mr Wojakovski's position including a lack of frankness about funding and the source of monies used by him in the past. He concluded:

> 111. It is of course possible, as Mr Wojakovski adamantly maintained, that his legal fees are being funded by friends concerned to ensure that he is afforded access to justice in relation to the ongoing disputes with the applicants and with his trustee in bankruptcy. That is not something that I could resolve on this application, however. Provided that I am satisfied, as I

> am, that the various matters to which Mr Fulton has referred give rise to a real risk that the ongoing funding of his legal expenses may be in breach of the WFO or the proprietary injunction, then I consider that on the facts of this case it is just and convenient to make the orders sought.

321. Jatin has expressed concern that if he is ordered to give disclosure of the TPFA his funder might withdraw funding. However, a similar argument was advanced by Mr Wojakovski who argued that his funders would be subject of "*aggressive and oppressive conduct from the applicants*", where it was said that the applicants had "*adopted a strikingly aggressive stance*" designed to establish that two third party firms of solicitors were in contempt of court. Zacaroli J nonetheless concluded:

> "I do not think, however, that when set against the factors identified above, this disentitles the applicants from obtaining the orders sought in order effectively to police the WFO and the proprietary injunction of 16 January 2020."

322. Whilst all parties are taking an active and robust approach to this claim, there is simply no evidence of similar conduct by the claimants in these proceedings. It certainly does not provide any additional basis for rejecting the Indian Funding Application.

Conclusions

323. Drawing the threads together. I have set out in some detail the background to the Disclosure Applications and Jatin's evidence and identified what appear to me to be significant shortcomings in it. I do not repeat the detail I have set out earlier in this judgment but it all comes back into account.

324. The flimsiness of that evidence and its inadequacies raise numerous concerns about the way in which Jatin has approached and funded the Indian proceedings and the reason for the use of Shouq Al Kathiri.

325. As I have set out above the evidence and explanations advanced by Jatin are limited, not entirely consistent and raise more questions than they answer. That is particularly so given the quality of evidence about the TPFA itself and the apparent misunderstanding that the claimants' real concern was that it was just a device to obscure a source of funds/other assets.

326. The court is entitled to have genuine scepticism about the "elaborate scheme" including the routing of the funding through Shouq Al Kathiri without any explanation. That is particularly so given that, as Mr Dawid submitted, there was no reason for the elaborate scheme at all. Jatin could just have notified which assets he wanted to use to fund the Indian proceedings or he could have been much more straightforward about the Indian funding. He has provided no evidence to explain why he did not or what difficulties he considered this would cause.

327. Everything about the TPFA is unexplained and does not make sense. This includes the failure to tell the claimants about it until the 2 February letter, and the failure to engage with the queries raised by the 6 February letter. As it turned out some of the claimants' speculation about the terms of the TPFA turned out to be true. It is hardly therefore a

criticism to be levelled at the claimants that they asked questions, sought information, and then issued the Indian Funding Application. It is a consequence of the failure to engage properly with the requests for information and the shortcomings in the evidence advanced by Jatin.

328. Added to this is the information provided by Shouq Al Kathiri, SS Hora and Vikram Sutaria. Mr Dawid sought to argue that the claimants were inappropriately seeking to impugn the honesty of SS Hora, Vikram Sutaria or indeed Shouq Al Kathiri. Mr Wilson was clear that he was not seeking to impugn the honesty of the Indian and UAE lawyers but simply that the evidence available lacked transparency and there was limited visibility. I agree. I do not know what the Indian and UAE lawyers were asked to do when they provided the correspondence and ledgers but its limitations provide further concerns about the lack of engagement and evidence from Jatin.

329. I keep in mind the evidence of Vishal in relation to the Ahli Receivables that contractual documents do not mean what they say and cannot be relied on. It provides a reason to be cautious about the TPFA. I also take into account that the Alleged Fraud itself involves a complex multi-layered structure involving alleged sham transactions. If the claimants are right, then some elaborate scheme to hide either Jatin's assets or the proceeds of the Alleged Fraud cannot be discounted. The apparent discrepancy in the wealth of the Family Defendants as against the asset disclosure can only add to the sense of caution against which to assess the evidence from Jatin.

330. Whilst there is a risk that any disclosure might as a corollary identify past breaches that does not preclude disclosure and would not be the purpose of the disclosure. There are existing mechanisms in place which Jatin can avail himself of should he need to.

331. The ephemeral and changing nature of Jatin and the Family Defendants' evidence was so limited and inadequate that I could not identify any credible evidence that the disclosure of information in relation to the Indian Funding or even the Ahil Receivables would prejudice Jatin or the Family Defendants.

332. I am satisfied that on the evidence available there are grounds to believe that there is a real risk that the TPFA and the scheme for funding the Indian proceedings may be a device which is being used to obscure a source of funds available to Jatin. There is a "*practical utility" in requiring the evidence "necessary" to police an injunction*", and "*it is just and convenient to order the further evidence to ensure that the injunction is effective*".

333. The final issue to consider is the nature and extent of that the disclosure. It is here that I consider that the claimants have substantially overreached. The disclosure sought in the Indian Funding Application and the additional disclosure application so far as it related to the TPFA seemed to me to exceed what might be necessary or just and convenient simply to police the WFO. As the authorities make clear this is not an opportunity to fish widely for information both historic and current. There is certainly a sense in which the draft order is an exercise of trawling or dredging rather than even fishing.

334. The claimants are concerned that at the end of the funding rainbow they will find current and present, undisclosed assets or the proceeds of the Alleged Fraud that are the source of the funds being used to fund the Indian proceedings. It is not the TPFA itself that is

said to be an asset, but it may be a route through. They believe the TPFA and the use of Shouq Al Kathiri are part of an elaborate scheme or device to enable the Family Defendants to circumvent the WFO and access undisclosed assets. That it is being used to hide or obscure those assets from the claimants and the WFO. As I set out above it seems to me that there is credible material on which to base such a concern.

335. However, any disclosure needs to be carefully calibrated keeping well in mind the purpose of the disclosure and no broader than is reasonably necessary. But I am satisfied it is appropriate to permit some limited disclosure at this stage to enable the issue to be investigated.

336. The claimants seek a wide range of information that pre-supposes that Jatin has some means of accessing and producing bank account details and details of payments made to his various legal representatives and third parties. I also keep in mind that if it turns out that the TPFA is genuine then the majority of that information being sought would not be Jatin's to disclose and nor would it need to be disclosed.

337. It seems to me therefore that in ensuring the disclosure sought is properly calibrated I need to limit the extent of it at this stage. It may be that this will not be the end of the information or disclosure since the approach will need to be iterative. But there will come a point when enough is enough and the claimants should not seek to stretch the boundaries of what is required or necessary to enable them to police the WFO.

338. Whilst the court has a discretion to order further disclosure which is not limited to the respondents to the WFO and could include third parties such as their legal representatives, if it considers it is just and convenient to do so in order to ensure the effectiveness of the WFO (see for example Henderson J in *JSC BTA Bank v Solodchenko* No 3 [2011] EWHC 2163 (Ch) and Zacaroli J in *Tonstate*), as Mr Dawid reminds me the WFO has limited reach against anyone outside the jurisdiction unless and until it has been declared enforceable in another jurisdiction. He reminds me that it is not binding on the third-party funder or Shouq Al Kathiri or indeed the Indian legal representatives. Further he says that nothing in the WFO would prevent the third-party funder from complying with any extra jurisdictional contractual obligations.

339. Although the claimants had sought to frame the disclosure they were seeking as disclosure from Jatin or the Family Defendants, in reality they were seeking disclosure from third parties who are based out of the jurisdiction. The requests for disclosure will need to be considered against that background.

340. In respect of the Indian Funding Application, Jatin should provide an affidavit with the information sought in paragraph 1.1 – how he has funded the Indian proceedings. If Jatin considers that the TPFA is an entirely legitimate and genuine commercial business arrangement he may want to include additional evidence in his affidavit to seek to assist the court and the claimants to understand that.

341. I am not prepared to direct disclosure in the form sought in paragraphs 1.2 to 1.4. This seems to me to be unreasonably wide, certainly at this stage. I will direct that Jatin's affidavit should include details of any amounts paid, the dates and the source of payments made by Jatin in respect of the Indian proceedings which will include any he has routed through Shouq Al Kathiri. If he says there are none he should say so.

342. So far as paragraph 2 is concerned the TPFA should be disclosed. It should be disclosed in an unredacted form save to the extent that it includes for example a commercial assessment of the merits of the underlying claims. However, it does seem to me that the balance between the parties is to provide some limitation on who may see it. The group should include the claimants' English legal team, the JLs, and a limited number of identified individuals, beyond the English legal team, who would have to be in a position to provide appropriate undertakings to the court which could be enforced. Consideration should be given to whom the JLs consider essential having regard to the indications I have given and ensure that any group is the minimum necessary. This will have to be dealt with by way of a confidentiality club if there is in fact a confidentiality clause in the TPFA.

343. There should in addition be disclosure of any other funding agreements which Jatin has entered into in respect of the Indian proceedings which can be disclosed on the same terms.

344. I am not persuaded that pending disclosure of the TPFA and any equivalent agreements there should be any broader general further disclosure around the TPFA at this stage.

345. However, it does seem to me that there should be further disclosure about the costs and expenses of the Indian proceedings given the issues that the information provided to date appears to identify. Again I consider that an iterative approach is helpful.

346. I would direct that Jatin:

i) procure from SS Hora and Vikram Sutaria an explanation of the redactions on the Shouq Al Kathiri ledgers as referred to in this judgment.

ii) ask for copies of his client ledgers for each of the Indian proceedings from each of the Indian legal representatives. By that I mean the client ledgers going back to the inception of the claims that are in his name and if there are none, he will need to provide an explanation in his evidence. If it is considered that some redaction is necessary, no doubt that can be explained in Jatin's affidavit.

iii) It is possible some payments may have been made directly to an office account in relation to any of the client matters. If such direct office account payments have been made, Jatin should seek copies of those ledgers on the same basis which can also be appropriately redacted provided he includes an explanation in his affidavit.

347. This is not onerous and is information which Jatin ought to be entitled to as the client. If there are any discrepancies, he should seek to explain them in his affidavit which may reduce the extent of any further queries.

348. The wording of paragraphs 3 and 4 of the additional disclosure application may need to be considered further at the hearing. I am concerned that the effect of the order is far too broad and that it is in effect seeking disclosure from Shouq Al Kathiri who are based in the UAE albeit under the guise of an order against the Family Defendants. It seems to me that a formula similar to the one I have adopted in relation to the Indian proceedings may be appropriate. A starting point might be an affidavit from Jatin and/or another of the Family Defendants, setting out all payments made by Shouq Al Kathiri

on behalf of the Family Defendants and each of them since the WFO or her appointment whichever is the later, and the source of the funds for those payments if not already notified. The Family Defendants should also ask Ms Shouq to provide them with a copy of a client account ledger for the Family Defendants and each of them since the WFO/the appointment of Shouq Al Kathiri if later. Again, if it is considered that some redaction is necessary, no doubt that can be explained in the affidavit.

349. The active defendants would be well advised to carefully consider any reasonable request for further information. I remind them of the extended definition of assets within the WFO.

350. I would invite the parties to seek to agree the form of an order to reflect my indications as to the extent of the disclosure I consider should be provided. I will hear any further submissions on the precise terms at the hand down hearing on 25 October 2024.