Neutral Citation Number: [2026] EWCA Civ 940

Case No: CA-2025-3173
CA-2025-3181

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT
Stephen Houseman KC (sitting as a Deputy High Court Judge)
[2025] EWHC 2968 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/07/2026

Before:

LORD JUSTICE MALES
LORD JUSTICE PHILLIPS
and
LORD JUSTICE FOXTON

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Between:

1) RICARDO BENJAMIN SALINAS PLIEGO **2) CORPORACION RBS SA DE CV**	**Appellants/ Claimants**
- and –	
1) ASTOR ASSET MANAGEMENT 3 LIMITED **2) WEISER GLOBAL CAPITAL MARKETS LIMITED** **3) TAVIRA MONACO SAM** **4) VLADIMIR SKLAROV** **5) CORNELIUS VANDERBILT CAPITAL MANAGEMENT LTD** **6) ASTOR CAPITAL FUND LIMITED**	**Respondents/ Defendants**

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John Wardell KC, Richard Greenberg & Stefanie Wilkins (instructed by **LK Law LLP**) for the **Claimants**

Niranjan Venkatesan KC & Alexander Georgiou (instructed by **PCB Byrne LLP**) for the **First & Fourth to Sixth Defendants**

Hearing dates: 30 June, 1 July & 2 July 2026

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Approved Judgment

This judgment was handed down remotely at 2.00 p.m. on Tuesday 21 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE MALES:

1. These appeals raise the question whether what has been described as 'privilege hunting' (i.e. obtaining or seeking to obtain an opponent's confidential and privileged information by dishonest means) is an abuse of the process of the English court and, if it is, what if anything should be the court's response.

2. In the present case the claimants employed a company called Black Cube, a private investigation firm staffed by former Israeli intelligence officers, to target in a covert sting operation the solicitor at the defendants' solicitors who had the conduct of the defendants' case. By pretending to be a potential new client, a Black Cube operative fraudulently induced the solicitor to attend meetings in Amsterdam, at which the solicitor was induced to reveal sensitive information about the case, including the impact of freezing orders which the claimants had obtained, perceived weaknesses in the defendants' case, litigation strategy and settlement strategy. The meetings were secretly recorded and the recordings were provided to the claimants.

3. This was done without the knowledge of the claimants' then solicitors, Enyo Law LLP. When they were told about it, Enyo refused to look at the video files or listen to the audio files. That resulted in them being sacked and the claimants' current solicitors and counsel being instructed. The new solicitors, LK Law LLP, issued an application for summary judgment, exhibiting the covertly obtained recordings. The defendants' response was to apply to strike out the claim on the ground that the Black Cube sting operation was an abuse of process.

4. Mr Stephen Houseman KC, sitting as a Deputy High Court Judge, held that the sting operation was an abuse of process, but that the appropriate response was not to strike out the claim. He regarded that as disproportionate. Instead, he struck out the claimants' summary judgment application and deferred to a future hearing the questions whether or to what extent the claimants would be entitled to make use of or deploy in evidence the material which they had obtained and whether a fair trial remains possible.

5. The claimants appeal against the finding of abuse and contend that they should be allowed to pursue their summary judgment application, alternatively that the application should not have been struck out without conducting a detailed analysis of the extent to which they were free to use the material obtained on the ground that it was within the 'iniquity exception' to legal professional privilege. The defendants cross-appeal, saying that the judge should have struck out the claimants' claim in its entirety.

6. I have concluded that the claimants' conduct did constitute an abuse of the process of the court, that the Deputy Judge was right to refuse summary judgment, and that the appropriate and proportionate response was not to strike out the entire claim, but to discharge freezing orders obtained by the claimants and to leave it to the trial judge to decide whether the claimants' abuse should affect any entitlement they may otherwise have to the equitable or discretionary relief which they seek.

The parties

7. The first claimant, Mr Ricardo Salinas Pliego, is a wealthy Mexican businessman. He is the founder and chairman of Grupo Salinas, a conglomerate of businesses operating in Mexico. One of the companies in the group, in which Mr Salinas was a large shareholder, was Grupo Elektra SAB de CV. It is listed on the Mexican Stock Exchange. Its business included financial services and the operation of retail stores. The second claimant ('RBS') is another Mexican company ultimately owned and controlled by Mr Salinas.

8. The fourth defendant, Mr Vladimir Sklarov, is of Ukrainian origin. It is the claimants' case that he is a prolific fraudster who engages in stock lending frauds across the world. His *modus operandi* is said by the claimants to include the use of false names and misleading trading names, often resembling those of wealthy families associated with well-known legitimate financial services firms, to obtain valuable securities which are ostensibly to serve as collateral for a loan; those securities are then misappropriated, sometimes after a spurious declaration of an Event of Default, and sold through a web of companies in offshore jurisdictions.

9. The first, fifth and sixth defendants, incorporated respectively in Quebec, Belize and the Bahamas, are companies under Mr Sklarov's control. Despite their names, they have nothing to do with the well-known Astor or Vanderbilt families or with businesses genuinely associated with those families.

10. The second and third defendants ('Weiser' and 'Tavira') are companies incorporated in the Bahamas and Monaco which carry on business as brokers and custodians of securities. They are not concerned in this appeal. I shall refer to the first, fourth, fifth and sixth defendants collectively as 'the defendants'.

The claim

11. In the spring of 2021 Mr Salinas wanted to borrow money urgently. He asked his subordinate, Mr Eduardo Salceda, to arrange a loan. Mr Salceda contacted Mr Salinas' Swiss-based financial adviser, Mr Alexandre Torti, who was tasked with looking for financial institutions who might be willing to provide the necessary funds. As part of these efforts, Mr Torti was introduced to Ms Zara Akbar of Enness Global, a UK based financial services firm. Ms Akbar told Mr Torti about a financial institution called Astor Capital Fund, with which she said that she had previously worked successfully, and agreed to put him in touch with Astor. She explained that Astor Capital was 'originally set up on the foundations of the wealth of John Jacob Astor' and gave details of prestigious investors in the fund. She provided him with a corporate profile which emphasised the fund's origins in the Astor family.

12. This led to an introduction to a Mr Gregory Mitchell and a Mr Thomas Mellon, supposedly senior representatives of Astor Capital Fund. In fact such individuals did not exist; these were aliases of Mr Sklarov and his associate, Mr Alexey Skachkov.

13. This introduction led to the conclusion on 28th July 2021 of a Stock Lending Agreement between Astor 3 as lender, RBS as borrower, and Mr Salinas as guarantor. Astor 3 advanced the Mexican equivalent of about US \$115 million in five tranches against security in the form of Mr Salinas' shares in Grupo Elektra which had a total value of approximately US \$415 million. These were to be held by Weiser and Tavira as custodians during the loan term.

14. The Stock Lending Agreement included terms which prohibited the lender, so long as there had not been an Event of Default, from selling or short-selling the shares on any publicly traded securities exchange or from transferring the shares to its own account. But it also contained other provisions, drafted in what the claimants say was deliberately obscure and convoluted language. The defendants say that these provisions did after all entitle them to deal with the shares during the currency of the loan.

15. It appears that the Elektra shares transferred to Weiser and Tavira were promptly transferred to the defendants, who sold them to third parties. The proceeds of these sales were used to fund the third and subsequent tranches of the loans provided by Astor 3 to RBS. The surplus, some US $271 million, was paid into accounts controlled by a Mr JT Singh, an associate of Mr Sklarov.

16. The net result of these transactions was that in exchange for a loan of US $115 million, the claimants transferred shares in Grupo Elektra worth about US $415 million which have now been sold, with the greater part of the proceeds being transferred into the control of Mr Sklarov.

17. The claimants say that they were deceived into concluding the Stock Lending Agreement and transferring the Grupo Elektra shares by the defendants' false representations that they were a legitimate and honest financial institution connected to the Astor family, when in fact they were creatures of Mr Sklarov set up pursuant to a fraudulent scheme to expropriate the shares; and that the disposal of the shares was in breach of the Stock Lending Agreement.

18. The defendants deny these claims, saying that the Stock Lending Agreement permitted what they call the 'rehypothecation' of the shares, which included lending them to third parties who were permitted to trade them without restriction, and that the claimants knew and agreed that this would happen. They say that this was the *quid pro quo* for the low interest rate charged for the loan; that without a right to deal with the shares in this way, the agreement would not have made economic sense, as the claimants must have understood; and that the scheme was intended to work by the defendants purchasing equivalent shares to be returned to the borrower when the loan was repaid. They say that the claimants defaulted on the loan by failing to pay fees and interest as required, and that they served valid notices of default in March 2024 and subsequently, as a result of which they were under no obligation to return the shares or their equivalent to the claimants.

19. The defendants admit that Mr Sklarov used the name Astor in order (in Mr Sklarov's own words) 'to piggyback off the popularity that has been created by that name', but contend that this is common practice in the business world, pointing to the fact that there are several thousand companies globally which contain the name Astor. They deny making any claim to be connected with the Astor family and say that if Ms Akbar referred to any such connection, she did so without their knowledge or approval. Mr Sklarov accepts that he used the alias Gregory Mitchell, but says that he used this name because Vladimir is not a popular name in the US and he wanted to avoid discrimination as a result of being both Jewish and Ukrainian.

The Deputy Judge's view of the strength of the claim

20. The Deputy Judge did not reach the stage of determining the claimants' summary judgment application, but he made a number of comments about the strength of the claimants' case on the merits. He began his judgment by posing the question, 'What should the Court do when someone with an apparently strong and substantial, perhaps unanswerable, claim in fraud seeks summary judgment in light of illicit knowledge obtained by unethical means?' Later, however, he said only that the claimants had 'a decent prospect' of succeeding on their deceit claim at trial (para 78(ii)) and that the summary judgment application 'might have succeeded based on the material I have seen, at any rate as regards proof of dishonest misrepresentations intended to induce the claimants' (para 82(i)).

21. We have rightly not been addressed in any detail on the merits of the claim, although Mr Niranjan Venkatesan KC for the defendants insisted that it was a weak claim. I will proceed on the basis that the claimants have a strong case on the merits and that, if the summary judgment application had not been struck out, it might well (but would not inevitably) have succeeded. That seems to reflect the Deputy Judge's view and appears to be supported by the limited evidence that we have been shown. It is, therefore, the basis on which any question of proportionality must be assessed.

The engagement of Black Cube

22. BC Strategy UK Ltd, better known as 'Black Cube', is a UK company established in 2012 by Dr Avi Yanus, its sole director. It operates under the Black Cube brand in the UK, the European Union, the US and over 50 other countries. Dr Yanus describes it as a litigation support firm which is 'composed of a select group of veterans from special units of the Israeli intelligence community and skilled intelligence officers with a background in law and finance', with offices in London, Tel Aviv, Madrid and Singapore, which is 'engaged for its expertise in intelligence collection and analysis'. Its operating methods include making contact with individuals relevant to litigation in which its clients are involved in order to obtain information ('human intelligence' or 'Humint') which is covertly recorded. Copies of the recordings are then provided to clients after using software to distort the voices of its agents in order to conceal their identity.

23. By a Letter of Engagement dated 27th August 2024 Black Cube was engaged, purportedly by a Mexican company called Nueva Elektra del Milenio SA de CV ('NEM') which was referred to as the 'Client'. It was signed on behalf of NEM by Mr Gabriel Roqueñi, a senior executive within Grupo Elektra.

24. The letter set out 'the research process and scope of services to be provided to the Client in anticipation of Client commencing legal proceedings'. It is not clear why NEM was named as the Client. It is not a party to these proceedings and there is no reason to think that it was ever contemplated that it would be. It had no independent interest in or knowledge of the dispute between the parties. To the extent that it played any role in this matter, it must have done so with the knowledge and approval of the claimants. It is a reasonable inference that the reason why NEM was named as the Client was in an attempt to put distance between the claimants and Black Cube.

25. The letter described how Black Cube would gather information about the defendants and relevant individuals associated with them and the methods of extracting information which would then be employed:

> ‘8. Building on the research described above, Black Cube will identify and select the optimal subjects (hereafter the “Humint Targets”) to approach in order to extract the intelligence.
>
> 9. Black Cube will then find the best access points to the Humint Targets and create elaborate, personalized cover stories for each subject selected by the team and approved by the Client.
>
> 10. Physical and digital infrastructures will be tailored in order to support the cover stories designed by the team, using Black Cube’s unique expertise in social engineering, psychological and behavioural pattern-identification, and web capabilities. The infrastructures may include the following features:
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> a) Registered companies;
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> b) Websites;
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> c) Emails, both personal and professional, depending on the needs of the cover;
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> d) Personal mobile phones;
>
> e) Landline phone numbers with operators and receptionists;
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> f) Internet presence, including on social media.
>
> 11. Operational needs may necessitate the deployment of additional field agents who may be supported by similar infrastructures as mentioned above.
>
> 12. The Humint Targets will then be approached for the purpose of gathering intelligence as per the objectives described above. Once approached, Black Cube operatives will build personal and/or professional relationships with each of them to extract relevant information and evidence.’

26. A redacted version of the letter was in evidence before the judge, redactions to the payment terms having been made by the claimants on the basis of asserted commercial sensitivity and irrelevance. We directed that an unredacted version be provided to us, which was duly provided.

27. As appears from the parts of the Letter of Engagement which have now been unredacted, for its services Black Cube was to be paid a Retainer Fee of £1,144,000, payable in two instalments, plus a fee of £220,000 in the event that it made one or more witness statements in the proceedings. A further fee of £250,000 was payable if Black Cube’s intelligence led to a criminal investigation against any of the defendants

in any jurisdiction.[1] In addition a further Success Fee was payable, consisting of a percentage of the total amount received by the claimants in the event that intelligence sourced by Black Cube was 'used':

> 'In the event that the intelligence sourced by Black Cube is used and the Client or any of its related parties obtains pecuniary or monetary worth – whether in a form of money, shares, properties or other forms of value – compensation, awards, damages and/or any other remedy from any of the Counterparties or any other relevant party, by way of settlement, negotiations, enforcement, tribunal decision or in any other way, then Black Cube would be paid an additional Success Fee of 4% of the total amount or value received by the Client or any of its related parties.'

28. The letter did not specify what would constitute 'use' of intelligence sourced by Black Cube, but it is apparent, in view of the size of the claim, that Black Cube stood to earn a very substantial Success Fee, in addition to its Retainer Fee, in the event that the claimants used the intelligence which it was to provide. In addition, it earned a healthy fee for the witness statements provided by Dr Yanus, although the Deputy Judge was not told this.

29. I can see no justification for the redaction of these payment terms. They were plainly relevant, at the very least, to any assessment of Dr Yanus' evidence. They provided a powerful incentive to Black Cube to adopt unethical methods, as the claimants must have understood.

30. Another covert operation by Black Cube provides an illustration of its methods, strikingly similar to those used in the present case. This operation sought unsuccessfully to trick a retired Canadian judge, who had heard a case involving a Black Cube client, into making biased and anti-Semitic comments in order to discredit him for the purpose of an appeal (*Catalyst Capital Group Inc v Westface Capital Inc* (2021) ONSC 7957, paras 25 to 32). In that case Black Cube appears to have been engaged on a basic fee of US $1.5 million with up to US $11 million payable in total after potential bonuses.

The Black Cube operation

31. One of the 'optimal subjects' identified to be approached in order to extract human intelligence was a partner at the defendants' solicitors, DWF Law LLP, who was one of two partners responsible for the conduct of their case.[2] In his judgment the Deputy Judge referred to this solicitor as 'X'. Neither party challenged this approach. I shall adopt the same course.

32. The claimants' evidence about how and when Black Cube came to target X is opaque, no doubt deliberately so, although his targeting must at least have been approved by

[1] It appears that Mr Sklarov does face criminal proceedings in the US as a result of the transaction in issue in this case, but neither party addressed to us any submission about these criminal proceedings and it was not suggested that they were the result of any information obtained by Black Cube.

[2] There were other targets. One of these who is known to have been targeted, Ms Akbar, was not a solicitor. The identity of other targets, and what if any information was obtained from them, is unknown.

the claimants in accordance with clause 9 of the Letter of Engagement. The Deputy Judge was not prepared to admit Dr Yanus' fourth witness statement, on the ground that it was served far too late, but he commented that he did not regard as 'remotely credible' the purported explanation which it contained as to why Black Cube had identified X as a target, saying that it looked like an attempt to distance the claimants from that decision.

33. Ultimately, although the Deputy Judge regarded the claimants' evidence about this as 'both incoherent and incredible' (para 23), he made the important findings that 'the claimants intended or expected [Black Cube] to engage in the kind of unethical conduct which took place and for which [Black Cube] was paid an undisclosed fee' (para 21) and that 'the claimants themselves engaged in unethical behaviour with a view to obtaining an unfair litigation advantage' (para 25).

34. The 'elaborate personalised cover story' invented by Black Cube in order to target X was for a Black Cube operator, calling himself Mr Marco Ortelli, to pose as the representative of a potential new client, an Italian oil company, interested in instructing X in connection with 'a multi-million-dollar arbitration' against the government of the United Arab Emirates. The arbitration appears to have been a real case, an investment treaty arbitration which was currently proceeding, the existence of which was in the public domain. The cover story was that the notional client was concerned that allegations of conspiracy would be made against it in the arbitration due to a joint venture which it had with the UAE government, and that an award could potentially be enforced against the receivables of the joint venture if the UAE government did not pay.

35. On this pretext, X (in London) was invited initially to take part in a Zoom meeting with 'Mr Ortelli'. The first contact with X was on 3rd October 2024 and the Zoom meeting was one week later, on 10th October 2024. It lasted about an hour. It was followed by an invitation to Amsterdam to 'finalize the terms of our engagement', with all expenses covered by the notional client. At this stage 'Mr Ortelli' provided the name of the supposed client, who was a real person for whom DWF (though not X) had previously acted. On 4th November 2024 X met 'Mr Ortelli' at the Dylan Hotel in Amsterdam.

36. 'Mr Ortelli's' story at this meeting was that the client's joint venture partner in the UAE was in default under various terms of the joint venture agreement and that the client wanted to find a way to access shares which the local partner had provided as collateral for its contribution to the joint venture. He said that he had heard of the possibility of structuring the agreement so as to allow the client to take control of the collateral shares in the event of default by the joint venture partner, describing this as 'rehypothecation'. This was the lever to induce X to talk about the present case, which involved similar issues. He did so with a view to impressing 'Mr Ortelli' with his relevant experience and knowledge of financial markets and litigation strategy.

37. A further meeting took place over dinner at a restaurant in Amsterdam which included discussion of 'Mr Ortelli's' and X's personal lives, and in which 'Mr Ortelli' persuaded X (who did not usually do so) to drink alcohol. In all of these meetings 'Mr Ortelli' was building the personal and professional rapport with the target which is described in the Letter of Engagement and was steering the conversation in a way which would encourage X to reveal information about the present case.

38. Examples of the kind of questions asked by 'Mr Ortelli' are as follows:

(1) 'What are the strategies and tactics that you're using to, you know ...?'

(2) 'What tactics, sorry, are you using to make the other party fade out and, you know ...?'

(3) 'When do you decide when is the right point to compromise? ... in the case you're having, why aren't you compromising?'

(4) 'What would be the main flaws and challenges that – that you have in your case?'

(5) 'I'm asking you on the other side. If you were their attorney, what would you claim?'

39. These meetings in Amsterdam were followed by further email contacts and suggestions for a further meeting, which (of course) came to nothing. On 12th February 2025 'Mr Ortelli' advised that the client no longer needed X's assistance.

The information obtained by Black Cube

40. All three of the meetings were recorded. We have not been shown the transcripts of the recordings, which cover a total of about 6 ½ hours, but the passages on which the claimants rely are set out in the first witness statement of Mr Andrew Ford, the principal of LK Law who is responsible for the conduct of these proceedings on behalf of the claimants. The Deputy Judge described the conversations as follows:

> '27. My observations can be summarised as follows, including by reference to the witness statement of X himself:
>
> (i) X was induced to meet on a false premise or basis. He was told that ['Mr Ortelli'] represented a client with a substantial dispute and they wanted to interview him with a view to engaging his services. This was a lie. It is similar to the lie told by [Black Cube] to Justice Newbould in the *Catalyst* case (potential arbitral client). I doubt I am alone in regarding the word 'pretext' as somewhat euphemistic.
>
> (ii) There were three meetings. The first was conducted virtually with X in England for about one hour. The next two were held abroad in person on a single day: over lunch in a business environment and then dinner with alcoholic drinks in a restaurant, totalling about 5.5 hours. A local private investigation firm was retained by [Black Cube] to assist with this process. Further email communication between ['Mr Ortelli'] and X followed the meetings.
>
> (iii) Through these three meetings, spaced apart as they were, X was skilfully and tenaciously steered by ['Mr Ortelli'] into discussing various aspects of the litigation and settlement strategy of his clients, including by reference to the WFOs. This involved persistent questioning designed to

elicit insights into Mr Sklarov's business model or practices, his *de facto* control of corporate entities involved in this alleged fraud, the perceived legitimacy or otherwise of such practices, and the merits of the claim and his defence to such claim.

(iv) On numerous occasions, ['Mr Ortelli'] interrupts X so as to sharpen the focus of an answer or bring the subject back on track. Sometimes this is done by offering a selective or salacious recap of what he pretends to understand X has just told him (e.g. references to "Ponzi" and "Madoff"); other times by insisting on greater clarity where X has said something potentially ambiguous. On other occasions, X is left to speak freely because he is divulging what is being targeted and harvested by ['Mr Ortelli']. This may not amount to "baiting" as occurred with Justice Newbould. However, it has all the hallmarks of persistent leading, channelling and swarming of questions designed to pressure the interviewee into privileged and confidential territory.

(v) At no point did ['Mr Ortelli'] express any reservation or inhibition about X delving into confidential or potentially privileged territory. On the contrary, the line of questioning was designed to encourage X to do so whilst thinking he was in a safe environment. It is hard to imagine (a genuine intermediary of) a genuine prospective client behaving in this way or feeling comfortable with someone else's solicitor speaking so freely and candidly about such sensitive matters in pending litigation – at any rate without saying something to sign-post their discomfort or break the momentum of candour.

(vi) It is clear that ['Mr Ortelli'] was very well briefed about the issues in these proceedings and nuances about the case. This is what enabled such close and careful interrogation of X. The preparation for that exercise must have been extensive, far exceeding the 4-5 hours estimated as judicial pre-reading for the present hearing. It is likely to have involved access to privileged and confidential information belonging to the claimants: see paragraph 17(iii) above. This degree of insight on the part of an interviewer is far removed from a situation in which (a genuine intermediary of) a genuine prospective client meets with a solicitor in good faith in order to evaluate their expertise and suitability for a specific dispute. The two scenarios are incomparable.

(vii) The spacing apart of the meetings may have formed part of [Black Cube's] use of its professed expertise in "psychological and behavioural pattern-identification". It appears to have allowed ['Mr Ortelli'] a better opportunity to build a "personal and/or professional" relationship with X, as promised by the terms of the [Black Cube] Retainer. This no doubt increased trust and candour, something ['Mr Ortelli'] needed in order to extract sensitive information from X.

(viii) X has explained in his witness statement why he engaged as he did during these meetings, e.g. out of courtesy or cultural sensitivity and an eagerness to impress. I prefer to say nothing about his interpretation given the potential disciplinary investigation he is now facing. He comments about the effect of alcohol at dinner, as someone who rarely drinks; but there is no evidence suggesting that his drink was spiked.

(ix) X was lulled into a false sense of confidence and security, as evidenced by how he started to share personal information about his non-professional life and family members. He was the victim of a contrived rapport and false sense of confidence that encouraged an excess of candour. He was deceived and played for a fool by a skilful and well-prepared interrogator armed with insider knowledge.

(x) X did all of this as a newly-promoted partner in the hope of winning a major client, and potentially building on that professional success down the line. Despite the deception and manipulation practised upon him by ['Mr Ortelli'], X is responsible for any breach of client confidentiality.'

41. I would add that the information disclosed by X painted a clear picture of the impact of the litigation on Mr Sklarov, including the severe impact of the freezing orders obtained by the claimants. Although this was not the kind of information which could be deployed as evidence, it would have been of considerable (albeit unquantifiable) value to the claimants in deciding their tactics in the litigation with an understanding of where pressure could most usefully be applied. It was also information which, once learned, could not be unlearned.

42. On the Deputy Judge's findings, this was a deliberate and sophisticated scheme, carried out with the knowledge and approval of the claimants, with a view to obtaining confidential and privileged information which would assist the claimants in the litigation. Whether or not as a result of the psychological profiling which was part of its services, Black Cube had picked its target well. The operation was successful.

43. The claimants have deployed the fruits of this deception of X in these proceedings. Their solicitor, Mr Ford of LK Law, describes it as 'significant new information ... which has, at least in part, precipitated the Summary Judgment Application'. The Deputy Judge found that, in addition to deploying the information obtained as evidence in the proceedings, the claimants sought to benefit from it by engaging in without prejudice negotiations with some of the defendants before launching the summary judgment application (para 34).

44. The consequences of this covert operation have been dramatic. For X personally, who now faces disciplinary proceedings before the Solicitors Regulatory Authority[3] and professional ruin, they have been disastrous. For the defendants, they have led to a change in their representation, with PCB Byrne LLP replacing DWF, no doubt as a result of the breakdown in trust and confidence caused by X's revelations.

Procedural history

45. These proceedings were commenced by the issue of a claim form on 2nd August 2024. The claims made include various claims for damages (for conspiracy, deceit, breach of trust and breach of contract) but also proprietary claims to recover the proceeds of the Elektra shares, which the claimants say were held on trust for them, and claims for equitable compensation for knowing receipt and dishonest assistance.

46. On the same day, 2nd August 2024, Mr Justice Jacobs made a worldwide freezing order, without notice to the defendants, freezing the assets of Astor 3 and Mr Sklarov. This was 22 days before the date of the Black Cube Letter of Engagement, although it is obvious that there must have been considerable discussion with and briefing of Black Cube before the letter was signed. The claimants' evidence, no doubt deliberately, does not reveal when or how contact with Black Cube was first made. Needless to say, there was no mention of Black Cube in the claimants' evidence in support of the freezing order application. Further worldwide freezing orders were made against other defendants on 7th and 13th August 2024.

47. On 20th August 2024 the defendants applied to discharge the freezing orders, alleging breaches of the claimants' duty of full and frank disclosure. These allegations had nothing to do with the engagement of Black Cube, of which at this stage the defendants knew nothing. The application to discharge the freezing orders came before Mr Justice Calver on 20th September 2024 and his reserved judgment dismissing the application was handed down on 7th October 2024 ([2024] EWHC 2522 (Comm))[4]. This was four days after the initial contact with X made by Black Cube.

48. Armed with the information obtained by Black Cube, the claimants issued an application on 5th March 2025 for summary judgment on the liability elements of their claims for deceit and breach of contract, alternatively for a conditional order requiring security to be provided in the sum of US $315 million. On 18th June 2025 the defendants issued an application to strike out or stay the claim for abuse of process and for directions as to the inadmissibility of the information obtained by Black Cube.

49. At a hearing on 20th June 2025 Mr Justice Robin Knowles directed that these applications should be heard together.

50. On 19th September 2025 the defendants made a further application seeking (as an alternative to striking out or staying the action) the discharge of the worldwide freezing orders obtained by the claimants.

[3] It is extraordinary that the complaint was made by the claimants who had procured X's disclosures, rather than by the defendants who had every right to feel aggrieved by them.
[4] An appeal was later dismissed ([2025] EWCA Civ 1060).

51. All three applications came before the judge at a three day hearing from 3rd to 5th November 2025.

The judgment

52. The Deputy Judge's judgment was produced with impressive promptness and contains clear and comprehensive findings of fact. He identified five issues for decision:

> '(1) Does the claimants' unethical behaviour involve or constitute an abuse of process?
>
> (2) What is the evidential status of the illicit information?
>
> (3) Depending on the answer to (2) above, is the claimants' possession of illicit knowledge likely to obstruct the just disposal of these proceedings or otherwise create a substantial risk of an unfair trial?
>
> (4) If (1) or (3) above is shown, what is the appropriate and proportionate response of the Court?
>
> (5) In light of (4) above, are the claimants entitled to pursue their summary judgment application and, if so, should they be granted summary judgment or a conditional order?'

53. On the first issue, the Deputy Judge characterised the claimants' behaviour as 'anathema to the fundamental basis or premise of civil proceedings' (para 25) and as 'an affront to justice and inimical to the fundamental norms and values of civil litigation in this jurisdiction' (para 77). However, he said that he would 'proceed on the basis that there was nothing unlawful or illegal about the way illicit information was obtained from X or transmitted to the claimants or their new solicitors' (para 30).

54. The Deputy Judge identified two broad categories of abuse, depending on whether the conduct in question has an impact on the proceedings:

> '44. ... there are two broad categories or species of abuse of process: one which is concerned solely with the quality of behaviour and another which is concerned with the impact of that behaviour on the future course of a case and the integrity of its determination: see *Raja v van Hoogstraten* [2006] EWHC 1315 (Ch) at [31]-[32] (defendant's complicity in the murder of the claimant).'

55. He held, as I understand his judgment, that the conduct of Black Cube, for which the claimants were responsible and in which they were complicit (para 63), was abusive within the former category, that is to say regardless of its impact on the proceedings:

> '60. As regards the accrued position, I am satisfied to the requisite standard that the claimants engaged in abusive conduct by seeking or attempting to obtain confidential information from their adversary's litigation solicitor as occurred. This is so irrespective of the precise evidential status

> of any material obtained by such unethical process, including whether privilege in any information is on proper analysis precluded by the iniquity principle.
>
> 61. Put bluntly, this is something that should not happen and it cannot be countenanced by the Court. The use of unethical methods to target an adversary's solicitor in the hope of extracting sensitive information or insights from them is anathema to the norms and values of civil litigation. It is cheating the system with a view to undermining the level playing field which the Court strives to maintain between opposing parties. It offends justice.'

56. It appears that what the Deputy Judge meant by being satisfied as to 'the accrued position' was that he could already conclude that the claimants' conduct was abusive without needing to decide what impact it would have on the fairness of the proceedings.

57. The Deputy Judge considered next whether the claimants' possession of illicit knowledge was likely to obstruct the just disposal of the proceedings or otherwise to create a substantial risk to a fair trial. He regarded this as depending on the evidential status of the material obtained by Black Cube. However, because the claimants contended that the material fell within the 'iniquity exception', and because the Deputy Judge felt that determination of this issue would take longer than the time which had been available at the hearing, he reached no conclusions on his second or third issues. Instead he deferred them to a further 2-3 day hearing which he referred to as the 'Information Review Hearing'. We were told that this hearing has not taken place. It awaits the outcome of this appeal and is currently listed for November 2026.

58. The Deputy Judge described the fourth issue, what was the court's appropriate and proportionate response to the claimants' abuse, as the most difficult issue. With some apparent hesitation, he decided that it was not appropriate or proportionate to strike out or stay the claim in its entirety for the following reasons:

> '77. There have been moments when I have felt that I ought to accede to [the defendants'] primary position. This reflects the gravity and culpability of the claimants' behaviour, which I have characterised as an affront to justice and inimical to the fundamental norms and values of civil litigation in this jurisdiction.
>
> 78. I have nevertheless decided against striking out (or staying) this claim in all the circumstances:
>
> > (i) The Court's response must fit the abuse which has so far been established. As explained in Issue (1) above, that abuse is found in the unethical behaviour involved rather than the nature or quality of the illicit information - see Issue (2) - or the impact of illicit knowledge upon the claimants' litigation conscience or consequent prospects of a fair trial: see Issue

> (3). Those are matters to be determined at a further hearing and may yet attract additional responses from the Court.
>
> (ii) Striking out (or staying) the entire claim would be disproportionate at this juncture in circumstances where there is a decent prospect of the claimants succeeding on their deceit claim at trial. There is a distinct policy in favour of exposing and remedying serious wrongdoing such as fraud: see paragraph 55 above.
>
> (iii) Come what may, the [defendants'] own cross-applications necessitate a further hearing to deal with Issue (2) and Issue (3). My own review of material and initial analysis suggests that there are arguments either way on privilege and iniquity.
>
> (iv) I cannot ignore the independent responsibility and culpability of X. He revealed far more than a solicitor in his position needed to or should have done when seeking to impress the representative of a potential major new client. This in no way absolves the claimants for their own unethical and inimical behaviour. It does nevertheless feed into the balancing exercise at this stage of the analysis.
>
> (v) I am satisfied that there is a more proportionate response to the claimants' abuse of process, namely forfeiture of their summary judgment application and payment of costs: see Issue (5) below.
>
> 79. In all the circumstances, I do not consider it appropriate and proportionate to strike out (or stay) the claim in its entirety at this stage. The fate of these proceedings awaits the outcome of the Information Review Hearing.'

59. Finally, the Deputy Judge considered whether the claimants were entitled to pursue their summary judgment application. He decided, 'as a matter of inherent jurisdiction and of my own motion', to strike out the summary judgment application. He explained his reasoning as follows:

> '83. I am satisfied that this constitutes an appropriate and proportionate response to the claimants' accrued abuse of process in circumstances where:
>
> (i) the summary judgment application was otherwise well made and might have succeeded based on the material I have seen, at any rate as regards proof of dishonest misrepresentations intended to induce the claimants;
>
> (ii) taking this approach deprives the claimants of any specific findings in their favour beyond and above those

> already made in an interlocutory context by Calver J and my own observations in paragraph 12 above;
>
> (iii) this may not be the only response of the Court in light of the potential prospective impact of the claimants' abuse of process depending on the future outcome of Issue (3); and
>
> (iv) the claimants will be liable to pay the costs of the present hearing, which seems [*sic.*] likely to be awarded on the indemnity basis (see below).'

The appeals

60. The Deputy Judge's decision did not satisfy either party. The claimants appeal on the basis that the Deputy Judge was wrong to hold that there was a category of abuse concerned 'solely with the quality of behaviour', which does not involve assessing 'the impact of that behaviour on the future course of the case and the integrity of its determination'. The information obtained was not confidential or privileged because the iniquity exception applied. The Deputy Judge was therefore wrong to find that there was any abuse, or at least any relevant abuse, by the claimants, and should simply have found that the claimants satisfied both limbs of the summary judgment test in CPR 24.3 (i.e. no real prospect of the defence succeeding and no other compelling reasons for a trial). Alternatively, the Deputy Judge should not have struck out the summary judgment application without determining the evidential status of the information obtained by Black Cube, had failed to give proper weight to the strong public interest in exposing and remedying the defendants' fraud, and had acted unfairly by not canvassing with the parties the possibility of deferring consideration of the evidential status of the Black Cube material.

61. The defendants, on the other hand, submit that the only appropriate sanction for obtaining confidential and privileged information from an opponent's solicitor is for the claim to be struck out, at any rate unless there are compelling reasons to the contrary. Alternatively, the claim should have been struck out as a matter of discretion, in particular because the Deputy Judge was wrong to take account of the claimants' prospects of success at trial, was wrong to conclude that X's own culpability was relevant to the choice of sanction, and failed to take account of the need to deter others from committing this form of abuse in future.

The issues

62. Although the parties have put forward numerous grounds of appeal and cross-appeal, it seems to me that the issues we have to decide are relatively straightforward. They are as follows:

(1) Was the claimants' conduct an abuse of the process of the court?

(2) If so, was the Deputy Judge wrong to conclude that striking out the summary judgment application was the appropriate and proportionate response to the abuse?

(3) If so, what was the appropriate and proportionate response?

Was the claimants' conduct an abuse?

63. A classic statement explaining what is meant by an abuse of process is Lord Diplock's statement in *Hunter v Chief Constable of the West Midlands Police* [1981] UKHL 13, [1982] AC 529, 536, which was approved by the Supreme Court in *Summers v Fairclough Homes Ltd* [2012] UKSC 26, [2012] 1 WLR 2004, para 35(ii):

> 'This is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.'

64. Although the categories of abuse are not closed, and an exhaustive definition may not be practicable, it follows from the fact that abuse of process is concerned with abuse of the procedure of the court that there must be some nexus between the conduct which is said to constitute abuse and the proceedings which are said to have been abused. Sometimes the abuse will mean that there cannot be a fair trial, in the narrow sense that the party's conduct prevents the court from reaching a safe conclusion. *Raja v Van Hoogstraten* [2006] EWHC 1315 (Ch), where the defence and counterclaim were struck out, is an extreme example of such a case. Mr Justice Lightman found that the defendant had caused the claimant to be murdered, so that he was no longer able to give evidence, and that without his evidence the claimant's estate would be in difficulty in proving its case.

65. But it is not a necessary requirement, before a finding of abuse can be made, that a fair trial (in the sense that the court can be confident that it is able to reach correct conclusions) has become impossible. This is clear from *Summers*, para 33, where Lord Clarke explained that the court has jurisdiction to strike out a statement of case for abuse of process 'even after the trial of an action in circumstances where the court has been able to make a proper assessment of both liability and quantum', albeit that the power to strike out in such circumstances should only very exceptionally be exercised. It is also apparent from *Raja v Van Hoogstraten*, where Mr Justice Lightman would have been prepared to strike out the defence and counterclaim 'irrespective whether a fair trial is possible' because of the egregious nature of the defendant's conduct. But it is important to note that there was in that case a direct nexus between the defendant's abuse and the proceedings because of the finding that Mr Van Hoogstraten had ordered Mr Raja's murder 'to obtain an advantage in this litigation' (para 32).

66. Some of the cases speak of conduct which is an affront to the court, or of a litigant forfeiting by its conduct its right to take part in a trial. For example, in *Arrow Nominees Inc v Blackledge* [2001] BCC 591, Lord Justice Chadwick said that:

> ‘54. ... But where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice, the court is entitled - indeed, I would hold bound - to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reason, as it seems to me, is that it is no part of the court's function to proceed to trial if to do so would give rise to a substantial risk of injustice. The function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke.’

67. Lord Justice Ward used similar language:

> ‘74. This was, therefore, a flagrant and continuing affront to the court. Striking out is not a disproportionate remedy for such an abuse, even when the petitioners lose so much of the fruits of their labour.
>
> 75. Even if the judge were correct in his analysis that all effect of the 1994 agreement could be excised from the petition and a *prima facie* case could be made out of what remained, I am quite clear that, if the CPR are to receive a correct start, then this court must make the clear statement that deception of this scale and magnitude will result in a party's forfeiting his right to continue to be heard.’

68. Fairness of the trial in the narrow sense described above will always be an important consideration, but conduct may have an impact on the fairness of the proceedings in other ways which justify its characterisation as an abuse. Thus in *Arrow Nominees* Lord Justice Chadwick continued:

> ‘55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court. The court does not do justice to the other parties to the proceedings in question if it allows its process to be abused so that the real point in issue becomes subordinated to an investigation into the effect which the admittedly fraudulent conduct of one party in connection with the process of litigation has had on the fairness of the trial itself. That, as it seems to me, is what happened in the present case. The trial was "hijacked" by the need to investigate what documents were false and what documents had been destroyed. The need to do that arose from the facts (i) that the petitioners

> had sought to rely on documents which Nigel Tobias had forged with the object of frustrating a fair trial and (ii) that, as the judge found, Nigel Tobias was unwilling to make a frank disclosure of the extent of his fraudulent conduct, but persisted in his attempts to deceive. The result was that the petitioners' case occupied far more of the court's time than was necessary for the purpose of deciding the real points in issue on the petition. That was unfair to the Blackledge respondents; and it was unfair to other litigants who needed to have their disputes tried by the court.'

69. Similarly Lord Justice Ward described the risk of a fair trial not being possible as a factor of very considerable weight, which may often be determinative, but said that it was not the only material factor; the fact that the conduct in question had caused the proceedings to be hugely more expensive and to take much longer was also an aspect of fairness which needs to be considered (paras 72 and 73).

70. The importance of legal professional privilege as an element of the rule of law has been emphasised in many cases. As long ago as 1878, Chief Justice Cockburn said that it was 'essential to the interests of justice and the well-being of society' (*Southwark and Vauxhall Water Co v Quick* (1878) 3 QBD 315, 317-8). More recently, in *R v Derby Magistrates' Court, ex parte B* [1996] AC 487, 506, Lord Taylor CJ described privilege as 'much more than an ordinary rule of evidence, limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests'. In *R (Morgan Grenfell & Co Ltd) v Special Commissioners of Income Tax* [2002] UKHL 21, [2003] 1 AC 563, para 7, Lord Hoffmann said that it was a 'fundamental human right long established in the common law ... a necessary corollary of the right of any person to obtain skilled advice about the law'.

71. I would add that legal professional privilege – the knowledge that what is said in confidence to a solicitor will never be disclosed to the other side – is an aspect of the relationship of trust and confidence that must exist between solicitor and client if our legal system is to function in accordance with the interests of justice.

72. Mr John Wardell KC for the claimants concentrated his fire on the Deputy Judge's characterisation of the relevant conduct in this case as being 'concerned solely with the quality of behaviour', as distinct from 'the impact of that behaviour on the future course of [the] case and the integrity of its determination'. He submitted that there was no such category of abuse because abuse of process is always concerned with the impact of the conduct in question on the proceedings. In my judgment, however, the Deputy Judge's division of abuse of process into these two broad categories is unhelpful. It does not reflect the facts of the present case.

73. Undoubtedly Black Cube's activities have had a very serious impact on the course of the proceedings. They have caused the breakdown of the relationship of trust and confidence between the defendants and their solicitors, depriving the defendants of their first choice of legal team to represent them in these proceedings. They have given rise to substantial hearings which would not otherwise have taken place, a three-day summary judgment/strike out application, to be followed by a three-day Information Review Hearing to decide the evidential status of the information

obtained. This increases the costs to the parties and prejudices other litigants who need to have their disputes resolved by the Commercial Court. The proceedings have been delayed for some 18 months, as the Information Review Hearing will not take place until November of this year. For all of this time freezing orders against the defendants have been in place. Moreover, the claimants have obtained valuable insights into the defendants' litigation strategy, the advice given to the defendants by their previous solicitors and the impact of the litigation (including the freezing orders) on the defendants.

74. In these circumstances I have no doubt that the claimants' conduct in seeking to obtain privileged information by deceiving the defendants' solicitor, which they then used in order to obtain an advantage in these proceedings, was an abuse of the process of the court. Some things are so obvious that they do not need much analysis.

75. It makes no difference that the solicitor, X, was obviously at fault in revealing information that he should not have revealed. That was the whole object of the Black Cube operation, which the claimants sanctioned and of which they now seek to take the benefit. It is absurd for the claimants to submit, as they submitted forcefully before the Deputy Judge and rather more faintly in this court, that their conduct should not be regarded as abusive because the operation should have been unsuccessful – in Mr Wardell's words, that 'there should have been a nil return'. The claimants were paying millions of pounds for Black Cube's expertise in extracting information which should not have been available to them for use in the litigation. They expected and intended to benefit from such information, not to be told that the operation had been unsuccessful and there had been a 'nil return'.

76. Nor would it make any difference if it should transpire that some of the information obtained by Black Cube falls within the iniquity exception to legal professional privilege. That exception was considered by this court in *Al Sadeq v Dechert LLP* [2024] EWCA Civ 28, [2024] KB 1038. The principle is that 'where there is a *prima facie* case of iniquity which engages the exception, there is no privilege in documents and communications brought into existence as part of or in furtherance of the iniquity' (para 166). However, the exception will only be engaged in the first place if the iniquity in question involves an abuse of the normal lawyer/client relationship. As Lord Justice Popplewell explained (emphasis added):

> '57. The principled juridical basis for the exception is that it is a necessary ingredient of legal professional privilege that the communication should be confidential; and that the iniquity exception applies where and because the iniquity deprives the communication of the necessary quality of confidence: see the authorities considered in *JSC BTA Bank v Ablyazov* [2014] EWHC 2788 (Comm), [2014] 2 CLC 263 at [76]-[92]. It is therefore an exception in the sense of something which prevents the privilege arising in the first place, not an exception in the sense of a disapplication of existing privilege.
>
> 58. Communications between a lawyer and client, or with third parties, are confidential if they take place in the usual course of the professional engagement of such a lawyer, notwithstanding that the engagement may concern an iniquity. This is why the

> iniquity exception does not apply to what Glidewell LJ referred to as the "ordinary run of cases" in *R v Snaresbrook Crown Court, Ex p Director of Public Prosecutions* [1988] QB 532, 537-538. Such privilege is not prevented from attaching merely because the solicitor is engaged to conduct litigation by putting forward an account of events which the client knows to be untrue, and which therefore involves a deliberate strategy to mislead the other party and the court, and to commit perjury, as is clear from that case and *R v Central Criminal Court, Ex p Francis & Francis* [1989] AC 346. Accordingly the touchstone in distinguishing such cases from those where the exception applies is *whether the iniquity puts the conduct outside the normal scope of such professional engagement or is an abuse of the relationship which falls within the ordinary course of such engagement*. This was the conclusion reached from the analysis of the authorities at para 93 in *Ablyazov*, cited with approval and applied by this court in *Candey Ltd v Bosheh* [2022] EWCA Civ 1103, [2022] 4 WLR 84, paras 70-71 and 82-83. This was common ground on the current appeal.'

77. Whether the iniquity exception applies to the information obtained by Black Cube has yet to be decided and there is likely to be a real question whether the iniquity exception is engaged at all. But even if it is, the claimants could not have known that when they sanctioned the Black Cube operation or when they listened to the recordings which Black Cube had obtained.

78. I have already noted that the Deputy Judge said that he would 'proceed on the basis that there was nothing unlawful or illegal about the way illicit information was obtained from X or transmitted to the claimants or their new solicitors' (para 30). I find that surprising. To obtain privileged information from the other side's solicitor by dishonestly pretending to be a prospective client is obviously a civil wrong. It may well have been a criminal offence under section 2 of the Fraud Act 2006 (fraud by false representation) to which the claimants were an accessory. Mr Wardell submitted that the relevant information was obtained in Amsterdam and that there was evidence before the Deputy Judge that no criminal offence was committed under Dutch law. But even if that is so, the initial lie (i.e. that 'Mr Ortelli' represented a prospective client) took place in England and it was that from which all else flowed. Fraud by false representation is a criminal offence under English law if 'any of the events which are relevant events in relation to the offence occurred in England and Wales, regardless of whether the defendant was in England and Wales at the time of any such event' (Criminal Justice Act 1993, sections 1(2)(bb)(i) and 2). Similarly, the promise of lucrative new business with which to impress X's new partners at DWF in order to induce him to reveal confidential information obtained in the course of his functions as a solicitor may have constituted an offence under section 1 of the Bribery Act 2010, although we did not hear submissions about this.

79. For all these reasons I have no doubt that the claimants abused the process of the court. It was a very serious abuse. To obtain privileged information by suborning the other side's solicitor by deception is a form of corruption, just as it was 'clearly corrupt behaviour' to obtain and retain the other side's internal legal documents in

Federal Republic of Nigeria v Process & Industrial Developments Ltd [2025] EWCA Civ 715, para 163. The Deputy Judge's characterisation of the claimants' conduct as 'an affront to justice and inimical to the fundamental norms and values of civil litigation in this jurisdiction' (para 77) was fully justified.

80. I reach this conclusion without regard to what Mr Venkatesan described as an aggravating factor. He criticised as improper the conduct of LK Law in reviewing and then deploying in evidence the information obtained by Black Cube, submitting that this was a factor which aggravated the claimants' own abuse of process. However, this was a submission which was not open to the defendants in view of the unequivocal acceptance in their solicitor's evidence that there was no allegation of misconduct on the part of Mr Ford or other lawyers at LK Law who participated in choosing to review and deploy material known to have been obtained by the deception and suborning of X. I have therefore ignored this factor.

81. That said, the explanation given by Mr Ford for believing that it was appropriate to review the material, namely that he believed privilege had been waived by X, does not hold water. It is elementary that the privilege is not the solicitor's to waive. However, there was no application before the judge to cross-examine Mr Ford and it must therefore be accepted that this was his genuine – albeit obviously untenable – belief.

Was the Deputy Judge wrong to strike out the summary judgment application?

82. Once the conclusion is reached that the claimants' conduct was abusive, the question arises, how should the court respond? That must depend on all the circumstances of the case, but before turning to those circumstances it is necessary to consider what the court is seeking to achieve. I would identify three principles. First, the objective is not to punish the abusive party, but to protect the court's own process, which exists for the wider administration of justice and is not solely concerned with the outcome of any particular case.[5] Accordingly the court has an interest in protecting its process by an appropriate response which is independent of the interests of the victim of the abuse. Second, protection of the court's own process includes an element of deterrence, so that others are not tempted to abuse the process of the court in a similar way. Third, the court's response should be proportionate to the conduct in question. In some cases, however, the abuse may be such that it is appropriate to speak of a party having forfeited its right to have its claim (or defence) determined. The court has a broad discretion as to how best to give effect to these principles, with which an appellate court will only interfere in the limited circumstances in which it will interfere with any other exercise of discretion by a first instance judge.

83. All three principles can be seen in the judgment of the Supreme Court in *Summers v Fairclough*. In that case a personal injury claimant who had obtained judgment on liability dishonestly exaggerated the extent of his injuries. This was clear from surveillance evidence. At the quantum trial the judge was able to make reliable findings as to the genuine injuries suffered by the claimant and to award damages accordingly, but the defendant submitted that the entire claim should be struck out as an abuse of the court's process. The Supreme Court accepted that the claim was an abuse, and that the court had power to strike it out even after a trial at which it had

[5] For that reason I prefer to speak of a response rather than a sanction, lest the word 'sanction' be thought to imply any punitive element.

been able to make a proper assessment of both liability and quantum, but held that it should do so only in very exceptional circumstances where the court was satisfied that the abuse of process was such that the claimant had thereby forfeited the right to have his claim determined.

84. Lord Clarke said that 'the court has power to strike out a statement of case at any stage on the ground that it is an abuse of process of the court, but it will only do so at the end of a trial in very exceptional circumstances' (para 36). He cited *Arrow Nominees* as 'authority for the proposition that, where a claimant is guilty of misconduct in relation to proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute his claim, then the claim may be struck out for that reason' (para 37). He referred to the power to strike out as 'not a power to punish but to protect the court's process' (para 45) and referred also to the need to take 'all reasonable steps' to deter such abuse (para 50). However, the critical issue was proportionality:

> '48. It is in the public interest that there should be a power to strike out a statement of case for abuse of process, both under the inherent jurisdiction of the court and under the CPR, but the court accepts the submission that in deciding whether or not to exercise the power the court must examine the circumstances of the case scrupulously in order to ensure that to strike out the claim is a proportionate means of achieving the aim of controlling the process of the court and deciding cases justly.
>
> 49. ... The draconian step of striking a claim out is always a last resort, *a fortiori* where to do so would deprive the claimant of a substantive right to which the court had held that he was entitled after a fair trial. It is very difficult indeed to think of circumstances in which such a conclusion would be proportionate. Such circumstances might, however, include a case where there had been a massive attempt to deceive the court but the award of damages would be very small. ...
>
> 61. The test in every case must be what is just and proportionate. It seems to us that it will only be in the very exceptional case that it will be just and proportionate for the court to strike out an action after a trial. ...'

85. Of course, the factual context for these statements was that there had already been a trial in which it had been possible to make a fair (i.e. reliable) assessment of the claimant's genuine loss. The proportionality balance might be struck differently if the question was whether it would be possible to have a future trial, taking up the court's resources, in which one party had dishonestly obtained an insight into the thinking of the other side's lawyers (cf. *Masood v Zahour* [2009] EWCA Civ 650, [2010] 1 WLR 650, para 73, a case where the claim was based on forged documents and false evidence; Lord Justice Mummery observed that 'One of the objects to be achieved by striking out a claim is to *stop* the proceedings and *prevent* the further waste of precious resources on proceedings which the claimant has forfeited the right to have determined').

86. Moreover, proportionality is a factor which cuts both ways. Just as the court should not over react to the misconduct in question, so too its response should properly reflect the gravity of that misconduct, bearing in mind the need to protect its own processes and to deter abusive conduct. These factors engage wider interests than those of the parties to the particular dispute. It will be a last resort to strike out what may be a genuine claim, particularly if that would leave a fraudster with the benefit of his fraud (*Ras Al Khaimah Investment Authority v Azima* [2021] EWCA Civ 349, [2021] CLC 715 (‘*RAKIA*’), para 62, see para 97 below). But there may be occasions, if the abuse is sufficiently serious and there is no viable alternative, when nothing less will do.

87. In the light of these principles, I have no doubt that the Deputy Judge was right to refuse to order summary judgment in favour of the claimants, although it would have been more straightforward, rather than striking out the application, to dismiss it on the ground that there was a compelling reason why the case should go to trial (CPR 24.3(b)). That reason was that the claimants were relying on material obtained by an abuse of process which (subject only to the iniquity exception) was privileged, with no attempt to disentangle evidence which was untainted by this abuse from that which was. Indeed, Mr Ford accepted, in his witness statement in support of the summary judgment application, that the application had been ‘precipitated’, at least in part, by the obtaining of this material. Although it might have been possible to decide whether some or even all of the tainted evidence was admissible by reason of the iniquity exception, that would have required a decision on the balance of probability (*Al Sadeq v Dechert LLP*, para 63) which the Deputy Judge considered could only have been made after a further three day hearing. He was under no obligation to allow the court’s time to be used in this way in support of an application founded upon an abuse of process.

88. In those circumstances the Deputy Judge was fully justified in concluding that the summary judgment application should not proceed. To have granted summary judgment would have rewarded the claimants for their abusive conduct. Anything less which the court might have done to mark the abuse, such as depriving the claimants of their costs or even awarding indemnity costs against them, would have been trivial. Claimants who were prepared to pay Black Cube millions of pounds to obtain privileged material dishonestly would have regarded such a costs order as no more than a mild slap on the wrist.

89. The real question, however, is not whether the Deputy Judge was wrong to strike out the summary judgment application, but whether he was wrong to decide that this should be the court’s *only* response to the claimants’ abuse.

What was the appropriate and proportionate response?

90. Mr Venkatesan submitted that the Deputy Judge should have gone further and should have struck out, not only the summary judgment application, but the entire claim. He put his case in two ways. Logically the first of these, although coming last in Mr Venkatesan’s oral submissions, was that in principle the court’s default response to this form of abuse (by which I understood him to mean dishonestly obtaining the other party’s privileged material) should be to strike out the abusive party’s claim, in the absence of very good reason to do otherwise.

91. However, the difficulty with this submission is that there is no principled reason why 'privilege hunting' should attract this particularly draconian response as a default rule when other equally culpable forms of abuse do not. For example, striking out the claim is not the default response when disclosable documents are deliberately suppressed (*Dadourian Group International Inc v Simms* [2009] EWCA Civ 169, [2009] 1 Lloyd's Rep 601), when a claim is dishonestly exaggerated or a witness is shown to have given perjured evidence (*Summers v Fairclough*), or when information is obtained by unlawful hacking (*RAKIA*), although each of these may be just as inimical to the proper administration of justice. Indeed, in a case where privileged documents were stolen from the dustbins of the chambers of the claimant's counsel, which was held to be an abuse of process, this court held that the documents had given the claimant no advantage and that the question whether the claimant should be disqualified from advancing a positive case did not even arise (*Hamilton v Al Fayed (No. 2)* [2000] EWCA Civ 3012, [2001] EMLR 15).

92. It is true that the administration of justice depends on the integrity of legal professionals. It relies on the high professional standards to which lawyers are subject and to which they generally adhere. In contrast, the law recognises that parties will sometimes bring false or exaggerated claims and that witnesses will sometimes give false evidence. Its procedures are designed to expose such conduct. So in a sense, the corrupting of lawyers can be regarded as a special case which undermines public confidence in the civil justice system. But I would not regard the high importance which the law attaches to the integrity of those who conduct litigation as a sufficient reason for fashioning a unique default rule, applicable in cases of 'privilege hunting', which avoids the necessity for a proportionality analysis. As Mr Wardell pointed out, to treat striking out as the default response in such a case would mean that instead of being the last resort it would become the first resort.

93. I would therefore reject this first way of putting the case.

94. The second way of putting the case was that the Deputy Judge's exercise of his discretion was flawed, so that this court should re-exercise the discretion and should conclude that the appropriate response was for the claim to be struck out. Mr Venkatesan pointed to the five reasons given by the Deputy Judge for deciding against striking out the claim which I have set out at para 58 above. He submitted in particular that the fourth reason ('I cannot ignore the independent responsibility and culpability of X') was not a legitimate consideration, so that the Deputy Judge had taken account of an irrelevant factor, thus entitling this court to intervene.

95. I would accept that the responsibility and culpability of X was not a relevant consideration. In no sense was it 'independent', if by that the Deputy Judge meant that it was independent of the claimants' abusive conduct. On the contrary, the Black Cube operation was carefully designed to bring about the disclosure by X of privileged information, and the deployment of that information was calculated to destroy the relationship of trust and confidence which ought to have existed between the defendants and their chosen solicitors. I have already rejected Mr Wardell's submission that, because X was at fault and there ought to have been 'a nil return', the claimants' conduct cannot be regarded as abusive. Equally, it was the claimants' conduct (or that of Black Cube for which they are responsible) which was the effective cause of privileged information being obtained and deployed.

96. But I would hesitate to conclude that this single factor entitles this court to interfere with the Deputy Judge's exercise of discretion. It seems to me that it was something of a makeweight in his reasoning. The essence of that reasoning was that the court's response must fit the abuse (sub-para (i)), that there was 'a distinct policy in favour of exposing and remedying serious wrongdoing such as fraud' (sub-para (ii)), and that there was 'a more proportionate response to the claimants' abuse of process, namely forfeiture of their summary judgment application and payment of costs' (sub-para (v)).

97. I agree with the first two steps in this reasoning. As to the first, I have already explained that the court's response to abuse should be proportionate in that it should not over react to the misconduct in question, but must nevertheless properly reflect the gravity of that misconduct. As to the second, the public policy in favour of exposing and remedying fraud was referred to in *RAKIA*:

> '62. Three other points are worthy of note. First, as we have said, the hacked materials ought to have been disclosed by Mr Azima anyway (except to the extent that they were legitimately covered by legal professional privilege). Second, to strike out RAKIA's claim would leave Mr Azima with the benefit of his fraud. That element of public policy in civil cases is at least as strong, if not stronger, than disapproval of the means by which relevant evidence is gathered. Third, there are other ways in which the court may express its disapproval of the conduct of a party found to have procured relevant evidence by unlawful means: notably by penalties in costs or, perhaps, the refusal of interest on damages awarded.'

98. In view of the claimants' reliance on *RAKIA* as a closely analogous case, it is worth noting that the first and third of these points do not apply, or do not apply with the same force, in the present case. *RAKIA* is not, therefore, closely analogous with the present case. It was not about the hacking of privileged documents. If privileged documents were obtained, which I do not think was ever decided, that was merely incidental. Subject to any privilege, if it existed, the hacked documents would have been disclosable by Mr Azima in the proceedings. Thus the hacking, unlawful as it was, only achieved early receipt of what would have been disclosable in due course anyway. That is not a factor in the present case. The information disclosed by X was not in the form of documents and, if he had not disclosed it to Black Cube, it would not have been ascertainable by the claimants in any other way. As to the third point, I have already explained why a costs sanction would not meet the gravity of the abuse in the present case.

99. In my judgment it is at the third step that the Deputy Judge's reasoning breaks down. It is apparent that, if he had been faced with a stark choice between striking out the claim and doing nothing, he would in all probability have struck out the claim. It may be that this would have been a valid exercise of discretion but it is unnecessary to reach a final decision about this. But the Deputy Judge was wrong, in my judgment, to regard striking out the summary judgment application as a sufficient response to the abuse, and wrong also to overlook an alternative effective response, which was to discharge the freezing orders obtained by the claimants. These are errors which,

applying the standard approach to discretionary decisions at first instance, entitle this court to intervene.

100. Striking out the summary judgment application was insufficient because it did not properly reflect the gravity of the claimants' conduct and depended on the happenstance that the claimants had applied for summary judgment. As I have explained (para 78 above), the Deputy Judge proceeded expressly on the basis that there was nothing unlawful or illegal about the way the information was obtained from X or transmitted to the claimants' new solicitors. But that was mistaken. Whether or not Black Cube's conduct was criminal, it was certainly unlawful as well as abusive. Moreover, the Deputy Judge failed to consider the possibility of discharging the freezing orders, despite the fact that the defendants had issued an application inviting him to do so as an alternative to their strikeout application. The freezing orders were particularly relevant in deciding what should be the court's appropriate and proportionate response to the claimants' abuse.

101. Accordingly the Deputy Judge's exercise of discretion was flawed and it is for this court to reconsider what the court's response should be in order to give effect to the principles which I have identified.

102. As I have explained, the claimants appear to have a strong case on the merits (para 21 above), and there is a public policy that fraud should be exposed and that a fraudster should not be left with the benefit of his fraud (*RAKIA*, para 62). Despite Mr Venkatesan's submission to the contrary, in my judgment these are material considerations. Striking out the claim in its entirety is a last resort, as it has the effect of depriving the claimants of a legal remedy to which they would or may otherwise be entitled. It is therefore necessary to consider whether there is an alternative response which properly reflects the gravity of the claimants' misconduct. In my judgment discharge of the freezing orders obtained by the claimants is such a response and needs to be considered. Other potential courses, such as depriving the claimants of their costs or restraining them from deploying the information in evidence irrespective of the iniquity exception, do not properly reflect the gravity of the abuse. As I have already said, the information which the claimants obtained, and the tactical insight into the defendants' thinking which it has yielded, cannot now be unlearned. For that reason, restraining the claimants' current legal team from continuing to act would not be a solution either.

103. What about discharge of the freezing orders? On the facts here, that is a particularly appropriate response. The claimants have chosen not to explain when they first made contact with Black Cube or how and when X came to be targeted, although we know that Black Cube's first contact with X was on 3rd October 2024. This contact must have been preceded by a period of briefing and research, as described in the Black Cube Letter of Engagement, in order to formulate the 'elaborate, personalised cover story' which would be used to entrap X and enable 'Mr Ortelli' to 'build [a] personal and/or professional relationship' with him. In view of the claimants' lack of candour, it is reasonable to infer that all this was happening at about the same time as the claimants were seeking freezing orders from the Commercial Court, which they obtained on various dates in the first half of August 2024, and resisting the defendants' discharge application in August and September 2024. Whether or not that inference is correct, it is certain that Black Cube's first approach to X on 3rd October 2024 was made at a time when Mr Justice Calver had not yet handed down his

judgment on the defendants' application to discharge the freezing orders (para 47 above). It is equally certain, in my view, that if Mr Justice Calver had been made aware of the Black Cube operation, he would not have continued the freezing orders. A party in the course of committing a serious abuse of the process of the court could not have expected to benefit from a discretionary remedy such as a freezing order.

104. Mr Wardell submitted that once the freezing orders had been served on the defendants and they had instructed solicitors, the claimants' duty of full and frank disclosure no longer applied. That submission sits ill in the claimants' mouth in view of their lack of candour in explaining how and when the decision to target X was made. But in any event, the reason why a claimant's duty of full and frank disclosure when seeking a remedy without notice ceases to apply when the defendant is on notice of the application is that the defendant can be expected to draw relevant matters to the attention of the court for itself. The fact that the defendant is on notice of the application and has instructed solicitors does not absolve the claimant from drawing to the court's attention matters which are highly material to the exercise of the court's discretion and of which, as the claimant is or ought to be well aware, the defendant cannot possibly know.

105. That was the position in the present case. The claimants knew or must be taken to have known that Black Cube was in the process of suborning X, and that the defendants could not possibly know this, but chose to say nothing about it to Mr Justice Calver. If they had done so, not only would it have been inevitable that the freezing orders would have been discharged, but the Black Cube operation (at least so far as concerned X) would have been fatally compromised. The information which the claimants obtained from X through Black Cube was therefore obtained directly as a result of the claimants' decision not to tell Mr Justice Calver about this operation. Thus, whether or not the freezing orders should have been granted in the first place, they should not have continued beyond 7th October 2024 when Mr Justice Calver handed down his judgment in ignorance of the Black Cube operation which was by then under way. Moreover, one of the valuable insights which the claimants obtained as a result of the operation concerned the ways in which the freezing orders were causing serious pressure on the defendants' banking relationships. There was, therefore, a real nexus between the freezing orders and the claimants' abusive conduct.

106. I would therefore discharge all of the freezing orders obtained by the claimants (including, for the avoidance of doubt, the orders made in support of proprietary claims). I appreciate that this may create difficulties for the claimants in enforcing any judgment which they may obtain, but in my view the concluding remarks of Mr Geoffrey Vos QC in *St Merryn Meat Ltd v Hawkins* (unreported, 29th June 2001) are apposite here, albeit transposed to a case of abuse of process such as the present case:

> '106. It seems to me that, in a case of this kind, where bad faith by the Claimants has been established, the court must be astute to ensure the Claimants are deprived of any advantages they may have derived from their serious breaches of their duty to the court.
>
> 107. I accept that [counsel] is entitled to ask me to consider as against that principle, the fact that the Defendants have

> admitted fraud and that a remedy against them in damages will be impossible if they have dissipated their assets. I accept also that there is evidence before the court that there is a good arguable case against the Defendants and evidence that they may indeed dissipate their assets before judgment. But this evidence cannot outweigh the necessity to demonstrate to the Claimants (and other applicants for without notice interim orders) the gravity of their duty of disclosure and the consequences of ignoring them.
>
> 108. I accept also that the rules I have described must not be used as an instrument of injustice. I do not, however, think it would be unjust to deprive the Claimants of the relief that they have obtained in flagrant breach of their obligations of absolute good faith. ...'

107. Mr Wardell submitted that it was not open to this court to discharge the freezing orders as the application for their discharge had been deferred to the Information Review Hearing and was not properly before this court. I would reject that submission. As it is for this court to re-exercise the discretion as to what is the appropriate response to the claimants' abusive conduct, we must be entitled to consider whether that response should include discharge of the freezing orders. The Deputy Judge was wrong to exclude that possible course from his consideration.

108. As the freezing orders should not have been continued beyond 7th October 2024, I would leave the defendants, if so advised, to apply to the Commercial Court for enforcement of the undertakings in damages given by the claimants in order to obtain and continue those orders.

109. I would also make clear that in the event that the claimants' case succeeds at trial, it will be for the trial judge to decide whether and to what extent their abusive conduct should disqualify them from the equitable relief which they seek, which includes a proprietary claim in equity to recover the proceeds of the Elektra shares and claims for equitable compensation, as well as other discretionary remedies such as interest and costs. The trial judge will be better placed than we are to make that decision, once there has been disclosure and cross-examination of the claimants' witnesses to reveal the full extent of the claimants' abusive conduct.

Disposal

110. For these reasons I would dismiss the claimants' appeal and would allow the defendants' cross-appeal to the extent of discharging the freezing orders. But I would not strike out the claim, which should continue to trial.

111. I record for completeness that since preparing this judgment I have seen the judgment of Mr Justice Richards in *Bourlakova v Anufriev* [2026] EWHC 1747 (Ch), handed down on 10th July 2026, which discusses a different form of 'privilege hunting' and refers at para 166 to the decision of the Deputy Judge in this case. Nothing in that judgment affects the views which I have expressed.

Postscript

112. A ‘privilege hunting’ operation such as occurred in this case should have no place in litigation in the courts of England and Wales. Such litigation may be hard fought, but it must be fought fairly in accordance with the substantive and procedural rules which are designed to ensure a just result. Although I have reached no final decision whether the conduct of Black Cube amounted to the commission of a criminal offence under English law (see para 78 above), it is clear that this conduct was a serious abuse of the process of the court for which the claimants are responsible. Solicitors in other cases who are presented by clients with the fruits of such ‘privilege hunting’ operations will need to consider carefully, not only their professional responsibilities, but also the possibility that by making use of such material they may be encouraging, or assisting their clients to benefit from, the commission of criminal offences.

LORD JUSTICE PHILLIPS:

113. I agree.

LORD JUSTICE FOXTON:

114. I also agree.