Neutral Citation Number: [2020] EWHC 1498 (Comm)

Case No: CL-2019-000118

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/06/2020

Before :

MR JUSTICE JACOBS

- -

Between :

THE PUBLIC INSTITUTION FOR SOCIAL SECURITY	**Claimant/ Applicant**
- and -	
(1) FAHAD MAZIAD RAJAAN AL RAJAAN & OTHERS	**First Defendant/ Respondent**

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Michael Lazarus and Christopher Burdin (instructed by **Stewarts Law LLP**) for the **Claimant**
Tom Weisselberg QC and Kendrah (instructed by **Mishcon de Reya LLP**) for the **First Defendant**

Hearing dates: 3rd and 4th June 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 9th June 2020 at 11:30am.

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MR JUSTICE JACOBS

Mr. Justice Jacobs :

A: Introduction: the application

1. The Claimant ("PIFSS") applies for disclosure of further information by the First Defendant ("Mr. Al Rajaan") arising from a worldwide freezing injunction ("WFO") granted on 16 October 2019. The background to the present proceedings, which is well-known to the parties, is set out in my judgment on that application: see [2019] EWHC 2886 (Comm).

2. In summary, PIFSS operates the State of Kuwait's social security and pension scheme. Mr. Al Rajaan was its former Director General from 1984 to 2014. The claim in these proceedings is for relief in respect of alleged unlawful payments by various financial institutions and intermediaries of unauthorised secret commissions procured by Mr. Al Rajaan. PIFSS alleges that these secret commissions were paid over a period of approximately 20 years, between 1995 and around 2015. The amount of money paid is presently unknown but believed to exceed around US$ 840 million, of which it is alleged that Mr. Al Rajaan personally or via nominees received around US$ 513 million. The amount frozen by the freezing injunction is US$ 847 million, which encompasses the totality of the commissions allegedly paid both to Mr. Al Rajaan and others.

3. When a worldwide freezing order is made, it is typically the case that an order will be made for disclosure of assets, on the basis that this is necessary in order to enable the injunction to be made effective. Such an order was made in the present case. Paragraph 7 of the WFO therefore required Mr. Al Rajaan "to the best of his ability" to swear an affidavit setting out all his assets which were subject to the WFO as follows:

> "… the Respondent must inform the Applicant's solicitors of all assets exceeding £ 50,000 in value whether in his own name or not and whether solely or jointly owned and whether the Respondent is interested in them legally, beneficially or otherwise, giving the value, location and details of all such assets."

4. At the time that this order was made in October 2019, PIFSS was also seeking a far-reaching further disclosure order, as set out in paragraph 9 (a) (ii) of the draft order which was then before the court. The application was for information relating to the monies which Mr. Al Rajaan had received over the relevant period of approximately 30 years from 1984 to 2015, for the purpose of enabling PIFSS to trace those monies or their proceeds. The underlying basis of the application was that PIFSS claimed a proprietary interest in the monies paid to Mr. Al Rajaan. At the October 2019 hearing, it was conceded by Mr. Weisselberg QC, on behalf Mr. Al Rajaan, that PIFSS' evidence was sufficient to give rise to a serious issue to be tried in that connection: see paragraph [76] of my judgment. I held (see [77]) that it was appropriate for there to be relief which supported the proprietary claim, but that the extent of the relief – including the extent of asset disclosure – gave rise to discretionary considerations to be addressed after further submissions.

5. In the course of argument following judgment, I expressed a concern as to the tracing exercise contemplated by the order sought. It was not an application to trace money

which had recently gone missing, but extended over a 30 year period which ended some 4 years prior to the application. Mr. Ritchie QC, who appeared for PIFSS on that application, submitted that his clients were concerned to make the litigation effective: the primary purpose of the disclosure order was to ensure that there will be effective recoveries. In his submissions in response, Mr. Weisselberg (who appears for Mr. Al Rajaan on the present application as well) submitted that it would be better to wait for: (i) the asset disclosure which had been ordered in relation to the freezing injunction, and (ii) the case management conference which would happen in due course. In his reply, Mr. Ritchie indicated that a proportionate or pragmatic approach would be for his clients and the court to reconsider the wider application in the light of whatever was disclosed pursuant to the disclosure in support of the freezing order. In short, the need for further orders in support of the proprietary claim would be informed by the extent of the disclosure of current assets that was provided by Mr. Al Rajaan. As Mr. Ritchie submitted:

> "… if Mr. Al Rajaan gives the disclosure that we would expect him to give and discloses many hundreds of millions under 7, then it may cast the necessity of 9A (2) into a different light".

6. In the light of these submissions, I decided that the appropriate course was to adjourn the application under paragraph 9 (a) (ii) for wider disclosure pending provision of the disclosure ordered under paragraph 7, although I indicated that an order for wider disclosure in support of a proprietary claim would in principle be available. Paragraph 9 of the order made therefore provided:

> "The Applicant's application for the relief set out at paragraph 9 (a)(ii) of the draft order at tab 6b of the hearing bundle both in relation to the schemes identified in the Consolidated Particulars of Claim and any further schemes identified in the Respondent's affidavit served pursuant to paragraph 8 is adjourned with permission to restore."

7. The date for provision of Mr. Al Rajaan's disclosure affidavit (pursuant to paragraph 7 of the order) was 13 November 2019. Mr. Al Rajaan served that Affidavit ("FAR 1") on that day.

8. Following receipt, Stewarts on behalf of PIFSS wrote a detailed letter dated 11 December 2019. They said that the picture that emerges is a 'marshalling by your client of (in most cases) a more up-to-date picture of some of the assets which PIFSS was already aware of through information within the Swiss Mutual Legal Assistance material and the Swiss Domestic Material'. A specific issue raised on the first page of the letter (and which is central to the application now pursued) is that there was a 'remarkable disconnect' between the assets personally received over a 20 year period (exceeding US$ 440 million), and the assets disclosed (likely less than US$ 200 million). Lifestyle spending could not account for that differential 'particularly given the likely investment and inflationary returns on investments and real estate since receipt'. A large number of detailed points were also made as to the disclosure provided.

9. On 13 December 2019, Mishcon de Reya ("Mishcons") on behalf of Mr. Al Rajaan said that they were unable to obtain detailed instructions on Stewart's letter, since Mr. Al Rajaan's health was 'precarious'. At around that time, Mr. Al Rajaan had been receiving hospital treatment for a serious condition. On 15 January 2020, Mishcons wrote to advise that their client's health had improved sufficiently to allow them to take instructions on the 11 December letter. On 31 January 2020, a detailed response was provided. In response to the argument as to the disconnect between Mr. Al Rajaan's receipts and the assets shown, Mishcons said that it was a non sequitur to suggest that these figures should tally, and that Mr. Al Rajaan's position in relation to the commissions allegedly received was reserved. The whereabouts of monies received by Mr. Al Rajaan was 'an entirely separate question to the question of our client's current asset position. Your insistence that the two should marry up is misconceived and plainly wrong'. At the conclusion of the letter, Mishcons said that as a result of further enquiries, Mr. Al Rajaan would file a corrective affidavit in relation to three matters.

10. At the time of this correspondence, Mr. Al Rajaan was in the process of preparing to serve his defence in the action. A lengthy defence was served on 28 February 2020. Very shortly afterwards, and without (as Mr. Weisselberg submitted) giving Mr. Al Rajaan any 'respite' following service of his defence, PIFSS made the present application for further disclosure and related relief. The application was served on 13 March 2020, and was supported by an Affidavit of Mr. Nicholas Haworth, a partner in Stewarts. On 20 March, I gave directions for the hearing of the application together with some ancillary orders. Shortly thereafter, Mr. Al Rajaan provided his second witness statement ("FAR 2"). This constituted, essentially, the 'corrective Affidavit' foreshadowed in Mishcons' letter of 31 January.

11. Mr. Al Rajaan's evidence in response to the application comprised his third witness statement ("FAR 3") dated 4 May 2020 together with the 5th witness statement of Ms. Kathryn Garbett, a partner at Mishcons.

12. Mr. Al Rajaan's third witness statement described his historic lifestyle expenditure, essentially by way of a response to PIFSS' argument as to the disconnect between the sums received by him and the US$ 183 million of assets which have been disclosed. The witness statement describes an extraordinarily lavish lifestyle, involving expenditure estimated at US$ 210- 214 million over a 30 year period, on a conservative basis. This equates to around US$ 7 million per annum, mostly comprising living expenses (including charitable donations) but encompassing to some degree the purchase of properties for the children of Mr. Al Rajaan and his wife.

13. Ms. Garbett's witness statement responded to much of the detail in Mr. Haworth's Affidavit. In paragraphs 146 – 151, she addressed the likely cost of the 'complete tracing exercise' contemplated by the orders then sought by PIFSS, the difficulties likely to be encountered in carrying out that exercise, and the likely unproductive nature of what was contemplated.

14. Mr. Haworth served a responsive witness statement on 21 May 2020. At that time, PIFSS' application was substantially modified and reduced, as is apparent from a document (at Bundle B/ Tab 2C) showing in 'track changes' the amendments to the original order. It is apparent that some of these modifications were the result of the points made by Ms. Garbett as to the cost and proportionality of the tracing exercise required by the original application. Other modifications reflected, on PIFSS' case, the

fact that PIFSS had received some of the information that they had been seeking through materials provided subsequent to the application, including Ms. Garbett's lengthy witness statement itself.

15. There is a dispute as to the extent to which some or all of these modifications can be justified by this reasoning: Mr. Al Rajaan contends that modifications have been made because the application in those respects was never justified in the first place. For present purposes, however, it is not necessary for me to address this debate as to the history of applications which are no longer pursued. These may or may not be relevant to later issues as to the costs of the present application. My focus in this judgment is necessarily on the applications which are pursued, as to which there was some further narrowing subsequent to 21 May.

16. The upshot is that PIFSS now seeks the following relief:

    a) Disclosure to assist PIFSS to trace the proceeds of the alleged secret commissions. This application is made by way of restoration of PIFSS' original application for proprietary disclosure, which was adjourned by paragraph 9 of the WFO. This part of the application is also pursued on the basis that there are substantial grounds to believe that Mr. Al Rajaan's asset disclosure is incomplete.

    b) Further disclosure concerning two alleged trusts for the alleged benefit of Mr. Al Rajaan's children ("the Myrose Trust" and "the Dukesmews Trust" or "Myrose" and "Dukesmews"), referred to in Mr. Al Rajaan's evidence but in respect of which he has provided only limited information.

    c) Further disclosure concerning assets that Mr. Al Rajaan had not fully disclosed in his original disclosure Affidavit (FAR 1) served in November 2019. This category has significantly narrowed after the issue of the application in March 2020, principally (on PIFSS' case) in light of subsequent disclosures and explanations provided in Mr. Al Rajaan's subsequent witness statements (FAR2 and FAR3) and Ms. Garbett's 5th witness statement.

    d) Variation of the WFO to include expressly assets that Mr. Al Rajaan has disclosed so far.

17. An application for permission to use information for purposes other than the present proceedings is not, at the present time, pursued.

B: Legal Principles

18. A useful starting point is the decision of Popplewell J. in *Angola v Perfectbit Ltd* [2018] 3 WLUK 76, paragraph [8]:

> "The importance of disclosure in rendering freezing orders effective has often been emphasised. See, for example, what was described by Steyn LJ, as he then was, in *Grupo Torras S.A v Al Sabah [2014] 2 CLC 636* as a seminal article of Mr Lawrence

> Collins as he then was at 105 LQR [1989] 262 and what Waller LJ said in *Motorola Credit Corporation v Uzan [2002] C.P. Rep 69* at paragraph 29. 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. Those are considerations which apply with full force in the current case, in which Angola has established a strong prima facie case that these defendants have perpetrated a large scale fraud, and that there is a real risk of dissipation of their own assets as well as a risk of dissipation of the assets to which Angola has a proprietary claim."

19. This does not mean that the court will always require, via injunctive relief prior to determination of the parties' rights at trial, an extensive disclosure exercise whenever a proprietary claim is made. Questions of proportionality will always arise, as is clear from the case-law which was summarised in *BDW Trading Ltd. v Fitzpatrick* [2015] EWHC 3490 (Ch), paragraphs [49] – [55]. In *Arab Monetary Fund v Hashim (No.5)* [1992] 2 All ER 911, Hoffmann J. said that the plaintiff must demonstrate a real prospect that the information may lead to the location or preservation of assets to which he is making a proprietary claim. He also said that the potential advantage of the order to the plaintiff in that case (AMF) 'must be balanced against the detriment to the person against whom the order was sought, not merely in terms of cost … but by way of invasion of privacy and requiring breach of obligations of confidence to others'.

20. Such a balancing exercise may more readily come down against disclosure in a case where an application is made for a disclosure exercise to be carried out by an innocent third party (as in *Hashim*) than when it is made against an alleged wrongdoer. But Mr. Lazarus on behalf of PIFSS did not dispute that issues of proportionality will arise in the latter context as well. Rightly, in my view, he accepted that the court would be very reluctant indeed to require an alleged wrongdoer, prior to trial, to carry out a tracing exercise which might require the involvement of a large team of forensic accountants and cost £ 10 million. The need for a proportionate approach, even in a case where a proprietary claim is made, is reflected in the narrowing of PIFSS' present application when compared both to the application which was considered last October, and when compared to the application as originally formulated in March 2020.

21. In the present case, I have already decided that there is a serious issue to be tried in relation to PIFSS' proprietary claim: see paragraph [76] of my October 2019 judgment.

I rejected the argument that PIFSS' case, that there was a proprietary claim as a matter of Kuwaiti law, was weak. In his submissions for the present hearing, Mr. Weisselberg has identified two further issues which will be deployed by way of defence to the proprietary claim, namely: (a) that Swiss law applies to PIFSS' claims against Mr. Al Rajaan, and Swiss law does not provide for proprietary remedies; and (b) that the enforcement of PIFSS' alleged proprietary claims under Kuwaiti law will be impermissible because it would involve an attempt directly or indirectly to enforce penal or public laws of Kuwait. Neither argument was advanced in October 2019 as a reason why the relief sought on that occasion was impermissible, and even now Mr. Al Rajaan does not (as Mr. Weisselberg's skeleton argument makes clear) 'ask the court to determine whether PIFSS has an arguable proprietary claim'.

22. Against this background, I consider that it is right to approach the present application on the basis that PIFSS has established an arguable proprietary claim. I see no reason at the present stage to regard that claim as being a weak one. The two additional points referred to in the previous paragraph were not the subject of detailed argument, and the court is in no position to express a view as to whether these points will have any force. I do not accept that the alleged weakness of the proprietary claim is a matter which I should take into account when deciding how to exercise my discretion. I have no basis to conclude, and have not been persuaded, that the case is weak. In circumstances where no substantive argument has been addressed as to the weakness of the proprietary claim, and where it has previously been conceded that there is a serious issue to be tried, the necessary merits threshold for the grant of relief in support of a proprietary claim has been passed, and I do not consider that it is appropriate to reconsider the merits as part of the exercise of my discretion.

23. The alternative basis on which further disclosure is sought is, in a sense, independent of the claim for proprietary relief. Even if there were no arguable proprietary claim in the present proceedings, PIFSS has established – sufficiently for the purposes of obtaining a substantial freezing order – a good arguable case on the underlying merits of its claim for substantial damages as a result of Mr. Al Rajaan's conduct, and a real risk that a future judgment would not be met because of the unjustifiable dissipation of assets. In other words, irrespective of any right to trace into assets where a proprietary claim is asserted, there is a sufficient case to warrant a WFO in relation to Mr. Al Rajaan's current assets. Where disclosure has been ordered in support of a WFO, and it is alleged that such disclosure is inadequate, it is open to a party to apply to the court for further orders. There was some debate as to the test to be applied in relation to such an application: Mr. Weisselberg ultimately submitted that the test was whether further disclosure was 'necessary'. Mr. Lazarus submitted that the test was whether it was just and convenient.

24. I consider that, in the context of a non-proprietary claim giving rise to a freezing order, the approach of Hildyard J. in *JSC Mezhdunarodniv Promyshlenniy Bank v Pugachev (No 2)* [2015] EWHC 1694 (Ch), [2016] 1 WLR 781 at [38] – [40] is instructive. Under the heading "Test whether to order further affidavit evidence …", Hildyard J. said:

> "[38] I can be brief in this context: the test is in effect whether the court is satisfied that further evidence is necessary in order to make the freezing order more effective.

> [39] 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.
>
> [40] I consider also that the court must be satisfied that a yet further round of evidence is proportionate."

25. One circumstance in which a court may be prepared to order further disclosure is where there is an obvious discrepancy between assets which were at one time held by a defendant, and the current assets disclosed in response to the disclosure order in a freezing injunction, and where there is a real possibility that there are further assets to which the freezing order may apply: see *FM Capital Partners Ltd. v Marino* [2018] EWHC 2889 (Comm), [2019] 1 WLR 1760, para [72].

26. The court also has a specific power to make an order under CPR 25.1 (1) (g):

> "… directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction."

27. This power enables the court to make an order for the provision of information in respect of assets which are not currently within the scope of a freezing order, but where the further information may lead to their inclusion: see the decision of the Court of Appeal in *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139, [2016] 1 WLR 160, at [58].

28. The question of what enquiries a WFO defendant may be required to make was considered by Hildyard J. in paragraphs [41] – [42] of the subsequent *Pugachev* decision (see paragraph [24] above):

> "[41] Another subsidiary point I should address in this context (since it may affect the question whether a further affidavit should be ordered and it may also be relevant on the issue of costs) is in relation to any obligation to "make all reasonable inquiries". The claimants submitted that this was implicit in every disclosure order, citing *Gee on Commercial Injunctions*, 5th ed (2006), para 22-017, and *Bird v Hadkinson* [2000] CP Rep 21.

> [42] It seems to me to be obvious that a defendant required to comply with such an order must take reasonable steps to investigate the truth or otherwise of any answer he gives as regards assets in which he has or had an interest and has or can obtain information in right of that interest. However, in my view, that does not (at least at the point of initial compliance with a disclosure order) extend to making inquiries of persons in relation to assets in which the defendant unequivocally asserts he no longer has any interest of any kind or any right to information, although the court may make available the means of testing that assertion if there is credible evidence that it may be false: and see the Court of Appeal's decision in these proceedings *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2016] 1 WLR 160, paras [43] – [60] and the cases there cited".

29. With these principles in mind, I turn to the detail of the present application

C: The alleged 'disconnect' or 'discrepancy' – the premise of the application

30. At the heart of the present application, certainly in so far as it concerns disclosure in support of PIFSS' tracing remedy, is PIFSS' case that there is a substantial discrepancy between the monies received by Mr. Al Rajaan over the course of very many years, and the assets which he has identified in response to paragraph 7 of the WFO. Mr. Weisselberg, correctly in my view, identified this in his skeleton as being the premise for the application. He submitted that the premise was flawed. Any discrepancy between the assets disclosed by Mr. Al Rajaan and the monies he is alleged to have received is sufficiently explained by, in particular, Mr. Al Rajaan's evidence as to his lifestyle (including charitable donations) as to which he is only able to provide a preliminary account. In addition, account needs to be taken of further assets which are in the name of his wife, Ms. Al Wazzan, as well as amounts which are held in accounts in Kuwait and Egypt as to which Mr. Al Rajaan has no sufficient information.

31. I consider that the resolution of this argument is important and indeed critical. If the evidence does indicate a significant and material discrepancy between amounts received by Mr. Al Rajaan and assets now declared, after taking into account likely expenditure over many years, then this would (all other things being equal and subject always to proportionality questions) incline the court towards making further orders. These could be either (i) orders for the tracing of assets previously received, pursuant to PIFSS's arguable proprietary claim, or (ii) orders for further disclosure on the basis that there is a real possibility that there are further assets to which the freezing order may apply, or both. Equally, where specific details in relation to particular disclosed assets are sought, a substantial and material discrepancy might also incline the court towards making orders for the provision of further specific information pursuant to its general powers or specifically under CPR 25.1 (1) (g). I therefore turn to the evidence relating to the alleged disconnect or discrepancy.

32. The headline figures relevant to this issue are as follows. PIFSS contends, on the basis of the very considerable amount of work that has been carried out on the available documentary materials, that Mr. Al Rajaan has received (either directly or through nominees) at least US$ 513 million by way of secret commissions. The amount of assets

disclosed by Mr. Al Rajaan is, on Ms. Garbett's evidence, US$ 183 million. There is therefore a shortfall, comparing monies received to assets disclosed, of US$ 330 million. PIFSS contends that this gap cannot reasonably be explained by ordinary living expenditure, even on a lavish scale. The expenditure identified by Mr. Al Rajaan in his third witness statement amounts to US$ 210 million or thereabouts, over a 30 year period. However, no corroborating evidence has been produced to support the allegation of expenditure on that enormous scale. But in any event, it would still leave a significant discrepancy between monies received (US$ 513 million) and assets retained plus expenditure (US$ 183 million plus US$ 210 million = US$ 393 million).

33. Moreover, PIFSS says that the real discrepancy is larger for two reasons. First, some or all of the US$ 513 million (to the extent to which it was not being spent) would inevitably have been invested over the years, and would have grown by the addition of income and capital growth. (Indeed, some of the assets currently disclosed are likely to have been purchased for lower amounts, and to have increased in value over the years). In that context, Mr. Al Rajaan has previously claimed that both he and his wife were very successful investors. Secondly, Mr. Al Rajaan has previously claimed that he, and his wife, had significant other sources of income and wealth other than that derived from his position at PIFSS. It is therefore wrong to approach the 'discrepancy' question by assuming that the US$ 513 million received as commissions were the only source of income to finance the lifestyle of Mr. Al Rajaan and his family.

34. On behalf of Mr. Al Rajaan, Mr. Weisselberg accepted that it might look as though there was some discrepancy. However, account needs to be taken of various matters. The US$ 513 million starting point was only PIFSS's claim. Mr. Al Rajaan had not admitted receipts in that sum: the admitted figure was only US$ 257.3 million. If that figure were used, there is no material discrepancy, taking into account US$ 183 million of disclosed assets and Mr. Al Rajaan's expenditure of around US$ 210 million. In addition, the alleged discrepancy must take into account other matters. First, the US$ 210 million of expenditure is only an estimate. Mr. Al Rajaan does not have access to any of his documents in Kuwait, since he cannot return there. Secondly, there are bank accounts in Kuwait and Egypt, and Mr. Al Rajaan does not know how much is in those accounts. Thirdly, some assets are now held by Ms. Al Wazzan, his wife.

35. I consider that there is indeed, as PIFSS submits, a significant and material discrepancy between the amounts which, on the current state of the evidence, were received by Mr. Al Rajaan, and the assets which he has identified in the disclosure given pursuant to the October order, even taking into account his lifestyle expenditure and the other matters relied upon. The premise on which the present application is founded is therefore not, as Mr. Al Rajaan submitted, flawed. My reasons for reaching this conclusion are as follows.

36. First, I consider that the appropriate starting point is the amount of US$ 513 million calculated by PIFSS, rather than the lower admitted figure of US$ 257.3 million. The figure of US$ 513 million is the product of a considerable amount of work and analysis of documentary material by PIFSS' legal teams, and it is reflected in detailed Particulars of Claim. These sums represent a significant part of the overall commissions exceeding US$ 800 million which have been calculated, and in respect of which PIFSS' case is sufficiently strong to justify a freezing order in the sum of US$ 847.7 million.

37. Mr. Al Rajaan has not positively disputed – either in his defence in these proceedings or in his evidence for the present application – the figure of US$ 513 million, nor given any reasons why that figure has been incorrectly calculated and exceeds the sums that he received. His defence advances no positive case in that regard. The defence does refer to the complexity of the exercise of analysing what happened in this case, and to the work that is ongoing with a forensic accountant. That may be so, but I note that Mr. Al Rajaan had approximately 8 months to prepare his defence (from June 2019 to February 2020), and subsequently a further 3 months prior to the hearing of the present application, in circumstances where considerable work must already have been carried out as a result of proceedings in Switzerland and indeed elsewhere. In any event, if it were to be alleged that the figure of US$ 513 exceeds very significantly the sums actually received, I would have expected Mr. Al Rajaan to say so clearly and give at least a general explanation as to why that is the case.

38. In sum, the current state of the evidence is therefore that there is much material to explain and support the figure of US$ 513 million; and no positive case or evidence to the contrary by Mr. Al Rajaan. It is therefore appropriate, in my view, to start an analysis of the discrepancy issue by reference to the US$ 513 million received.

39. Secondly, I agree with PIFSS that it would ordinarily have been expected that a person in Mr. Al Rajaan's position would invest monies so that, over a period of many years, the amounts received would increase by income yields and capital growth. I have been referred to the evidence which was submitted on behalf of Mr. Al Rajaan in the English criminal restraint proceedings described in my earlier judgment (see e.g. paragraphs [35] – [38]). The substance of that evidence, described in more detail below, was that both Mr. Al Rajaan and his wife were experienced and successful investors. Although Mr. Al Rajaan's evidence in the present proceedings refers to one investment transaction where a substantial sum of money was lost, he has not alleged that generally speaking he invested in poorly performing let alone disastrous investments or business ventures. Indeed, the thrust of his evidence in the criminal proceedings was to the contrary.

40. Thirdly, I also agree with PIFSS that one cannot approach Mr. Al Rajaan's lifestyle expenditure on the assumption that it was financed solely from the alleged secret commissions. Mr. Al Rajaan's evidence in the English criminal restraint proceedings was that he had substantial sources of income other than that derived from his position as Director General of PIFSS. His witness statement had a heading: "The Source of My Wealth is Legitimate". It referred to his wife's substantial inheritance and expansion of that wealth through her personal investment activities. He said that he managed and grew his personal wealth through legitimate employment and investment activities. The witness statement then set out a large number of directorship and other positions which he held. These resulted in remuneration and benefits which were substantial; millions of dollars over time. He also said that, in addition to the income received for his services on company boards, a large portion of his income came from his personal investment activities. He was an investment professional, who has always had a significant personal interest in the international and Kuwaiti markets. "I have been very successful in this regard". He said that he managed and grew his personal wealth over time. Mr. Al Rajaan's present defence refers to business ventures between Mr. Al Rajaan and one of the other defendants, Mr. Nasrallah, and that this business was carried out over a period of many years.

41. Mr. Lazarus submitted, in addition, that I should pay no regard to the figures given by Mr. Al Rajaan for his personal expenditure, on the basis that they were uncorroborated by any documentation or other independent support. I do not consider it necessary to address this argument. Even accepting expenditure at the level alleged by Mr. Al Rajaan, there is still a very large "disconnect" between the sums received and the assets now disclosed, both before and after taking into account the likely investment growth of the sums received and the other sources of income relied upon by Mr. Al Rajaan.

42. Nor is there any realistic basis for supposing that this disconnect could be accounted for by any of the other matters referred to by Mr. Al Rajaan. If the Kuwait and Egypt accounts were to account for the discrepancy, they would need to contain many tens (indeed the low hundreds) of millions of dollars. If this were the case, I would have expected Mr. Al Rajaan to have given this estimate. And whilst it is true that some assets may be held by his wife, the position is that the US$ 183 million figure already includes significant assets held by her as his nominee. If there were a realistic possibility that the discrepancy could be accounted for by tens or the low hundreds of millions held by Ms. Al Wazzan, I would again have expected that point to have been made by Mr. Al Rajaan. Indeed, realistically, I would have expected such assets to appear in Mr. Al Rajaan's asset disclosure, given that he accepts that some substantial assets were held by her as his nominee.

43. Accordingly, I am satisfied that there is indeed a significant unexplained difference between evidence as to current assets and evidence as to amounts received, even taking into account expenditure on the scale alleged. In principle, and subject to discretionary considerations, this seems to me to justify the court being willing in principle to consider making further orders which will enable further assets to be identified; particularly in a case where the claimant has an arguable proprietary claim, and where a tracing remedy is therefore potentially available.

D: Purpose of the present application

44. Before addressing the arguments relating to the exercise of the court's discretion, as well as the detail of the relief sought, I will address a principal theme of the submissions on behalf of Mr. Al Rajaan. In her 5th witness statement, paragraph 11 (4), Ms. Garbett said that Mr. Al Rajaan's position was that it was clear that PIFSS's "aim in issuing the Application is to act oppressively and to cause trouble (and costs) for Mr. Al Rajaan, rather than to obtain any substantive benefit". She drew attention to the fact that there was no evidence that PIFSS had previously tried to enforce the WFO itself, nor provided any evidence that it had been unable to do so. She said that the "real underlying purposes" of the application was to put pressure on Mr. Al Rajaan, to "obtain information to be used in other legal proceedings in other jurisdictions and/or to facilitate later enforcement against Mr. Al Rajaan (which is not an appropriate use of the relief at this stage in the proceedings)". She said that Mr. Al Rajaan was very concerned that the application was "simply an attempt to oppress him and/or to obtain information which will then be used by other Kuwaiti state organs to take other politically motivated action(s) against him". These themes, of oppression of a person who was unwell, and that information obtained would be used for collateral purposes, were repeated in different contexts throughout her statement.

45. In his evidence in response, Mr. Haworth explained that the background to the application was PIFSS' concerns as to Mr. Al Rajaan's purported compliance with his

disclosure obligations under the WFO; that inadequate responses had been received to Stewarts' letter dated 11 December 2019; and that the reality was that, as a result of the application, Mr. Al Rajaan has made further disclosures in his two subsequent witness statements and Ms. Garbett's fifth witness statement. He said that in the light of the responses received, PIFSS had reviewed the scope of the application. Its approach was guided by two principles: updating the application in the light of information received, and refining its disclosure requests in answer to Mr. Al Rajaan's alleged concerns as to proportionality. PIFSS was not demanding a £ 10m disclosure exercise or anything like it, and to make this even clearer its application had been further refined and focused.

46. In paragraphs 60 – 63, Mr. Haworth explained why steps had not yet been taken to enforce the WFO in other jurisdictions. Preparatory steps had been taken in a number of jurisdictions which PIFSS was prioritising. The process had been slower than hoped, partially due to problems locating non-conflicted lawyers in certain jurisdictions due to the number of banks involved in PIFSS' claim. It was therefore not correct to say that PIFSS had no genuine interest in enforcing the WFO abroad: 'It is simply that the process has taken some time, and PIFSS considers it appropriate to seek the Court's permission to enforce the WFO abroad in a coherent and properly evidenced way rather than piecemeal'. PIFSS therefore intended to make such application as soon as it could. In a number of cases, PIFSS was until recently lacking all of the information required to take steps to enforce abroad. For example, in relation to assets held by some of Mr. Al Rajaan's companies, PIFSS had sought information as to the relevant representatives of each company, so that the WFO could be enforced against them in the relevant jurisdictions. Similarly, some further details were required in relation to some of Mr. Al Rajaan's bank accounts.

47. I do not consider that the evidence justifies the conclusion that the present application is improperly motivated on the part of PIFSS. The present application is a narrower formulation of the application that was made at the hearing in October 2019. At that time, Mr. Ritchie on behalf of PIFSS took the pragmatic decision not to press the wider application for disclosure, based on PIFSS' proprietary claim, pending the provision of Mr. Al Rajaan's Affidavit of current assets. However, he made it clear on that occasion that if insufficient current assets were shown, the application for 'tracing' disclosure would be revived.

48. That is what has in substance happened as a result of the disclosure given in Mr. Al Rajaan's Affidavit served in November. Within a relatively short time, in December, Stewarts raised various issues, including in particular the disconnect between the disclosure given and the amounts previously received. This argument raised, for reasons which I have already explained, a valid point. But it was roundly rejected by Mishcons in their response dated 31 January, and I have ultimately determined this issue in favour of PIFSS.

49. At the October hearing, Mr. Ritchie had made clear that PIFSS was concerned to make sure that the present litigation produced an effective result. I was puzzled by Ms. Garbett's criticism (in paragraph 12 of her 5th witness statement) of PIFSS' application on the basis that one of its real underlying purposes was "to facilitate later enforcement against Mr. Al Rajaan", and that this was "not an appropriate use of the relief at this stage in the proceedings". The purpose of a freezing order is, generally speaking, to facilitate later enforcement in the sense that it is designed to counteract the risk of dissipation of assets. Where there is a proprietary claim, the position is (as Popplewell

J. said in *Angola*) that 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. Accordingly, in seeking to preserve assets against which to establish its rights to trace, or against which to enforce a non-proprietary claim, PIFSS is acting in a manner which is legitimate.

50. The basis of the application in October, and now, is therefore PIFSS' legitimate concern to ensure that assets against which it claims a right to trace (and indeed Mr. Al Rajaan's assets generally) are not dissipated or hidden away. Given the scale of the alleged wrongdoing, and the fact that I have already held that a freezing order is justified, I have no reason to think that this concern is not genuinely held.

51. Furthermore, it did not seem to me that PIFSS' conduct has been particularly aggressive or oppressive in the run-up to the present application. In view of Mr. Al Rajaan's illness, Stewarts did not press hard for a response to the letter of 11 December. When the response eventually came on 31 January, a corrective Affidavit was promised but this was not forthcoming. It was not until 13 March that the present application was made. Whilst one might possibly have expected a response to the 31 January letter in correspondence, my conclusion on the 'disconnect' issue (as well as my ultimate decision as explained below) indicates that a further application was justified and indeed inevitable. Mr. Weisselberg complains that PIFSS did not allow Mr. Al Rajaan any respite following service of his lengthy defence, and that this was indicative of oppression. However, the present case involves hard-fought litigation in relation to enormous sums of money where I have already held that PIFSS's case is sufficiently strong that it is entitled to a freezing order and disclosure order. Whilst Mr. Al Rajaan is a private individual, he appears to be a man of very considerable wealth and resources, and he has the services of lawyers and accountants in different jurisdictions. A claim of the present size and seriousness is, as Mr. Lazarus submitted, inherently oppressive in a general sense: it is, no doubt, difficult or time-consuming or stressful (or all three) for Mr. Al Rajaan to deal with. But it does not at all follow that PIFSS is behaving oppressively in pursuing an application for additional disclosure in support of a genuine claim which is of sufficient strength to justify a WFO.

52. Furthermore, I consider that PIFSS has made very real efforts to focus the present application so as to meet possible arguments that the disclosure involves a disproportionate exercise. The present application is far narrower in scope than its October 2019 and March 2020 iterations.

53. It is, I agree, somewhat surprising that PIFSS has not yet taken action in other countries in order to render the WFO effective there. However, the position has been explained by Mr. Haworth as described above, and I cannot therefore conclude that PIFSS has no interest in enforcement abroad and hence that the present application has some other, and improper, purpose. It also seems to me to be a somewhat difficult argument for Mr. Al Rajaan to advance. He is himself bound by the WFO, and the premise of the argument (that parties abroad need to be notified of the order) therefore appears to be that he cannot be relied upon to abide by it.

54. Nor, in my view, is there any evidence to support the suggestion that disclosure is being sought as a prelude to the improper provision of materials to, for example, the Kuwaiti state. As Mr. Lazarus pointed out, Mr. Al Rajaan's initial Affidavit of assets was

provided some 7 months ago, and further material has since been supplied. There is no evidence that this has been provided improperly to anyone else.

E: Discretionary considerations: general arguments

The parties' arguments

55. PIFSS contends that it is making a refined application for further disclosure. It is not contemplating a disproportionately expensive forensic accountancy exercise. The application now focuses, principally, on three categories of assets: 10 identified transfers of payments which represented secret commissions; transfers made by two specific companies, Bernabeu and Bordertown, which were recipients of secret commissions; and gifts of 4 properties which were made to Mr. Al Rajaan's children.

56. In relation to the 10 identified transfers (which in some cases concern groups of transfers), PIFSS no longer requires disclosure of materials which track the payments through to their ultimate destination. Instead, PIFSS seeks information as to the first stage of the transfers. At the hearing, Mr. Weisselberg described this as a request for the first layer of the onion, and that the request if granted will potentially lead to applications for more "onion peeling". Mr. Lazarus accepts that this is so, although he expresses the hope that it might be possible for agreement to be reached as to the production of materials relating to the further layers. He made it clear that PIFSS will not be interested in smallish transfers, or to trace monies that will have been spent on staff wages and matters of that kind. If the onion is to be further peeled, he says that it will be in order to follow the most significant transfers.

57. Mr. Lazarus submits that what is now sought is not an expensive or disproportionate exercise. PIFSS does not know how many layers of the onion may exist, and the court should not speculate as to this at the present stage. It is possible that the large payments will not have passed through a very large number of accounts. PIFSS was particularly interested in payments made after May 2012, totalling around US$ 135 million. These payments were made at a time when investigations into Mr. Al Rajaan in Switzerland were starting, and were made in response to those investigations. An incremental approach is being taken, focussing on the first unknown link in each chain of transfers. For the most part, Mr. Al Rajaan is asked to disclose bank statements showing where the money went next. The work required to meet the request is not unduly burdensome, particularly bearing in mind the significant sums that PIFSS seeks to recover.

58. PIFSS contends that such difficulties as have been identified by Mr. Al Rajaan (for example that banks are only required to maintain records for 10 years, or that entries on bank statements may not reveal the destination for the transfers, or difficulties arising from Swiss banking secrecy laws) are all somewhat speculative. The answer is that Mr. Al Rajaan should be ordered to provide the disclosure to the best of his ability (the expression used in paragraph 7 of the WFO and repeated in paragraph 1 of the proposed order).

59. On behalf of Mr. Al Rajaan, it is submitted that it is not just and convenient to grant any of the relief sought. The relief here is disproportionate. A number of sometimes overlapping points were made in this regard.

60. First, the ultimate location of the monies will not be identified, in reality, without a very expensive accountancy exercise. Some of the transfers involve transactions dating back to 2001. Mr. Al Rajaan cannot be expected to recall the transactions. He does not have his own paper records, and the exercise is therefore reliant on obtaining documents from third parties. This is likely to be difficult, given the historic nature of the transfers and the fact that Swiss banks are only required to maintain records for 10 years. Since both Mr. Al Rajaan and his wife had wealth independent of the alleged secret commissions, it will be difficult to separate out their personal assets from the monies sought to be traced. Even if bank records are available, these may not provide sufficient or meaningful information to enable assets to be traced: for example, there may be just a line entry stating "cash withdrawal". To follow the money, further applications will inevitably be required.

61. Secondly, the first stage in the onion peeling exercise is unlikely to provide meaningful information. It will only disclose the first recipient account. For many transactions involving day to day activities it will be difficult for PIFSS to identify the purpose or nature of the transactions, for example to distinguish payments to employees or other unrelated spending.

62. Thirdly, PIFSS' approach raises "difficult questions of comity" in so far as some aspects of the application involve Mr. Al Rajaan seeking copies of documents contained in a cache of materials known as the "Swiss Domestic Materials". This is a collection of important documents held by the Swiss prosecuting authorities. Mr. Al Rajaan has been permitted to take full copies of these documents (which I understand to be available to him in the form of an electronic database). However, PIFSS has been unsuccessful in its attempt to obtain equivalent copies, although it is able to access the documents by attendance at the prosecutor's offices and to make notes of what the documents say. Most recently, on 7 April 2020, the Swiss appeal court said that:

> "it is necessary to limit the inherent risks involved in a foreign state—or, as in this case, an entity that should be considered as such—i.e., the private claimant in the Swiss criminal proceeding, having access to the documents to which that state in principle is only able to access through international mutual legal assistance in criminal matters".

63. Mr. Weisselberg submits that the present application, in so far as it seeks documents from the Swiss Domestic Materials, would subvert the authority of the Swiss court, and therefore the principles behind the mutual assistance programme. He also submits that the issues raised in this regard should be properly determined with the assistance and involvement of other defendants, whose interests are similarly affected by PIFSS's request.

64. Fourth, it was submitted (in writing) that the present application did not fit with the Disclosure Pilot for the Business and Property Courts contained in PD 51U. Mr. Weisselberg did not, however, press this argument orally and for good reason. The Disclosure Pilot is seeking essentially to address the approach to disclosure in ordinary litigation where disclosure orders are made at the Case Management Conference. It does not seek to affect or limit the court's powers to order disclosure in support of a WFO or where it is sought at an interlocutory stage in support of a proprietary claim.

65. Fifth, it was argued that PIFSS' ultimate tracing exercise would be very expensive, and would likely to be unsuccessful in identifying the location of the monies. Ms. Garbett had referred to a figure of £ 10 million, although Mr. Weisselberg accepted that this was the cost for an ultimate tracing exercise, and that what is presently proposed (i.e. the first layer of the onion) would not cost that sort of sum.

Conclusion as to the general arguments

66. For the reasons which follow, I was not persuaded by the general arguments on Mr. Al Rajaan's behalf to the effect no further disclosure at all should be required. I accept, however, that it is right to look at each aspect of the relief claimed separately, in order to be satisfied that it is justified and proportionate.

67. The starting point in my view is that PIFSS have a very substantial claim for, amongst other things, many hundreds of millions of dollars received by Mr. Al Rajaan. Arguments as to disproportionality must be seen in that context. Furthermore, for reasons already given, PIFSS have sufficiently demonstrated on the present evidence a significant discrepancy between the monies received and the assets disclosed, even bearing in mind the expenditure allegedly incurred to support a lavish lifestyle. In circumstances where, as here, a defendant says that he has made every effort to disclose his available assets, but the evidence gives rise to the real possibility that there are further assets, a targeted exercise – in particular requiring the defendant to give information about specific assets received in the past – is appropriate and likely to be more productive than simply ordering the defendant to "do better". The justification for such an approach is reinforced where, as here, a claimant has an arguable proprietary claim to trace the assets about which further information is sought.

68. I do not accept that it is objectionable that PIFSS seeks to take an incremental approach to the further disclosure exercise; i.e. looking for targeted initial information as to what happened to a particular asset received in the past, with a view possibly to asking for further information at a later stage in order to pursue potentially productive lines of further enquiry. This appears to me to be sensible in circumstances where a full tracing exercise into the assets which are the subject of a proprietary claim would be so extensive that it would be too expensive and burdensome reasonably to expect it to be carried out in advance of the claimant establishing his substantive right to trace. But this does not mean that a claimant must be put in the position of getting no information in advance of trial in such a case. Were that so, then the more complex and extensive the wrongdoing, and the greater the period of time that it occupied, the less the information that the claimant could reasonably request.

69. I also agree with PIFSS that the court should not be drawn into speculation, on inadequate information, as to difficulties which may or may not be encountered in providing useful information. As Hoffmann J. said in *Hashim*, the claimant must demonstrate a real prospect that the information may lead to the location or preservation of assets to which he is making a proprietary claim. Provided such a real prospect exists, the court can make an appropriate order, even if there is inevitably some uncertainty as to whether that prospect will ultimately prove fruitful. The real prospect includes, in my view, the case where information is sought as to the first stage of transactions, where there is a real prospect that information as to further stages may lead to the location or preservation of assets which are the subject of a proprietary claim. It also seems to me that the real prospect of obtaining fruitful information may be stronger in the case where

the alleged wrongdoer is before the court and himself has access to relevant documentation than in the case where, for example, documents are sought from an innocent third party with a brief involvement in a transaction or series of transactions.

70. I do not consider that Mr. Al Rajaan's arguments concerning the Swiss Domestic Materials provide a reason why the court should, as a matter of principle, decline to make the disclosure orders sought. Some of the materials sought in the application are not within the Swiss Domestic Materials in any event; in particular, the information about the transfers made in 2012 and thereafter.

71. But even in relation to those parts of the application which may encompass documents within the Swiss Domestic Materials, Mr. Al Rajaan does not allege that the production of documents to PIFSS, pursuant to the present application, would result in his breaching any order of the Swiss court or that he would be exposed to any penalty or sanction. The position is therefore that I am dealing with a defendant (Mr. Al Rajaan) who is now resident here and who is subject to the jurisdiction of the English court in relation to the present proceedings. The present issue is concerned with whether or not the court should make targeted disclosure orders against Mr. Al Rajaan in order to make this court's previous order more effective or to support PIFSS proprietary claim in the present proceedings. I am not therefore presently asked to make an order for the complete disclosure of the materials held by Mr. Al Rajaan. For these reasons, I do not consider that considerations of comity provide reasons why the present targeted application for further disclosure should not be granted.

72. That said, I do think that it is relevant to the exercise of my discretion, as well as considerations of proportionality, to bear in mind that PIFSS does have access to the Swiss Domestic Materials. There has recently been an interruption to that access as a result of Covid-19 restrictions, but I was told that access could be resumed either immediately (on Mr. Al Rajaan's case) or within a matter of a couple of weeks (on PIFSS' case). I consider that where the information now sought is likely to be within the Swiss Domestic Materials, it is appropriate for PIFSS to use that route to find it rather than by requiring Mr. Al Rajaan to produce it in response to a court order. Even though PIFSS is unable to obtain copies of the materials, it is apparent that the access does enable them to examine the documents carefully and thereby understand, to the extent that the documents reveal it, the route which the relevant payments have taken. Whilst the process has been laborious, it has been far from unproductive: PIFSS' case in the present proceedings, which is very detailed, has been formulated (at least to a significant extent) as a result of the work that PIFSS has been able to carry out on these materials.

73. It is in my view appropriate for PIFSS to obtain the information, to the extent that it can, from this source. This will minimise the need for further applications to this court, and potential arguments as to whether or not Mr. Al Rajaan is or is not in breach of any orders made. It will also potentially reduce the burden of work and cost for Mr. Al Rajaan. He and his advisers will then be able to focus on the provision of information which is not easily available within the Swiss Domestic Materials.

74. I do not think that Mr. Al Rajaan's arguments as to the existence of various criminal restraint orders, or PIFSS' delay in commencing the present proceedings, provide a reason why I should decline to order further disclosure. To a large extent, these arguments repeat points made in relation to the application for the WFO, and which I

rejected in that context. I have already decided that it was appropriate to make a disclosure order in support of the WFO, and also that the proprietary claim in principle justified further relief. It would in my view be illogical to decline to make orders, whose purpose is to make the WFO and the proprietary claims effective, because of arguments which I have already rejected. However, I agree that if, because of delay, there are likely to be real difficulties in providing the information sought, or that there is no longer any real prospect that the information sought will lead anywhere fruitful, those are factors which are relevant to the exercise of the court's discretion.

75. Having outlined my general approach, I turn to the detail of the orders which are sought.

F: The tracing orders sought

F1: Banking transfers and documents

76. The principal application for disclosure in support of the proprietary claim is set out in paragraph 7 of Schedule 1 to the proposed order. This cross-refers to Schedule 3. Schedule 1 is itself introduced with the following words:

> "Where this Schedule 1 requires the First Defendant to provide information, the obligation in each case is to provide such information to the best of his belief and knowledge, after having made (or caused to be made, where it is not practicable for the enquiry to be made personally) all enquiries as are reasonably practicable, including such specific steps as are set out further below."

77. Paragraph 7 of Schedule 1 requires Mr. Al Rajaan to:

> "Provide the information and undertake the steps requested in relation to the cash transfers set out in Schedule 3 to this Order. To the extent that the requested information is obtainable with the assistance of the third parties specified in Schedule 3, the First Defendant is to seek their assistance. For the avoidance of doubt, the First Defendant must give the requested disclosure to the best of his ability after undertaking the steps specified in Schedule 3, even if the Claimant's identification of any transfer is inaccurate in any technical respect."

78. Schedule 3 then sets out the specific information, and steps required, as follows:

	Transfer	Disclosure required	Action to be taken vis-à-vis third parties
A	The sum of US$42,296,031 transferred from an account held in the name of Chulani Investments Inc at Pictet Bank (account number 188076) to an	Bank statements for the account at Deltec Bank and Trust Co Limited that received the	Ask the directors, officers and fiduciary service providers of Fyne Ltd to provide them, and if they are

	account with Deltec Bank and Trust Co. Limited on or around 29 May 2012, in the name of Fyne Properties	funds from 1 May 2012 to date (or until the credit balance fell below US$50,000)	unable to do so, ask them to request them from Deltec Bank and Trust Co Limited
B	The sum of US$27,000,000 transferred from an account held in the name of Chulani Investments Inc at Pictet Bank (account number 188076) to an account held by Mr Al Rajaan at Citibank on or around 27 May 2014	Bank statements for the account at Citibank that received the funds from 1 May 2014 to date (or until the credit balance fell below US$50,000)	Request them from Citibank
C	The sum of US$25,180,371 transferred from an account held in the name of Silvermoon Finance SA at VP Bank to an account held by Mr Al Rajaan at Fransabank in the Lebanon on or around 10 May 2012	Bank statements for the account at Fransabank that received the funds from 1 May 2012 to date (or until the credit balance fell below US$50,000)	Request them from Fransabank
D	The sum of US$22,000,000 transferred from an account held in the name of Dryden Worldwide SA at Pictet Bank, account number 190684 to an account held in the name of Whipple Holdings Limited at the Bank of Singapore (account number 500152) on or around 11 May 2012	An explanation to the best of the First Defendant's recollection and/or after making any appropriate inquiries as to why Whipple received this sum from Dryden	
E	The sum of US$18,645,120 transferred from an account held in the name of Thaxton Foundation at Pictet Bank to an account held by Mr Al Rajaan at	Bank statements for the account at Fransabank that received the funds from 1 May 2012 to date	Request them from Fransabank

	Fransabank in the Lebanon on or around 11 May 2012	(or until the credit balance fell below US$50,000)	
K	The sum of US$2,560,020 transferred to Gemcut, a jeweller based in Switzerland, from Domini Trading SA on or around 2 July 2008	An explanation to the best of the First Defendant's recollection and/or after making any appropriate enquiries as to what was purchased from Gemcut with those funds and what became of the items purchased; and to the extent that the full sum was not used to purchase items, what became of the money	
L	The sum of US$36,093,080 transferred to an account in the name of Evelyn Assets at Pictet Bank (account number 189194) in or around the period 18 June 2003 to 12 April 2012 including US$25,564,988 from Madrina Corporate Inc; US$7,019,003 from Atena Management Limited; US$2,918,350 from Creative Management Limited; and US$590,740 from Morel Management Limited as particularised further at Appendix 6.2 to the Particulars of Claim	Bank statements for account 189194 from 1 June 2003 to date (or until the credit balance fell below US$50,000)	
M	The sum of US$12.8 million transferred to an account in the name of Suncoast Finance SA at	Bank statements for account 201-0254314 from 6 February 2007 to	Ask the directors, officers and fiduciary service providers of Suncoast to provide

	UBP (account number 201-0254314)	date (or until the credit balance fell below US$50,000)	them, and if they are unable to do so, ask them to request them from UBP
N	The sum of US$34.7 million transferred from an account in the name of Bordertown Trader Limited (190890) at Pictet Bank to an account in the name of Lipuno Foundation at VP Bank (10.501.972)	Bank statements for account 10.501.972 from 1 January 2006 to date (or until the credit balance fell below US$50,000)	Ask the directors, officers and fiduciary service providers of Lipuno to provide them, and if they are unable to do so, ask them to request from VP Bank
O	The sums transferred from an account in the name of Orkina Foundation at VP Bank AG to an account in the name of Dugamo Foundation at VP Bank	Bank statements for the account at VP Bank that received the funds from 1 January 2006 to date (or until the credit balance fell below US$50,000)	Ask the directors, officers and fiduciary service providers of Dugamo to provide them, and if they are unable to do so, ask them to request them from VP Bank

79. I will deal with each of these in turn.

80. *(A): US$ 42 million transferred by Chulani to Deltec Bank.* This transfer was made some 8 years ago, in May 2012. It was one of the transfers (forming part of around US$ 135 million) alleged to have been made in response to the Swiss investigations. The disclosure sought at this stage is relatively limited and cannot be said to be disproportionate. The bank statements are not within the Swiss Domestic Materials, and therefore PIFSS does not have access to them via that route.

81. Mr. Weisselberg submitted that there was no need to provide information now to locate assets, since it is difficult to see why getting bank statements back to 2012 will show what the situation is now. Furthermore, Mr. Al Rajaan's first Affidavit (i.e. "FAR 1") served in November 2019 reveals assets in the Bahamas in the name of both Chulani and Fyne Properties, and these total in excess of the US$ 42 million which it is sought to trace.

82. I consider, despite these submissions, that this request is justified. The bank statements will show the first "layer of the onion", and is a proportionate first step on an incremental process (which for reasons previously given I consider justified) in locating these assets. Furthermore, there is no basis for concluding that the amounts already disclosed as being within the Chulani and Fyne Properties' accounts represent the US$ 42 million transferred in 2012. They are in different amounts, and it is possible that they represent subsequent payments.

83. *(B) US$ 27 million transferred by Chulani to Citibank.* This transfer was made more recently, in 2014, albeit I recognise that this is still some time ago. I consider that this request is justified for essentially the same reasons as (A): the disclosure sought is limited, the documents are not within the Swiss Domestic Materials, and this is a proportionate incremental first step. Mr. Weisselberg's only other answer is that the relevant account has been closed, and the availability of statements for closed accounts is "not known". This does not in my view provide a reason why Mr. Al Rajaan should not make the enquiries which are proposed. I bear in mind paragraph 1 of the proposed order: Mr. Al Rajaan's obligation to provide information is to be performed "to the best of his ability". There is no absolute obligation to provide information which Mr. Al Rajaan cannot reasonably find out.

84. *(C) US$ 25 million transferred by Silvermoon to Fransabank.* My conclusions in relation to (B) are equally applicable to this transfer, as to which no separate points were raised. They also apply to the transfer in *(E)* which similarly concerns Fransabank and where no separate points were raised.

85. *(D) US$ 22 million transferred from Dryden to an account of Whipple Holdings Ltd. at the Bank of Singapore in May 2012.* Here, PIFSS seeks only limited information; i.e. as to why Whipple received this significant sum from Dryden. No documentation is now sought.

86. The background, to what is now a limited request, is that Mr. Al Rajaan has explained in FAR 2 that he did not consider Whipple to be his company, and cannot recall this company. Enquiries with "Rhone Trust", which established and administered the transferor, Dryden, have not met with a positive response. This is because outstanding fees were owed to Rhone Trustees (Bahamas) Ltd. (i.e. "Rhone Trust"), and no information would be provided until those fees were paid. Those enquiries asked whether Rhone Trust had any information in the files of Dryden as to whether or not Whipple may have been legally or beneficially owned by Mr. Al Rajaan. In a recent letter dated 26 May 2020, Mishcons referred to the fact that 'despite having made enquiries of his advisors, [Mr. Al Rajaan] has no knowledge about Whipple and does not believe it to be his asset'. A similar point was made in a later letter dated 29 May 2020.

87. Mr. Lazarus submits that the request is justified, because Mr. Al Rajaan's evidence, and the correspondence, are concerned with whether or not he knows about the company and its beneficial ownership. He has not therefore addressed the question of what he knows about the payment.

88. In my view, this is a narrow request for information in relation to a very substantial sum of money transferred at around the same time as other substantial payments. I consider that Mr. Al Rajaan should answer the question posed. It may be that his answer will be, as Mr. Lazarus indicated, that he knows nothing about the payment of this very significant sum out of an account which was (as I understand it) an account on which Mr. Al Rajaan could draw. If so, then it would appear likely that the matter cannot be taken any further. However, it is possible that a different answer may be given, and this may lead to additional questions, which may lead incrementally to the location of assets against which PIFSS assert a proprietary claim. Accordingly, I consider this request to be justified.

89. *(K): the sum of US$ 2.5 million transferred to Gemcut, a jeweller in Switzerland, in July 2008.* The issue here is again a narrow one. Documents relating to the transfer, and the gems transferred, have now been identified as being within the Swiss Domestic Materials. Mishcons' letter of 29 May 2020 states that they are instructed that Mr. Al Rajaan does not know the location of the diamonds that were purchased. The issue is whether Mr. Al Rajaan should confirm that statement in a witness statement of his own.

90. I do not consider that this is necessary. There has been a clear statement by Mr. Al Rajaan's solicitors, on instructions, that he does not know the location of the diamonds. The amount of money involved in this particular transfer is not substantial in the context of the overall claim. I consider that where a clear response has been given by Mr. Al Rajaan's solicitors to a specific question, and the amount of money involved is not substantial in the context of the claim, it is appropriate and proportionate for that to be treated as sufficient.

91. *(L): Transfers to Evelyn Assets between 2003 and 2012 amounting to US$ 36 million.* The position here is that the Swiss Domestic Materials contain the relevant information sought in respect of the period subsequent to 2006. This means that information is available to PIFSS in respect of approximately US$ 29 million of the US$ 36 million that was transferred. For reasons already given, I consider that PIFSS should use that route in respect of those element of the transfers.

92. That does leave approximately US$ 7 million relating to transfers between 2003 and 2006. Those transfers are now of some considerable antiquity, and I have not been persuaded that it would be a proportionate or productive exercise for the court to make an order in respect of those transfers. As things currently stand, the evidence indicates that Mr. Al Rajaan could not himself make a request for this material. It would have to come from Rhone Trust, which is presently unwilling to assist Mr. Al Rajaan until their fees are paid. That particular problem may have a solution: it may be possible to replace Rhone Trust. But even if that proved possible, there is some doubt as to whether the relevant bank (Pictet) is obliged to provide records going back so far. Given that information as to the bulk of these transfers is available within the Swiss Domestic Materials, I do not consider that further orders in this respect are proportionate.

93. *(M): US$ 12.8 million transferred to Suncoast*. Suncoast's account seems (from Mishcons' letter dated 29 May 2020) to have been in existence between 2006 and 2012, and I infer from the terms of this request that the monies were transferred at some time after 6 February 2007. Mishcons have identified, in that letter, bank statements which are within the Swiss Domestic Materials. Mr. Lazarus indicated that he was not in a position to confirm that this was the case, and that his understanding was that the bank statements were or may not be there, although certain 'slips' were.

94. I consider that, for reasons already given, PIFSS should re-examine the Swiss Domestic Materials in order to see whether the information that it is seeking is there. If not, then further requests can be made and if necessary a further application can follow. At present, however, I do not consider it appropriate to make the order requested.

95. *(N): US$ 34.7 million transferred from Bordertown to Lipuno.* The position here is similar to (M). Mishcons' letter of 29 May 2020 identifies where in the Swiss Domestic Materials the bank statements are to be found. Mr. Lazarus accepted that some bank statements were in those materials, but he could not confirm if they were complete.

PIFSS should again re-examine the Swiss Domestic Materials to see if they contain the information requested. No order is presently required.

96. *(O): sums transferred from Orkina to Dugamo.* Although there appear to be some documents within the Swiss Domestic Materials relating to Dugamo, there is no indication that the statements were there. However, Mishcons on behalf of Mr. Al Rajaan have stated in their letter dated 26 May 2020 that he does not admit that Dugamo is his asset, and he could not be required to procure the directors, officers or fiduciary service providers to provide him with information in relation to it – even if he knew the identity of those persons, which (as Mishcons said on instructions) he did not.

97. I consider that the position here is similar to that relating to the gems, and that there is no reason to require Mr. Al Rajaan to repeat in a witness statement the matters set out in the letter of 26 May 2020. As Mr. Lazarus's submissions recognised, PIFSS had really taken this particular request as far as they could. I therefore do not consider an order to be appropriate in respect of this item.

F2: Bernabeu Investments Ltd. and Bordertown Trader Ltd.

98. Paragraph 5 of Schedule 1 to the order sought by PIFSS requires Mr. Al Rajaan to provide the following information:

> "In relation to the companies (i) Bernabeu Investments Ltd and (ii) Bordertown Trader Ltd, provide details as to their alleged liquidation and how and to whom the assets held by each company prior to liquidation were disposed of. Alternatively, if it is the First Defendant's case that he is unable to give this disclosure because the companies were not in his ownership or control, provide particulars explaining why the same is alleged."

99. The substance of the application under paragraph 5 is no longer, at least in relation to Bernabeu, for "details as to their alleged liquidation". These details have been provided at least in relation to Bernabeu. A letter from Swiss lawyers dated 20 April 2020 gave details of the dissolution of Bernabeu Investments Ltd. and enclosed relevant documents. Rather, PIFSS seeks information concerning the disposal of 'assets held by each company prior to liquidation'. Information has been provided as to the disposal of amounts in these companies' accounts at the time of liquidation, but not in relation to monies held prior to that time.

100. PIFSS contends that Bernabeu Investments Ltd was incorporated in the BVI in November 2008. It had accounts with one of the other defendants in these proceedings, a bank known as Mirabaud. Bernabeu received funds from Domini Trading SA, which Mr Al Rajaan accepts is his company. Domini was set up to receive secret commissions as part of the Mirabaud Scheme pleaded in the Particulars of Claim. Although Mr Al Rajaan has said that Bernabeu was liquidated on 12 November 2010, no information has been provided as to its liquidation or what became of the secret commissions it received.

101. PIFSS contends that Bordertown Trader Ltd was a company incorporated in the Bahamas to facilitate the receipt of secret commissions and their proceeds. Mr Al Rajaan has said that Bordertown was liquidated on 5 July 2012. Again, however, no

information has been provided as to what became of the secret commissions it received. There are indications in the pleadings, and in Ms. Garbett's 5th witness statement, that Bordertown was a company which was beneficially owned by Mr. Nasrallah, who refers to this fact in paragraph 97.4 of his defence. However, it is also clear from paragraphs 72.4 and 90.5 of Mr. Nasrallah's defence that Bordertown's bank accounts contained funds held for the benefit of Mr. Al Rajaan.

102. PIFSS therefore contends that, in relation to both companies, it has a proprietary claim to the monies which passed through the accounts of these two companies, and that Mr. Al Rajaan should provide information about those monies.

103. In relation to these companies, Mr. Weisselberg made his general submission that the information sought was not an exercise that would in itself be likely to find monies. As already indicated, I consider that an incremental approach is justifiable, even if there may be further stages before the proceeds of the alleged secret commissions are ultimately identified.

104. In his opening skeleton, it was also submitted that there was no need for any order in relation to these two companies. In relation to Bernabeu, information had been provided by the Swiss lawyers in relation to the liquidation, and the funds transferred upon liquidation. In relation to Bordertown: this was Mr. Nasrallah's company, and the appropriate party to provide further details was Mr. Nasrallah.

105. In his oral submissions, Mr. Weisselberg submitted that the order was far too wide, and would require disclosure of a complete history of monies received by the companies and paid out by them, irrespective of whether they were related to secret commissions. Mr. Lazarus's response to this particular point was that PIFSS knew of the involvement of these two companies in the receipt and transfer of secret commissions, but the documentation was not sufficient to enable PIFSS to particularise the transfers in the way that they had been able to do in relation to the Schedule 3 payments.

106. I consider that this request is justified, with the slight modification that details of the liquidation of the two companies need not be provided. In relation to Bernabeu, that information has been provided. In relation to Bordertown, what really matters is information as to the transfer of assets. The evidence indicates that both companies were involved in the receipt of commissions which are the subject of PIFSS' proprietary claim. The rationale for requiring the provision of further information is no different from that which justifies the orders in respect of the transfers in Schedule 3. The only material difference is that PIFSS has not been able to particularise the transfers. Hence the request seeks details of the disposal of all of the assets of these two companies. But there is no material which indicates, presently, that either company had any other substantial business, such that the provision of the information requested would be burdensome or likely to result in the provision of information relating to assets other than the commissions which are the subject-matter of the present claim. The fact that one of the companies may have been beneficially owned by Mr. Nasrallah does not make it inappropriate to seek information from Mr. Al Rajaan – in circumstances where Mr. Nasrallah's case is that monies in Bordertown's accounts were held for Mr. Al Rajaan.

F3: Gifts of property to Mr. Al Rajaan's children

107. Paragraph 6 of the proposed order seeks the following disclosure:

> "After undertaking reasonable searches of any relevant documents in his possession and enquiries of the First Defendant's family, set out in relation to the following properties (referred to in the First Defendant's Third Witness Statement): (i) their full address; and (ii) details of any transfers of the legal or beneficial title to the property that have occurred since they were acquired by the First Defendant's children:
>
> a. three properties located on West Century Drive in Los Angeles, California allegedly purchased for the First Defendant's daughters;
> b. apartment in St Moritz allegedly gifted to the First Defendant's children."

108. Mr. Al Rajaan's 3rd witness statement indicates that he transferred over US$30.6m to his children during the course of his 30-year tenure at PIFSS. The statement identifies four substantial gifts of property to his children comprising: (i) three properties in West Century Drive, Los Angeles, purchased for a combined cost of around US$12.1m, and (ii) an apartment in St Moritz, purchased for US$6.45m in 2011.

109. PIFSS contends that these assets are subject to PIFSS's proprietary claim. Further or alternatively, disclosure is justified under CPR 25.1(1)(g), because PIFSS may apply to restrain the assets (under the court's *Chabra* jurisdiction and/or because the gifts may be reversed under s.423 of the Insolvency Act 1986).

110. Mr. Al Rajaan submits, in response, first that there is no evidence that Mr. Al Rajaan's children had any involvement in his business affairs. PIFSS have only identified one occasion in the Swiss Domestic Materials where one of his children was named as a beneficiary on internal banking documents, and hence arguably acted as a nominee. However, that was a mistake and Mr. Al Rajaan does not know how it happened. The position of his children is distinct from that of Ms. Al Wazzan (against whom freezing relief is in place), who, Mr. Al Rajaan accepts, held certain accounts (for tax and inheritance purposes) that he used for his business.

111. Secondly, he submits that there is no basis for any proprietary claim in respect of these properties given that they are located in Switzerland and the US and the applicable law would, based on the *lex situs*, be Swiss or US law.

112. Thirdly, and in any event, he says that PIFSS is aware of the assets and it is open to PIFSS to investigate further if it considers it appropriate. The addresses of the US properties have been known for some time, and can be seen in some of the documents available in the bundles for the application.

113. Fourth, given Mr. Al Rajaan's independent wealth, it is not the case that all gifts necessarily represent the proceeds of the alleged secret commissions.

114. I consider that Mr. Al Rajaan should provide the details requested in relation to the US properties. There is an arguable proprietary claim in relation to those assets or any

proceeds thereof, if derived from the secret commissions received by Mr. Al Rajaan. There is no evidence that Californian law (or US law generally), where the assets are or were situated, would not recognise a proprietary claim. In the absence of evidence to the contrary, the English court proceeds on the presumption that a foreign law is the same as English law. Mr. Al Rajaan has presented no evidence to the contrary here. It is fair to say that the addresses of the relevant properties do appear in the documents, but it is a straightforward and easy matter for Mr. Al Rajaan to confirm those addresses.

115. It is necessary to consider the Swiss property separately. Here, there is evidence that Swiss law would not recognise a proprietary claim. Although PIFSS does not accept that Swiss law is applicable in relation to the claim in respect of the St. Moritz property, it did not put forward any argument at the hearing in response to Mr. Al Rajaan's argument that the lex situs of this particular asset is applicable. Whilst the question of applicable law is a matter for future argument and determination, for present purposes I consider it appropriate to proceed on the basis that Swiss law applies in relation to this property and that PIFSS' primary route to disclosure is not available.

116. However, PIFSS have intimated a possible claim to this property on the basis that Mr. Al Rajaan's children are holding this property as nominee for him (so that the asset would be amenable in due course to execution of an English judgment, and therefore capable of being the subject of a freezing injunction). However, this jurisdiction requires "good reason to suppose" that assets held in the name of a defendant against whom the claimant asserts no cause of action would be amenable to some process of execution in respect of a judgment against the defendant where there is a cause of action: see *PJSC Vseukrainskyi Aksionernyi Bank v. Maksimov* [2013] EWHC 422 (Comm) at [7] (Popplewell J.). At present, I do not think that there is sufficient material which provides "good reason" to suppose that this is so.

117. It is true that CPR 25.1 (1) (g) allows for the provision of information where, for example, this test is not presently satisfied: see *Pugachev* cited above. But I do not see how the provision of the limited information now requested would enable PIFSS to test the assertion of whether or not the St. Moritz property is or is not held by Mr. Al Rajaan's children as nominees. At present, as Mr. Lazarus accepted, there is a 'degree of speculation' about this particular claim.

118. The same can in my view be said about a possible claim under s. 423 of the Insolvency Act 1986. This requires a debtor to have acted with the purpose of putting assets beyond the reach of creditors or otherwise prejudicing them. At present, the argument that this section would apply to the St. Moritz property transfer similarly involves a degree of speculation.

119. I therefore decline to make the order sought in relation to the Swiss property.

G: Other applications

120. Paragraphs 1 – 4 of Schedule 1 to the draft order seek information under the headings "Bank accounts", "Companies" and "Alleged Trusts".

G1: Bank accounts

121. Paragraph 1 seeks disclosure of the identity of the branches of the banks where the accounts previously disclosed under the WFO are held. The WFO in the present case does not specifically require information as to branches. I do not consider that this is necessary to make the freezing order more effective. Mr. Al Rajaan has disclosed the account numbers and the identity of the banks. Ordinarily, one would expect this to be sufficient to enable a bank, which is given notice of the WFO, to identify the relevant account. There is no evidence that this is, or will be, insufficient to enable the freezing order to be enforced effectively in any jurisdiction. If problems are in due course encountered with any particular bank, PIFSS can return to court to seek a variation if this cannot be agreed.

122. Paragraph 2 has two aspects. First, PIFSS seeks an order for the disclosure of Mr. Al Rajaan's continuing enquiries in relation to certain accounts in Egypt and Kuwait. The current position is that Mr. Al Rajaan has been unable to obtain information about those accounts, in particular the amounts held. Since enquiries are continuing, and since the WFO requires Mr. Al Rajaan to provide information (to the best of his ability) as to the value of his assets, it follows that Mr. Al Rajaan should indeed provide further information, if received, which is within the scope of the existing WFO.

123. The second aspect is that PIFSS requires Mr. Al Rajaan to provide his best estimate of the balances of those accounts. I consider that this information should be provided. The estimate may prove inaccurate. But the existing order does require information as to the value of assets, to the best of Mr. Al Rajaan's ability. He should therefore give his best estimate.

G2: Companies

124. Paragraph 3 requires the disclosure of the results of Mr. Al Rajaan's continuing enquiries in relation to the location and details of the company officers, directors, and fiduciary providers for two companies where Mr. Al Rajaan accepts that he is the beneficial owner. I consider that this information should be provided. It will enable PIFSS to make the freezing order more effective by enabling PIFSS to give notice to those persons.

G3: Myrose and Dukesmews

125. Under Paragraph 4 of Schedule 1, PIFSS seeks disclosure of information relating to two trusts, Myrose and Dukesmews. The order sought is in the following terms:

> Alleged Trusts
>
> 4. In relation to "the Myrose Trust" and "the Dukesmews Trust" (as referred to in a letter of the First Defendant's solicitors dated 31 January 2020), after undertaking reasonable searches of any relevant documents in his possession and enquiries with the advisers, trustees, and beneficiaries involved, the First Defendant must:

> a. set out the identity of the trustee(s), settlor(s), any protector(s), and the beneficiaries of, and any other person carrying on some or all of the functions of a protector or trustee under another title in relation to the trusts;
>
> b. set out details of the assets subject to those trusts (including their value and location and whether they were formerly owned by or on behalf of the First Defendant); and
>
> c. supply copies of the trust deed(s) and/or any other instruments of settlement (with the exception of the original Dukesmews Trust deed that the First Defendant has disclosed) and subsequent amendments thereto, and correspondence (written and electronic) passing between the alleged settlor(s) (including any of their representatives) and trustee(s) (including any of their representatives) in relation to the settlement and on-going management and control of the trust and its assets.

126. The background to the application is as follows. Paragraph 4 of the WFO identifies two London properties as being subject to the injunction. These properties are at: (i) 199 Knightsbridge, where Mr Al Rajaan lives, and (ii) 36 Eaton Square. Neither property was disclosed in Mr. Al Rajaan's first affidavit, FAR1. The reason was that these properties were held by trusts where the beneficial ownership was considered to be vested in Mr Al Rajaan's children. The trusts are Dukesmews (for the Knightsbridge property) and Myrose (for the Eaton Square property).

127. Mr. Al Rajaan now accepts that the Knightsbridge property and the Dukesmews Trust are disclosable assets under the WFO. He has exhibited the trust deed which entitles Mr. Al Rajaan (jointly with Ms. Al Wazzan) to appoint the whole capital and income of the Trust Fund (defined as all the original and subsequent property of the trust) to any person including himself. His second witness statement has therefore disclosed the Knightsbridge property (acquired in 2006 for £ 6.69 million), and a bank account for Dukesmews Ltd. containing just over £ 4 million.

128. Mr. Al Rajaan contends that no further disclosure is required in relation to Dukesmews. He has disclosed all assets in excess of £ 50,000 as required by the WFO. PIFSS therefore has all the information that it could reasonably require for the purposes of enforcing the WFO.

129. The position in relation to Myrose is different. Mr. Al Rajaan contends that the Myrose Trust is for the benefit of his children and that he has no beneficial interest in the trust assets. He has therefore not provided any disclosure of the assets of the trust. He has produced evidence in the form of a letter dated 23 March 2020 from a Guernsey law firm (Mourant) which represents the trustees, AUB Trustees (Guernsey) Ltd. (AUB stands for Ahli United Bank). The letter states that Mr. Al Rajaan is not a beneficiary of the trust, and has no relevant powers under the trust deed. He cannot, for example direct the payment of trust income to himself or otherwise. There is also evidence that the trustees have refused to provide him with a copy of the trust deed, on the basis that he is not a beneficiary of the trust. He therefore submits that he has already undertaken

reasonable enquiries in relation to the Myrose Trust, and that there is nothing further that he could or should be asked to do.

130. The basis of PIFSS's application is twofold. The primary argument is that the trusts "arguably hold the proceeds of the Secret Commissions (to which PIFSS makes a proprietary claim)." Disclosure is therefore justified on the basis of the principles relating to disclosure in support of a proprietary claim.

131. An alternative argument is based upon the decision of the Court of Appeal in *Pugachev* and the width of the power in CPR 25.1 (1) (g). This is relevant because PIFSS 'may apply to freeze the trust assets'. PIFSS contends, in that regard, that there is credible evidence that Mr. Al Rajaan's disclaimer of an interest in the trust assets is false. They draw attention to the evidence of Ms. Al Wazzan in the English criminal restraint proceedings. She identifies her principal investment as comprising a shareholding worth US$ 68 million in Ahli United Bank "currently held by the Myrose Trust". She must therefore have understood at that time that she was a beneficiary of the trust at least to the extent of that shareholding, and PIFSS contends that it is but a short step to the conclusion that (as with other assets of Ms. Al Wazzan) such assets were held as nominee for Mr. Al Rajaan.

132. Since the arguments in relation to the two trusts are somewhat different, I will deal with them separately.

133. As far as Dukesmews is concerned, there is no dispute that the currently held assets of that trust should be disclosed by Mr. Al Rajaan in response to the WFO. He contends that he has already done so, in so far as such assets exceed £ 50,000. It seems to me to be implicit in Mr. Al Rajaan's second witness statement that the currently held assets of the trust, in excess of £ 50,000, are the Knightsbridge property and the £ 4 million in the disclosed bank account. I do not, however, think that this should be left as an implicit statement of the position. Mr. Al Rajaan should therefore confirm in a witness statement that the trust has no further assets in excess of £ 50,000 or, if this is incorrect, disclose the assets.

134. This addresses the question of current assets. It does not address the possibility that the trust previously had assets (into which PIFSS would seek to trace) but no longer has them. I was told by Mr. Lazarus that the lengthy wording of paragraph 4 (c) of the proposed order, as set out above, was directed at past assets. I do not think that this is at all clear from the wording. My reading of Mr. Lazarus' skeleton argument on this issue is that it was directed towards assets which the trusts "arguably hold": i.e. current assets. Similarly, the section of the skeleton dealing with tracing of the secret commissions related to the transfers discussed in Section F above, rather than Myrose and Dukesmews. Furthermore, the application in relation to the "whereabouts and/or proceeds of alleged Secret Commissions" was set out in paragraph 5 of the proposed order, rather than paragraph 4.

135. I do not therefore consider it appropriate at the present time to make an order which extends beyond disclosure relating to the current assets of this trust. I consider that the order sought under paragraph 4 (a) and (b) is appropriate, but I have not been persuaded that it is appropriate to go any further, at least at the present stage. I also note that the order made by Henderson J. in *Pugachev*, on which paragraph 4 is said to have been

based, was equivalent to that sought under paragraph 4 (a) and (b): see the judgment of the Court of Appeal, paragraph [7].

136. As far as the Myrose Trust is concerned, I consider that PIFSS' application for disclosure succeeds on the basis of its principal argument, namely that this trust arguably holds the proceeds of secret commissions to which PIFSS makes a proprietary claim.

137. It is therefore not necessary to address in detail the alternative claim based on the *Pugachev* decision and CPR 25.1(1)(g). It suffices to say that this alternative argument did in my view have some force, in view of the previous evidence of Ms. Al Wazzan in the criminal restraint proceedings as to her beneficial interest of a shareholding valued at US$ 68 million held by the Myrose Trust, coupled with the evidence that she does indeed hold some assets as her husband's nominee. That evidence as to the Myrose trust was given at a time when Mr. Al Rajaan and Ms. Al Wazzan were represented by the same solicitors. It would seem unlikely that Mr. Al Rajaan could have been unaware of her evidence as to her interest in the Myrose trust. Whilst it has now been said by her solicitor that this was a 'mistake', no explanation has been given as to how a mistake of this magnitude came to be made. I am therefore inclined to think that there is sufficient material to warrant an order under CPR 25.1 (1) (g) on the basis of the principles discussed in the two *Pugachev* decisions to which I have referred.

138. For reasons similar to those given in relation to Dukesmews, the disclosure should be limited to that sought under paragraphs 4 (a) and (b) of the proposed order. I do not consider that disclosure of the Myrose trust deed is necessary: the material terms of the deed relating to Mr. Al Rajaan have been described in Mourant's letter, and the substance of PIFSS' case is that Mr. Al Rajaan is the person who may be pulling the strings, through others, whatever the trust deed might say.

G4: Addition of assets to the order

139. PIFSS wishes the order to specify additional assets, now disclosed, which are subject to the WFO. This will therefore add to the list of specific assets which were originally identified, in the usual way, when the WFO was granted. I consider that the order should be supplemented in this way. It is usual, in my experience, for additional assets to be identified beyond those known at the time when a WFO is granted. This adds to the clarity of the order as far as the defendant himself is concerned, and indeed for any judge who has to consider later applications. It also adds to the clarity for third parties to whom the order may in due course be notified.

140. I do not see why the inclusion of assets, now subject to the WFO, should await any later application to enforce the WFO abroad. Any concerns of Mr. Al Rajaan in relation to the confidentiality of his personal financial information, such as bank account details, can in my view be met by restricting the form of the order which is to appear on the court file. PIFSS has made it clear that it does not oppose such a restriction, since it is not seeking to add these assets in order to publicise details of Mr. Al Rajaan's financial position.