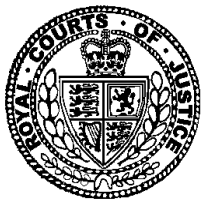

Neutral Citation Number: **[2023] EWHC 2234 (Comm)**

Case No: **CL-2009-000709**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

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

Date: 1 September 2023

Before :

The Hon. Mr Justice Bryan

- -

Between :

Deutsche Bank AG — **Claimant**

- and –

(1) Sebastian Holdings, Inc
- and-
(2) Mr Alexander Vik — **Defendants**

- -
- -

James MacDonald KC and Andrew McLeod, (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Claimant**
Duncan Matthews KC and Mr Tom Morris (instructed by **Brecher LLP**) for the **Second Defendant**

Hearing date: **1 September 2023**

- -

APPROVED JUDGMENT

MR JUSTICE BRYAN :

1. The parties appear before me this afternoon to seek my case management directions as to whether Mr Alexander Vik ("Mr Vik"), who is a convicted contemnor subject to a custodial sentence passed by Moulder J, which she suspended on terms which include the provision of extensive documents and that "Mr Vik attends Court to be examined by DBAG" (the "Further Examination") which is to take place on 19 and 20 September 2023 should, on that Further Examination, attend the Court in person (as the Claimant Deutsche Bank AG ("DBAG") submits he should, both on the terms of the Committal Order of Moulder J and in all the circumstances), or whether I should exercise my discretion to allow him to attend remotely by video link from Connecticut, USA (as Mr Vik submits I should).

2. This involves a consideration and application, of the applicable principles in the context of the terms of the Committal Order and the two applications respectively brought by DBAG and Mr Vik and associated supporting evidence, namely:-

   (1) DBAG's application dated 19 May 2023, that pursuant to the Court's general case management powers under CPR 3.1(2)(c) Mr Vik be required to attend in person at the Further Examination listed pursuant to paragraph 1 of Schedule B of the Committal Order of Moulder J (the "DBAG Application"). The DBAG Application is supported by the 5th statement of Christopher Robinson, dated 19 May 2023 ("Robinson 5") and the first and second witness statements of Emma Jane Probyn, dated 21 July 2023 and 29 August 2023 (respectively "Probyn 1" and "Probyn 2").

   (2) Mr Vik's application dated 23 June 2023, that pursuant to CPR 32.3, Mr Vik have permission to give evidence by video link from Connecticut USA on the Further Examination ("the Vik Application"). The Vik Application is supported by the 11th and 12th witness statements of Patrick James Clarke dated 23 June 2023, and 16 August 2023, ("Clarke 11" and "Clarke 12").

   As will appear in due course below, the application on the operative path is the Vik Application, for unless I accede to that application for Mr Vik to give evidence by videolink, attendance is in person.

3. I confirm that I have read and considered, and had careful regard to, the content of each of the witness statements and exhibits thereto (which run to three lever arch files). I have also had the benefit of detailed skeleton arguments on behalf of each of DBAG and Mr Vik, and I have heard oral submissions from Mr James Macdonald KC on behalf of DBAG and Mr Duncan Matthews KC on behalf of Mr Vik, all of which I have borne well in mind. I also have the benefit of a Prior Judgments Bundle containing some 11 prior judgments in this case and running to some 755 pages, and 2 Authorities Bundles in relation to the authorities relied upon by the parties in the context of the matters before me today.

4. The immediate backdrop to the matters before me is the Order of Committal made by Moulder J on 15 July 2022 ("the Committal Order"). The Committal Order recorded that it was made:

> "Upon the Court being satisfied so as to be sure that Mr Vik has been guilty of contempt of Court in failing to comply with

> paragraphs 1 and 2 of the order of Teare J, dated 20 July 2015, ('Teare J order') which required Mr Vik to produce certain documents and to attend Court to provide information as to the means of the first defendant, Sebastian Holdings Inc, ('SHI') of paying the judgment debt owed to DBAG ('the Judgment Debt') pursuant to the order of Cook J dated 8 November 2021."

5. The specific acts of contempt in respect of which Mr Vik had been found guilty were set out in Schedule A to the Order. The Committal Order at paragraph 1 committed Mr Vik to Her Majesty's Prison Pentonville for a period of 20 months and ordered that a Warrant of Committal be issued to that effect. Paragraph 2 provided that the Committal be suspended and that:

> "The warrant of committal remain in the Court Office at the Royal Courts of Justice, **on condition that Mr Vik complies with the terms set out in Schedule B to this order.**" (emphasis added)

6. Schedule B is titled "Terms of Suspension". It is then provided as follows:

> "The terms on which the committal in paragraph 1 of this order and execution of the warrant of committal are to be suspended pursuant to paragraph 2 of this order are as set out below."

It was then provided:

> "**Attendance at Court** for Further Examination as to SHI's means of paying the Judgment Debt**.**
>
> 1. **Mr Vik is to attend Court to be examined by DBAG** on the matters listed in paragraph 3 below (the **Specified Matters**) on a date or dates to be fixed to be no less than nine weeks from the date in paragraph 1.1 below.
>
> 1.1 that date is whichever is the later of:
>
> (a) 14 November 2022; or.
>
> (b) in the event that an appeal is filed the date on the final determination of any such appeal.
>
> 2. **Upon attending Court** on the dates referred to in paragraph 1 above Mr Vik is required to provide accurate answers to the best of his knowledge and belief to any questions as may be asked of him by DBAG or the Court in relation to the **Specified Matters**."
>
> (All emphasis added, save the underlining in the heading and "Specified Matters" which was in bold in the Committal Order)

7. It is clear, as is expressly set out in the sentencing judgment of Moulder J dated 15 July 2022 (*Deutsche Bank AG v Sebastian Holdings Inc and Alexander Vik* [2022] EWHC 2057 (Comm)) that in sentencing Mr Vik to 20 months imprisonment (for what were multiple

serious and deliberate breaches of a CPR Part 71 order committed to frustrate DBAG's efforts to enforce a circa USD 250 million Judgment Debt) Moulder J, "Hesitated long and hard as to whether or not to suspend this sentence." She then continued at [80] of her judgment:

> "On balance I have decided that I should give Mr Vik the opportunity to comply with the order **in the sense that he should comply with the conditions which are imposed**." (emphasis added)

8. She concluded by stating (at [84]):

> "I express no great confidence as to whether or not these conditions will lead to progress. I very much hope that it will and it seems to me that the authorities would urge me and encourage me to suspend the sentence and therefore that is what I order."

9. DBAG's position is that the terms on which Mr Vik's committal was suspended ("Attend at Court") require him to attend the Further Examination in person and he should not be permitted an exception to that requirement. It is submitted that it is clear that the express requirement that Mr Vik attend Court for the Further Examination was intended by Moulder J as a coercive element of the sanctions for his contempts. It was designed to increase the chances that Mr Vik would purge his contempts through the provision of truthful and accurate information in response to DBAG's and answers to the questions at the Further Examination. DBAG submits that Mr Vik's cross-application amounts to an attempt to water down this requirement and reduce the Court's ability to remain in control over his evidence through the use of coercive powers if necessary.

10. DBAG submits that remote attendance by Mr Vik is likely to be unsatisfactory, particularly where Mr Vik is a convicted contemnor with a long history of dishonesty and attempts to evade the Court's orders and refers to the facts on a previous occasion, when he was granted permission to give evidence remotely, there were technical difficulties. It is submitted that even if the measures now proposed are carried into effect, there would always remain some risk of technical difficulties and there is no good reason why DBAG, on that Further Examination, should be exposed to any risk at all in that regard.

11. DBAG submits that Mr Vik has identified no proper basis to justify, let alone require, his remote attendance at the Further Examination. The reasons that he has offered (through a witness statements made not by him but on instructions by one of his solicitors) are not good reasons (as is required on the authorities) but rather are vague, dubious, and wholly without merit. It is further submitted by DBAG that the Court cannot safely place any weight on these alleged justifications for permitting remote attendance at the Further Examination.

12. In contrast, on behalf of Mr Vik, it is submitted that, "The Committal Order does not require Mr Vik to attend the examination -- it makes it a condition of the suspension of the sentence." I have to say that I do not follow that submission or the distinction which is sought to be drawn. It is indeed a "condition of the suspension of the sentence" and as the Committal Order expressly states at [2], "The warrant of committal remains in the Court office ... on the condition that Mr Vik complies with the terms set out in Schedule B." Mr Vik is required to

comply with the terms in Schedule B and one of those is, I am satisfied, that "Mr Vik is to attend Court", language which is mandatory in nature.

13. At some point in Mr Mathews' oral submissions, it appeared to be suggested that compliance with the terms of the Committal Order and attendance at the Further Examination was optional on the part of Mr Vik. I consider that that is contrary to the express language of the Committal Order and also the meaning and spirit of that Order.

14. The terms on which the Committal were suspended were precisely that, terms of the suspension, like any other terms of a suspended Sentence Order. The party concerned being ordered to undertake those requirements, whether in some cases (for example) unpaid work or a rehabilitation requirement, or in this case the provision of further documents and attendance at Court for Further Examination. Those are things that the Committal Order requires to be undertaken by Mr Vik.

15. It is noted on Mr Vik's behalf that DBAG seeks an order that, "Mr Vik shall attend the Vik examination hearing to be examined in person", and it is submitted that this would, "elevate a condition into a compulsion in a manner inconsistent with the basis of the suspension of the Committal Order." I again have difficulty with this submission. If, as it is, it is a condition of the suspension that Mr Vik attend Court for Further Examination, it is a condition that should be complied with. On any view, Mr Vik is under an obligation to attend for Further Examination (however that is done) otherwise he would be in breach of the suspension terms and liable to face an application for breach and an order for immediate imprisonment. Indeed, in criminal cases, alleged failures to comply with conditions of a suspended sentence order are frequently (and correctly) referred to as “breach” proceedings.

16. I would have thought a more understandable submission would have been to argue that "Attend at Court" does not expressly state whether attendance must be in person or whether it could be by video link. Whilst more understandable, I consider that DBAG has much the better of the argument that what was being ordered was attendance in person based on the express language of the Committal Order, as quoted above and as emphasised above, and the intended coercion behind the Committal Order (which is itself set against the backdrop of the history of Mr Vik's lies and contempts, as found by Moulder J). It is one of the very purposes of a suspended Sentence Order to coerce a party to comply with the terms of that order (and to provide an opportunity as well to purge their contempt).

17. However, it is not in dispute that I can vary the Committal Order of Moulder J, if I considered, in the exercise of my discretion, that it was appropriate that Mr Vik attended the Further Examination by video link. Accordingly, and although I consider that the Committal Order does require Mr Vik to attend in person, I propose to address each of the DBAG application and the Vik Application on their own respective merits. In reality the application that is on the operative path is the Vik Application because (as appears on the authorities) the burden is upon Mr Vik to show “good reason” as to why, in the exercise of the court’s case management powers, he should be granted permission to give evidence by video link.

18. The thrust of the Vik Application is that: "the use of the technology will be likely to be beneficial to the efficient, fair and economical disposal of the litigation." (Vik Skeleton at [35]). That submission can be, and will be, addressed on its own merits in due course below.

19. However, I have to say that I am very troubled by the associated submission made on behalf of Mr Vik at [35.4] of the Vik Application in these terms:

> "**Given that Mr Vik is unable to be in the UK in person,** it is in the interest of justice that he is permitted to attend by video link. **If permission is not granted, the Claimant will lose its opportunity to question Mr Vik** about SHI's assets and Mr Vik will face the risk of becoming a fugitive from justice as a result of not being permitted the opportunity to answer questions which he is quite willing to answer." (emphasis added)

20. It is not suggested in either Clarke 11 or Clarke 12, and the evidence does not in any event demonstrate, that Mr Vik is unable to be in the UK in person. When this was put to Mr Matthews during the course of his oral submissions, he referred me to Mr Vik's application notice in part A where the reason that the order is being sought is stated as:

> "The second Defendant will be staying in Connecticut, USA during the course of the Further Examination hearing and is due to undergo a knee procedure on 21 September 2023."

21. The full reasons are set out in the witness statement of James Patrick Clarke, dated 23 June 2023. Mr Matthews points out correctly that the application notice is supported by a statement of truth from Mr Clarke. However, that application notice, supported by a statement of truth, does not say that Mr Vik is unable to be in the UK in person. It is merely a statement that, as at 23 June 2023, Mr Vik's intention is to be staying in Connecticut USA during the course of the Further Examination hearing. It does not begin either to answer whether or not he could attend in England, still less is there evidence before me to the effect that there is any impediment which would mean that he cannot attend in England. When pressed on this point, Mr Matthews was unable yo identify to me any impediment whatsoever to Mr Vik physically attending in England and Wales on 19 and 20 September 2023, even when pressed on that point. Rather there were simply reasons (which Mr Vik would have to demonstrate and show that they were "good reasons") as to why he wished to give video link evidence from Connecticut.

22. I deal separately below with the suggestion that if Mr Vik enters England and Wales, there is a risk, it is said on behalf of Mr Vik, that DBAG will or might take steps to prevent his departure from England and Wales. I have to say that that suggestion is wholly unsupported by any evidence adduced by Mr Clarke (or even assertion to that effect) or by Mr Vik (who does not himself give a witness statement). And again, when pressed as to whether or not it was being said that Mr Vik would not attend if he was ordered to attend, I never got a clear answer on behalf of Mr Vik from Mr Matthews, and no such e3vidence is before me.

23. I consider that [35.4] of the Vik Application is in the nature of a threat. In saying that, "If permission is not granted, the claimant will lose the opportunity to question Mr Vik", this paragraph has all the hallmarks of a submission *in terrorem* as a threat (or a Sword of Damocles) over the Court or, as the Court has said on other occasions, an attempt to " put a gun to the head of the Court" that if Mr Vik is obliged to attend in person, **he will not do so** and this consequence is then preyed in aid as a reason why he should be allowed to give evidence by video link, all in circumstances where his failure to attend the Further

Examination would be a failure to comply with a term of the suspension of the Vommottal Order. As such, this is a deeply unattractive submission. It is not the first occasion on which such submissions have been made to the Courts of England and Wales and as will be seen, the authorities show that the courts do not pander to a gun being put to their head. Be that as it may, I will consider the Vik Application on its own merits based on the points that are made on Mr Vik's behalf in the evidence (such as they are).

24. At this point it is appropriate to set out the history of matters to date and associated findings of the Court, in circumstances where the matters for consideration are not to be considered in a vacuum but against the backdrop of events to date.

25. In 2009 DBAG brought a USD 250 million claim in the Commercial Court against Sebastian Holdings Inc (SHI) arising from derivatives trading conducted by SHI (with heavy losses) using DBAG's prime brokerage services. SHI counterclaimed for USD 8 billion. Following a four-month trial before Cooke J, DBAG obtained judgment in its favour for in excess of USD 243 million on its claim (the Judgment Debt) and the dismissal of SHI's counterclaim.

26. Mr Vik was SHI's sole shareholder and director at all relevant times. Per previous judgments that have been given (as cross referenced in DBAG's Skeleton Argument) Mr Vik, who has been referred to as a "multibillionaire" resident in Monaco has used SHI as his "personal investment vehicle" to conduct trading activities on his behalf. He was held to be SHI's "controlling mind and will" and operated SHI, which Cooke J described as his "creature company" - without regard to corporate formalities or its financial obligations.

27. DBAG's case is that for almost a decade Mr Vik has used his vast wealth and considerable experience of litigation to cause SHI to avoid the Judgment Debt. When he became aware of SHI's liabilities to DBAG in October 2008, Mr Vik started to strip SHI of its vast assets to make it judgment proof, a process that appears to have continued until at least 2015. In findings made in his trial judgment (which have been relied upon by the Court of Appeal in later judgments) Cooke J held that Mr Vik could at a moment's notice return SHI's assets to meet the Judgment Debt. Instead, Mr Vik has taken ever more steps to put SHI's assets out of reach and obstruct recovery by DBAG.

28. In July 2015, Teare J made an order under CPR Part 71 requiring, Mr Vik to provide documents about the whereabouts and nature of SHI's assets and to attend Court for questioning (the "Part 71 Order"). Mr Vik failed to provide the disclosure required and lied repeatedly at the oral examination held in December 2015 pursuant to the Part 71 Order (the "Part 71 hearing"). Accordingly, DBAG applied to commit Mr Vik (the "Committal Application").

29. Following years of delay (DBAG say engineered by Mr Vik through unmeritorious applications and unsuccessful appeals) the Committal Application came on for hearing in June 2022 before Moulder J. Following an 11-day contempt trial during which Mr Vik was cross-examined for four days, Moulder J found Mr Vik in contempt for deliberately breaching the Part 71 Order. Specifically the judge held:

    (1) That when Mr Vik attended the Part 71 hearing, he deliberately gave false answers to questions asked by DBAG about several of SHI's assets or former assets. Moulder J made findings that Mr Vik treated the questioning as an intellectual

challenge and repeatedly provided answers which either did not respond to the question or were deliberately vague, ambiguous or misleading;

(2) Prior to the Part 71 hearing, Mr Vik deliberately failed to disclose significant categories of documents required to be produced to DBAG under the Part 71 Order. In particular, he disclosed no electronic documents whatsoever, despite SHI's complex business affairs being conducted over email;

(3) Mr Vik was an unreliable witness who, under cross-examination before Moulder J, had told multiple clear lies, sought to mislead the Court, repeatedly obfuscated and on a number of occasions gave evidence that was incapable of belief.

30. Amongst Moulder J's findings in the Committal Judgment (*Deutsche Bank AG v Sebastian Holdings Inc and Alexander Vik* [2022] EWHC 1599 (Comm)) was that his evidence was "not credible" in various respects, that he was being disingenuous in the manner in which he gave his evidence on particular topics, that Mr Vik sought to avoid answering direct questions and made an attempt to obfuscate, that he resorted to giving evidence that was clearly absurd and that he told lies in his evidence. The flavour of her findings can be seen at paragraphs [99]-[104] of the judgment:

> "99. My impression of Mr Vik, gained from his oral evidence read against the contemporaneous documents, is of a man who on his own case has demonstrated a readiness not to tell the truth in his business dealings ...
>
> 100. On Mr Vik's evidence little weight should be placed on documents as representing the true position merely because they are signed by Mr Vik ...
>
> 101. As discussed above, I do not accept as a general proposition that the passage of time is an explanation for his stated inability to recall matters. Rather Mr Vik's approach to giving evidence to this Court was that of someone who has been engaged in litigation over many years and was unfazed by the task of cross-examination and giving evidence. It could be said that he appeared to regard it as an intellectual challenge to pit himself against counsel for the bank.
>
> 102. Mr Vik is and I infer was at the XX hearing fully abreast of the issues in this litigation and he is sufficiently skilled (in terms of education and background) to understand the import of both the questions put to him, both at the XX hearing and in cross-examination before this Court and of the potential ramifications of his evidence. I do not accept as genuine (the majority) of occasions in his evidence to this Court where he professed to be confused or lost.
>
> 103. More significantly and as referred to above, in my assessment Mr Vik lied to this Court when faced with clear documentary evidence which contradicted his position.

> 104. For all these reasons I approach Mr Vik's evidence to this Court on individual issues on this committal application with considerable caution as to whether he was telling the truth to this Court in relation to the individual allegations of contempt."

31. Moulder J went on to make specific findings that Mr Vik's evidence was deliberately false in material respects (see, for example at [204] and [341]) and that he deliberately did not produce electronic documents in SHI's control and deliberately chose not to produce documents held by Mr Johanssen and the banks at which SHI had accounts (see, for example, at [458] and [459].

32. Mr Vik appealed against Moulder J's decision (as to both liability and sentence) and his appeal was heard over three days in February 2023. On 24 February 2023 the Court of Appeal unanimously dismissed the appeal, awarded DBAG indemnity costs against Mr Vik, and refused Mr Vik's application for permission to appeal to the Supreme Court. Males LJ (with whom Andrews LJ and Nugee LJ agreed) found, amongst matters, that the conclusion that Mr Vik was not a credible witness was properly open to Moulder J (at [90]), that DBAG had established a strong case that Mr Vik had told deliberate lies at the Part 71 hearing and had deliberately failed to produce documents which he had been ordered to produce (at [91]) and that Moulder J was entitled to find that Mr Vik had lied in the respects she did.

33. In relation to the appeal against sentence and the submission of Mr Matthews that a shorter sentence should have been passed, Males LJ said that in his judgment, "These submissions were hopeless" (at [125]) and he recognised that Moulder J's approach was that suspension, "**Should be on condition** that Mr Vik complied with various conditions as to future co-operation" (at [123]) (emphasis added).

34. It is clear, therefore, that Males LJ, too, understood the Committal Order to contain conditions which were to be complied with and so as to ensure future co-operation, an interpretation that I agree with for the reasons that I have already given.

35. The dismissal of Mr Vik's appeal engaged the conditions of his suspended term of Committal set out in Schedule B. As to these:

    (1) The Further Examination was required to be listed for a date not less than nine weeks after 24 February 2023. After some difficulty in identifying mutually convenient dates for the listing of the Further Examination, the examination was fixed by agreement on 23 March 2023 for 19 and 20 September 2023;

    (2) Mr Vik was also required by 4 pm on 24 March 2023 to produce to DBAG the Specified Documents (as defined in Schedule B[5]) comprising three broad categories of documents relating to SHI's assets and liabilities between 2008 and 2015 that Mr Vik should have disclosed, but failed to disclose, pursuant to the Part 71 Order. Mr Vik was obliged to make all reasonable efforts to request, obtain and (in the case of deleted electronic documents) recover the Specified Documents before producing them to DBAG by the stated deadline. In addition, he was required to serve a witness statement setting out full details of the steps taken to comply with his disclosure obligations under Schedule B by 31 March 2023. However, Mr Vik did not comply with these conditions and instead made an application on the day of the deadline for production of the Specified Documents

(i.e. 24 March 2023) seeking to vary the terms of Schedule B to extend the deadline by 28 days. That application is listed to be heard at the conclusion of the Further Examination.

36. I would only add at this point that the very fact that Mr Vik was purporting to comply with the conditions and when he had not complied, had sought to vary the terms to extend the deadline, shows that, contrary to the submissions advanced before me today on behalf of Mr Vik, Mr Vik was under an obligation under the terms of the Committal Order to comply with those terms. That is obviously right. In fact, I do not regard the contrary to be arguable.

37. The position of DBAG is that Mr Vik remains in serious default of his disclosure obligations under Schedule B and that the witness statements he has made describing his purported attempts to obtain documents and information about SHI's assets (namely Vik-13 and Vik-14) suggests that he is doubling down on the same dishonest excuses for his disclosure shortcomings that form the basis of Moulder J's contempt findings.

38. I say no more about these allegations, as I am not a position to assess the veracity of them, and in any event they are irrelevant to the matters under consideration before me today. They reflect, however, the real differences between DBAG and Mr Vik as to whether Mr Vik is seeking to comply with the terms on which the Committal Order was suspended and indeed whether he will do so at the Further Examination.

39. I turn next to the chronology of events in relation to the application now before me.

40. Mr Vik first raised the possibility that he might wish to attend the Further Examination remotely in March 2023 in the context of arrangements to fix the hearing, although I understand there may have been some foreshadowing of that even before the Committal Judgment.

41. By a letter dated 10 March 2023, Mr Vik's solicitors, Brecher, informed Freshfields, who are DBAG's solicitors, that Mr Vik would not oppose DBAG's request for an expedited listing on condition, amongst other matters, that DBAG agree that Mr Vik *"may attend via video link"* on the Further Examination.

42. Freshfields indicated (by a letter dated 16 March 2023) that DBAG strongly opposed Mr Vik attending the Further Examination remotely (setting out the reasons for its opposition) and sought confirmation that Mr Vik would attend in person. After pressing by Freshfields for a response, Brecher responded about a month later, by letter dated 12 April 2023, that Mr Vik considered it *"premature"* for either party to apply to the Court to determine the question whether Mr Vik should be required to attend the Further Examination in person.

43. By application notice dated 19 May 2023, DBAG made the Application seeking directions confirming that Mr Vik was required to attend the Further Examination in person (the DBAG Application) and by application notice, dated 23 June 2023, Mr Vik applied under CPR 32.3 for permission to give evidence at the Further Examination by video link (the VIK Applicayion).

44. I turn next to the applicable legal principles. Under CPR 32.3, which is a case management power, the Court has discretion to allow a witness to give evidence, "through a video link or

by other means". In exercising that discretion, I am satisfied that a number of general principles arise.

45. The first of those is that a direction permitting a person to give evidence by video link may only be made where it is **"for a good reason and serves a legitimate aim"**. Authority for this proposition, which was not contested on behalf of Mr Vik, comes from the Court of Appeal's decision in *Three Mile Inn Ltd (formerly Rivergrant Ltd) v Daley (Liquidator of New Northumbria Hotel Ltd)* [2012] EWCA Civ 970. At [12] Kitchin LJ, with whom Aikens LJ agreed, stated, amongst other matters, as follows:

> "... it is, in my view, incumbent on the Court to ensure that such a direction is made for a good reason and serves a legitimate aim ..."

46. I am satisfied that the requirement of a good reason and that for evidence to be given by video link must serve a legitimate aim remains the applicable test and remains good law, notwithstanding Mr Matthews' valiant attempts to say that the world had moved on since the views of the Court of Appeal in *Three Mile Inn*, in particular in a post-COVID pandemic environment.

47. The lie to that submission can be seen, apart from anything else, from Annex 3 to Practice Direction 32, which is the current applicable guidance. Paragraph 2 is as follows:

> "VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in particular, be likely to achieve a material saving of costs. Such savings may also may be achieved by its use for taking domestic evidence. **It is, however, inevitably not as ideal as having the witness physically present in court.** Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of a VCF is being considered, not only as to whether it will achieve an overall cost saving, but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. **In particular, it needs to be recognised that the degree of control a court can exercise over a witness at the remote side is or may be more limited than it can exercise over a witness physically before it**."
>
> (emphasis added)

48. I am satisfied that Annex 3 to Practice Direction 32 continues to be the applicable guidance, and that it remains to be recognised that video conference evidence is inevitably not as ideal as having the witness physically present in Court and that its convenience should not be allowed to dictate its use, and that it needs to be recognised that the degree of control that a Court can exercise over a witness at a remote site is or may be more limited than it can exercise over a witness physically before it. In such circumstances good reasons must still be demonstrated before it is ordered.

49. It is of course right, and well-known, that video link evidence is extensively used (and indeed the Commercial Court was a pioneer in that regard well before the pandemic). In this regard, Mr Matthews in his skeleton argument has drawn to my attention various authorities in relation to evidence being given by video link including, for example, *Freeman v Pennine Acute Hospitals NHS Trust* [2021] EWCA 3378 QB and in particular what was stated at [11].

50. I have also been referred to the Administrative Court case of *The Crown (on the application of Arman) v the Secretary of State for the Home Department*, a decision of Mostyn J, [2021] EWHC 1217 (Admin), and what he stated in that case in relation to remote evidence that:

> "The widely held misconception that this is unsatisfactory or in some way renders the task of the judge, in sifting truth from untruth, more difficult is being gradually displaced through wide experience."

51. There is no doubt that video link can be of assistance in suitable cases but the position remains that permission is needed for evidence to be given by video link and good reason must be shown as to why evidence should be given by this method. The position is *a fortiori* where a witness is an important witness in a trial especially where serious allegations are being made against them, whilst in the present cade we are concerned with an admitted condemnor who has found to have lied on oath on repeated occasions. Mr Matthews was unable to identify any authority where good reason had been demonstrated for evidence to be given by live link.

52. DBAG submits, in my view, with very considerable force, that no good reason has been identified, still less demonstrated, by or on behalf of Mr Vik as to why I should accede to an application that he gives evidence at the Further Examination by video link. At most the four matters identified by him (whilst unproved) relate to his convenience and no more.

53. In this regard, there is a series of authorities which show that convenience is not generally considered to carry much weight. That is, of course, apparent from CPR Practice Direction 32, Annex 3, as I have already quoted, nor should arguments based on efficiency or cost savings be given much weight, whether for or against video evidence (see *Marketmaker Technology Limited v CMC Group Plc* [2008] EWHC 1516 (QB) at [628]).

54. The correct position was reiterated by Ms Claire Ambrose (sitting as a deputy judge of the High Court) in the case of *Sayed Ahmed Rahbarpoor,* [2021] EWHC 3319 (Chancery) where she stated at paragraph 22 as follows:

> "However, the more relevant question is whether the application is justified and this goes to whether there are reasonable grounds for asking the Court's permission to attend remotely."

Which is an alternative formulation for saying that there must be good reason and that a legitimate aim must be served.

55. I was referred to a series of cases by Mr MacDonald which it is submitted, in my view with some force, are of more assistance in relation to the situation that I face today, where Mr Vik is an existing contemnor facing a Further Examination.

56. The first of these authorities that he took me to was the case of *Khrapunov v JSC BTA Bank* [2018] EWCA Civ 819. In that case there was a freezing order in relation to Mr Khrapunov and an order was made for cross-examination about his assets. There was a good arguable case he had lied previously. Mr Khrapunov applied for video link evidence in Switzerland. He did not want to come to England because that would put him at risk of extradition to Russia, Kazakhstan or Ukraine in relation to potential criminal proceedings. The Court of Appeal noted that there was indeed a real risk if he came to the UK of extradition to Ukraine, but the Court of Appeal refused to allow him to give evidence by video link. Sales LJ, giving the judgment of the Court to which both he and Newey LJ had contributed said as follows at [82]-[84]:

> "82. The high point of Mr Samek's submissions [who was acting for Mr Khrapunov] is that this should be the outcome if there is any material risk that the appellant would be subject to detention in this country as a result of the Interpol Red Notice and any extradition request made by Ukraine. He relied in particular on the decision of the House of Lords in *Polanski v Condé Nast Publications Ltd* [2005] UKHL 10; [2005] 1 WLR 637. Still more should that be the case if the appellant faces a real risk of extradition to and detention in Ukraine.
>
> 83. Mr Smith, on the other hand, emphasises the importance of the Court giving practical effect to the freezing order which has been made against the appellant. He cites the observations of Gross LJ in *JSC BTA Bank v Ablyazov (No.7)* [2011] EWCA Civ 1386; [2012] 1 WLR 1988 at [48] that it was "of paramount importance" in the circumstances of that case "for the Court to do and to be seen to be doing all it could to ensure the efficacy of the freezing order" which had been made against Mr Ablyazov. He also cites the judgment of Rix LJ in *JSC BTA Bank v Ablyazov (No.8)* [2012] EWCA Civ 1411; [2013] 1 WLR 1331, who makes a similar point at [188], as follows:
>
> > 'The authorities demonstrate that it is vital for the Court, in the interests of justice, to have effective powers and effective sanctions [sc. In relation to enforcement of a freezing order]. Without these, it would be possible for a defendant ... to flout the orders of the Court, which are the Court's considered means by which to keep the scales of justice for the parties even. If once it became known that the Court was unable or unwilling to maintain the effectiveness of its orders, then it would lose all control over litigation of this kind, with terrible consequences for the administration of justice. Those wrongly accused of fraud would be relieved of a certain amount of inconvenience, but fraudsters would rejoice and hitch a free ride to interminable litigation on the back of ill-gotten gains.'

> 84. Mr Smith says that the proposed process of cross-examination of the appellant in Switzerland will not be as effective as direct cross-examination of him before the High Court in London. **There is force in this.** He submits that, in light of the strong grounds for suspecting that the appellant has lied thus far in the disclosure he has given pursuant to para. 7 of the freezing order, which are the grounds justifying the order for cross-examination in the first place, **the Court should require the cross-examination to occur under conditions which involve the most serious threat of adverse repercussions for the appellant if he does not answer or lies in his replies to the questioning.** Only then will there be any real chance of extracting more information from the appellant of any practical utility to assist in enforcement of the freezing order.**To that end, Mr Smith submits that even if there is a risk of detention of the appellant in the United Kingdom, and a risk of his extradition to Ukraine, these are risks which in the circumstances of this case it is not unjust to require him to face.** In that regard, Mr Smith cites the decision of Neuberger J (as he then was) in *The Canada Trust Company v Stolzenberg* [1997] WL 1102707, decision of 3 October 1997." (Emphasis added)

57. Sales LJ continued at [91] as follows:

> "91. Again, this is to be contrasted with the present case. The order for cross-examination in our case has been granted in order to make the freezing order as effective as possible. It is not directed to enabling the appellant to bring or defend a civil claim in order to vindicate his rights in this jurisdiction. In *Polanski*, the factor which weighed most with Lord Nicholls (see [32]) was that the administration of justice is not brought into disrepute by allowing a fugitive from justice to bring a claim, so it was difficult to see why it would be brought into disrepute by permitting him to have recourse to a familiar procedure which would enable him to do that in an effective manner. **But in our case, the administration of justice is liable to be brought into disrepute if the Court is disabled from enforcing a freezing order in the most effective way possible.** That would be the effect of granting the variation od the 23 March order proposed by the appellant, to substitute cross-examination in Switzerland for cross-examination in the High Court in London." eEmphasis added)

58. DBAG submit with some force, in my view, that this situation is not unlike that of a suspended sentence order, where it is right and appropriate to require a defendant to attend at Court in person so as to maximise the possibility that the evidence will be given in the most effective way possible, as part of the coercive terms which are imposed by the Court.

59. Sales LJ also said as follows at [94]:

> "Similarly, in the present case, we consider that the Bank has made out a strong case that the appellant has been involved in assisting in a massive international fraud and is concealing evidence about relevant assets. **The public interest in the court trying to give maximum practical effect to the freezing order it has granted against him and in being seen to do so is strong.**" (emphasis added)

60. He continued at [96] and [97] as follows:

> "96. Finally, Lord Nicholls noted as a relevant factor that a VCF order would not assist Polanski's evasion of justice, since he would not come to England and put himself at risk of arrest whether a VCF order were made or not: [28]. Mr Samek makes a similar point in this case. He says that the appellant will not come to England for cross-examination even if he is ordered to do so, so the best that can be achieved is that he is cross-examined in Switzerland with the Bank having the benefit of the undertakings which have been offered to this Court by the appellant. **Mr Samek maintains this is not the appellant holding a gun to the Court's head to say it must do as he says but it is simply a recognition of the practical reality.**
>
> 97. **It may transpire that Mr Samek is right that the appellant will continue to refuse to obey an order that he come to the High Court to be cross-examined about his disclosure pursuant to para. 7 of the freezing order, although the appellant has not directly asserted that in terms in his own evidence. However, in our view, in the circumstances of this case the proper course is to put that to the test by maintaining the order for cross-examination in this jurisdiction. It is difficult to be sure whether in the light of this judgment, the appellant will obey that order or not.** There may well be pressures on him - for instance the risk, if he does not obey, of having a final judgment entered against him which might be enforceable in other jurisdictions - which may yet induce him to comply with it. The relatively low level of the risk of detriment that he would run by coming here, as further bolstered by the undertakings offered by the Bank's representatives, is itself indicative of a possibility that he may do so. **Certainly, it seems to us that the Court would be perceived as bowing to blackmail by him and would be liable to bring the administration of justice in this country into disrepute if it simply accepted the appellant's assertion that he will not come with a shrug of the shoulders and a sigh."**
>
> (emphasis added)

61. DBAG says the situation is not dissimilar here. Mr Vik is a contemnor and it is for this Court to decide the terms on which the sentence is suspended, one of those terms is that he attends

at Court for Further Examination. I have already touched upon the passages in Mr Vik's Skeleton Argument, in particular that at [35.4], where it is suggested: "If permission is not granted, the claimant will lose its opportunity to question Mr Vik about SHI's assets and Mr Vik will face the risk of becoming a fugitive from justice as a result of not being permitted the opportunity to answer questions which he is quite willing to answer", as being, in effect, a gun pointed to the Court's head.

62. Like Sales LJ before me, I do consider it would be bowing to blackmail, and would be liable to bring the administration of justice in this country into disrepute, if I simply accepted any assertion that Mr Vik will not come with a shrug of the shoulders and a sigh. However, it is important to note that nowhere in the evidence of Mr Clarke, in Clarke 11 and 12, is it suggested as asserted, that Mr Vik will not attend if ordered to attend. That comes, as far as I am aware, for the first time in the Skeleton Argument. I am satisfied it is not supported by any evidence adduced on behalf of Mr Vik and Mr Vik himself of course has chosen not to put any statement before this Court in support of the Vik Application.

63. As I have already identified, I do not consider that the terms of the application notice supported by a statement of truth even begins to amount to a statement that Mr Vik will not attend in this jurisdiction if he is ordered to do so. The position is that there is simply no admissible evidence before me that he will not do so. I consider that, in such circumstances, I am not in a position to proceed on an assumption that Mr Vik will not attend if the ordered is made.

64. I consider that the starting point is that there has been a Committal Order which sets out the terms to be complied with. Mr Vik has purported to comply with those terms in relation to disclosure, and in such circumstances there is no admissible evidence before me that Mr Vik will adopt a different approach in relation to compliance, either with the Committal Order based on the interpretation of the Committal Order that I have made, or on any order that I may make this afternoon in relation to his attendance in person, either in furtherance of the Committal Order (on the interpretation I have placed upon it) or upon the DBAG Application.

65. Mr Matthews invites me to infer that if Mr Vik does attend in person for the Further Examination that DBAG will take steps to prevent his departure. Mr Matthews refers to previous events which are not addressed in the witness evidence, but where he says that it was whilst Mr Vik was in the jurisdiction to give a deposition that he was served with the Part 71 proceedings. Whether that is so or not, there is no evidence before me from which I can infer that if Mr Vik attends in this jurisdiction he will be prevented by this Court from leaving. Of course DBAG was not in a position to give any undertaking in that regard and reserves its rights generally, but like other judges of this Court before me, I consider it to be an unlikely scenario that a judge of this Court would be in a position at the end of a Further Examination to immediately make an order or grant relief preventing the departure of Mr Vik or indeed committing Mr Vik to prison, without reserving judgment to give detailed reasons in relation to the matters before them, in any such scenario.

66. Reliance was placed, on behalf of Mr Vik, upon the decision in *Polanski v Conde Nast Publications* Limited [2005] 1 WLR 637. That was a case where their Lordships restored the order of the judge at first instance, permitting Mr Polanski to give evidence by video conference link. Mr Polanski, a fugitive from justice, was resident in France. He was not prepared to come to the UK for fear that he would be arrested and extradited to the USA for

sentencing for an offence to which he had pleaded guilty in 1977. Their Lordships held that it would not bring the administration of justice into disrepute if he were given recourse to the procedural facility of a video conference link for the purposes of giving his evidence. The unwillingness of such a claimant to come to England was a valid, and could be a sufficient, reason for making a VCF order, and the judge was entitled and right to exercise his discretion as he did.

67. In her judgment on Mr Vik's Application for permission to give remote evidence during the Committal Trial (*Deutsche Bank AG v Sebastian Holdings Inc and Alexander Vik* [2022] EWHC 1555 (Comm)), and having had regard to *Polanski*, Moulder J (allowing the application) reasoned at [25] that, if Mr Vik's Application for permission to give remote evidence were refused, the Court would, in effect be compelling Mr Vik to attend if he wishes to defend the application by giving evidence. I have also been referred to what she said at [26] of the Committal Trial judgment. However, of course, that was at a stage when there had been no findings of contempt that were made.

68. I consider that *Polanski* is distinguishable for a number of reasons, and is not in point on the facts of the present case. First, there is no question in this case (as there was in *Polanski*) of Mr Vik being denied access to justice if he is required to attend the further hearing in person. In *Polanski*, the Claimant film director commenced a libel claim in England and sought permission to give evidence at the trial of his claim by video link from France (where he resided). His principal reason for seeking to avoid giving evidence in person was that, if he did so, he was at risk of extradition from England to the United States, which would breach his constitutional right in France not to be extradited. As Lord Hope explained (at [66]): "The effect of refusing the order [permitting video evidence] will not be to assist the normal process of law. Its only effect will be to deny him access to justice".

69. In contrast, Mr Vik suffers no denial of access to justice if he is required to attend the Further Examination in person. He has adduced no evidence to suggest that there is any physical impairment or any physical reason why he cannot attend in person. As will be seen, such grounds as are relied upon essentially are matters that relate to convenience alone. As I have already noted, convenience is not generally a consideration that should carry much, if any, weight (see also CPR Practice Direction 32, Annex 3 at [2]). Equally he does not state in his evidence that he would not abide by any order that may be made nor that he would not attend (nor does he give any reasons that would justify such a stance).

70. Secondly, and echoing observations in the authorities that I have already referred to, as an exercise of the Court's common-law powers to enforce its own authority by way of the contempt jurisdiction, the obligation on Mr Vik to attend the Further Examination in person serves and advances the interests of justice. The contempt jurisdiction and the sanctions available to the Court serves to ensure compliance with the Court's orders and prevent the undermining of the administration of justice.

71. In this regard, I was also referred to the decision of *Navigator Equities Ltd v Deripaska* [2022] 1 WLR 3656 at [82]. As has previously been said, the public interest in upholding the Court's authority and the enforcement of Court orders (and in particular orders under CPR Part 71) is "very strong" (see *Vik v Deutsche Bank* AG [2019] 1 WLR 1737 at [57]). I am satisfied that it is entirely consistent with the underlying policy objectives of the *Polanski* principle for the Court to require a proven contemnor to attend Court in person as a condition

of suspending what would otherwise be an immediate Committal Order (or indeed to make such an order).

72. Thirdly, the considerations that led Moulder J to rely on the *Polanski* principle in permitting Mr Vik to attend the hearing of the Committal Application remotely are not present in relation to the Further Examination. Unlike the Committal Application, the Further Examination does not involve Mr Vik "seeking to defend his rights". The Further Examination is, by definition, a compulsory information gathering exercise, and not a contested hearing. Mr Vik's obligation to attend for questioning arises as a consequence of the Court's adjudication that he committed deliberate and dishonest breaches of its order. In such circumstances, far from undermining Mr Vik's rights, I consider that any loosening of the coercive purpose of that obligation would visit significant prejudice on DBAG's entitlement to truthful answers from Mr Vik about the nature and location of SHI's assets in accordance with the Part 71 Order.

73. Fourthly, and as I have already noted, there is nothing in the evidence served on behalf of Mr Vik which suggests that his wish to attend the Further Examination remotely is because he wishes "to avoid the normal process of law in this jurisdiction". Any such assertion, for assertion it is, has only been made in the Skeleton Argument and orally and to this day there is no evidence before me that Mr Vik would not attend if he was ordered to attend in person for the Further Examination. That is all pure assertion on the part of those acting on behalf of Mr Vik. It is surprising if that point, which by the end of Mr Matthews' submissions acquired some prominence, would not have been dealt with in the evidence, if that was Mr Vik's position. Be that as it may, there no such evidence before me.

74. I was also taken to a number of further authorities by DBAG, including *JSC BTA Bank v Ablyazov (No 8),* which related to a situation where Mr Ablyazov had been found guilty of contempt and the question was whether there should be debarring orders. In that case Rix LJ stated at [188] as follows:

> "188. The authorities demonstrate that it is vital for the court, in the interests of justice, to have effective powers, and effective sanctions. Without these, it would be possible for a defendant (or, in a different situation, a claimant) to flout the orders of the Court, which are the Court's considered means by which to keep the scales of justice for the parties even. If once it became known that the Court was unable or unwilling to maintain the effectiveness of its orders, then it would lose all control over the litigation of this kind, with terrible consequences for the administration of justice. Those wrongly accused of fraud would be relieved of a certain amount of inconvenience, but fraudsters would rejoice and hitch a free ride to interminable litigation on the back of ill-gotten gains."

75. I was also referred to the recent decision of Miles J in *Business Mortgage Finance Plc and others v Rizwan Hussain* [2022] EWHC 353 (Ch). That was a case where Mr Hussain was being tried for contempt and there was an order that he appear in person but he failed to attend. The judge came to the conclusion that he should proceed in Mr Hussain's absence. At [32]-[35] he stated as follows:

> "32. I should address at this stage the suggestion in Mr Hussain's emails that he is prepared to participate remotely and cannot therefore be said to have waived his right to take part. I consider this suggestion to be groundless.
>
> 33. First, I ordered the trial to take place in person. There are compelling reasons for that: **a committal application concerns a public administration of justice and the applicants are contending that the respondent has breached the order of the Court**; **the hearing should therefore take place with the alleged contemnor present to answer the charges.** It may be possible to contemplate unusual cases where remote appearance may be justified for reasons of health or vulnerability or otherwise. But that requires evidence and is not this case." (emphasis added)

76. Mr MacDonald submits (with some force) that the present case is an *a fortiori* case in circumstances where Mr Vik has already been found to be a contemnor.

77. Miles J continued at [35] as follows:

> "35. Secondly, Mr Hussain has not only failed to comply with the order that he attend in person, but has refused the requests of the Court to be informed of his whereabouts or hand over his passport or passports. He is therefore asking the court to allow him to participate on his own terms from an undisclosed location while avoiding arrest and refusing to cooperate with the court and its officers, while trying to maintain the option of avoiding the court's reach if things go against him. **The court cannot allow him to dictate the terms of his involvement in that way**." (emphasis added)

78. Apart from the fact that the location where Mr Vik wishes to give evidence is disclosed and therefore is not undisclosed, I consider that the sentiments expressed in that (recent) case are also apposite in the present case. It appears to me that what Mr Vik is seeking to do is dictate his own terms on which he will appear before the Court on the Further Examination. If he is to persuade this Court to accede to his application, he must show good reason as to why he should be permitted to give evidence by video link from outside of the jurisdiction (see again *Three Mile Inn v Daley (supra)*, [12]).

79. As was said in *JSC BTA Bank v Zharimbetov* [2014] EWHC 116 (Comm) at [33], cross-examination of a person over a video link may legitimately be considered unsatisfactory where the person has previously been found to have given dishonest evidence. That, of course, is the position of Mr Vik.

80. I was also taken by Mr MacDonald to the decision of Andrew Smith J in *JSC BTA Bank v Zharimbetov* [204] EWHC 16 (Comm). The facts of that case were that there was a committal application and Mr Zharimbetov had flown the jurisdiction after a judgment in which he was held liable for 1.5 billion and he failed to return in breach of two orders of the Court. In his witness statement he said he couldn't return to England because there were

threats to his personal safety but he would otherwise co-operate with enforcement proceedings by virtue of a video link. Andrew Smith J held him to be in breach of the Court orders and sentenced him to 15 months imprisonment. He said this at [33]:

> "33 ... Secondly I have concluded that the prejudice to the claimants is significant. They are entitled in view of their judgment to take steps properly available to them to proceed to enforcement against Mr Zharimbetov. **The suggestion that the cross-examination or examination can satisfactorily proceed over the internet does not seem to me to meet the circumstances of this case.** At trial, Mr Zharimbetov's evidence was disbelieved. Indeed, it is a mark of the Court's view that the order for costs against him was for costs to be assessed on the indemnity basis. **It seems to me that, in these circumstances, the bank is entitled to regard cross-examination over a video-link as unsatisfactory**." (Emphasis added).

81. I consider that the same principles apply in this case. Mr Vik is a contemnor. He is also someone whose evidence has been repeatedly disbelieved. He is also someone who has been ordered to pay indemnity costs on many occasions. And as in that case, it seems to me that the bank is entitled to regard cross-examination over a video link as unsatisfactory. I reject the suggestion that the world has moved on since 2014, when Andrew Smith J expressed such sentiments, not least given the terms of Annex 3 to Practice Direction 32 at [2], which I have already cited. The mere fact that video link evidence is regularly used in proceedings in the Commercial Court and in other divisions of the High Court and that judges have expressed sentiments about the utility of such procedures does not begin to grapple with the situation in a case such as the present and those authorities that have been identified before me, and which I have quoted in the context of an admitted contemnor with a suspended custodial order with terms to be complied with, including attending at Court. I consider that this is just the sort of situation where a bank in the position of DBAG is entitled to regard examination over a video link as unsatisfactory because, as is recognised by the Practice Direction itself, evidence by video link is inevitably not as ideal as having a witness physically present and the degree of control a Court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically present before it. I do not see why a bank in the position of DBAG in relation to enforcement where someone such as Mr Vik has been found to be a contemnor and an order has been suspended only on terms that he does certain things including attending at Court should, absent good reason, be allowed the give video evidence from abroad.

82. I turn then to the reasons advanced on behalf of Mr Vik in Mr Clarke's witness statements as to why there is good reason to allow Mr Vik to attend the Further Examination by videolink. As already identified, it is for Mr Vik to demonstrate that there is good reason for him to be permitted to attend the Further Examination remotely, *a fortiori*, if it is right that the Committal Order does require him already to attend in person by ordering him to attend at Court. As I have already noted, Mr Vik does not contend in Mr Clark's evidence that he is unable to attend the Further Examination in person. Rather he argues (through his solicitor Mr Clarke), having given no direct evidence himself in relation to either the application or the cross application, that there are four reasons why Mr Vik is unable to travel freely, and should not be required to attend the Further Examination in person. I understood Mr Matthews to

accept, on behalf of Mr Vik, consistent with the authorities that I have cited, including the *Three Mile Inn* authority, that it is for Mr Vik to show good reason why he should give evidence by video link.

83. I am satisfied that the four reasons which are advanced on behalf of Mr Vik are thin gruel indeed. I do not regard any of the reasons advanced as at all credible, far less that they would amount to good reason for him to give evidence by videolink. I will consider those reasons in turn.

84. First, Mr Clarke states that Mr Vik, "has informed me that he is scheduled to have a medical procedure performed on his knee in New York on 21 September 2023." That is of course the day after the Further Examination. No details are offered about this "procedure". I note it is not described as an operation, and little, if anything, is known about what the nature of that procedure is (nor is it evidenced at all). There is no suggestion, still less any evidence, that the matter is serious or that the matter is urgent. The Court is not even told whether it was scheduled before or after the Further Examination was listed or indeed whether there would be any difficulties in rescheduling it, were it necessary to reschedule it. I note that Mr Vik listed no health conditions in his mitigation evidence before Moulder J.

85. Mr Vik, has also adduced no evidence to explain why the "procedure" must occur on 21 September 2023. The uncontested evidence before me is that Mr Vik made no mention of this procedure to DBAG or the Court, when the listing of the Further Examination was made in March 2023. Nor did Brecher, his solicitors, disclose this "procedure" when indicating in early March 2023 that Mr Vik had a preference to attend the Further Examination remotely. Rather, this issue only emerged three months after the Further Examination had been fixed. Mr Vik has not given any explanation for this. In such circumstances I do not consider that this reason has been made out. However, there is a more fundamental point, as a result of which I do not consider this to be a reason at all, still less as demonstrating good reason why he should be permitted to give evidence by videolink.

86. As already noted, the scheduled medical procedure is to take place in New York on 21 September 2023. Even a cursory examination of current flight schedules and available flight seats from London Heathrow to JFK airport in New York on 20 September shows that there are multiple flights after 6.30pm (allowing time to get to Heathrow and go through security), to allow Mr Vik, if he so wishes, to take a flight back from the UK to New York arriving by mid-evening on 20 September (New York being, I believe, five hours behind UK time). That would, of course, allow him time to arrive in New York during the course of the evening and allow a full night's sleep before any procedure, whatever time such procedure is scheduled to take place the following day. In such circumstances I do not consider this reason to be a reason at all, still less as demonstrating a good reason why he should be permitted to give evidence by videolink..

87. Secondly, Mr Clarke says that Mr Vik has childcare responsibilities for a new grandchild following the happy birth of his daughter's second child. It is suggested that he is attending in New York for that purpose (see paragraph 21(b) of Clarke 11 and paragraph [11](a) of Clarke 12). Again, this alleged reason was not raised at the time the Further Examination was fixed. It is in any event clear that his daughter's second child has already been born, and I assume therefore that both he and his wife will already have had the opportunity to attend and celebrate the birth, and assist in childcare responsibilities to date, and will continue to be able

to do so in the weeks between now and when Mr Vik comes to England for the Further Examination. Equally, whilst Mr Vik is in England, his wife will be able to continue with childcare responsibilities.

88. In any event, as is either common ground, or is clear on the existing judgments, Mr Vik has very substantial financial resources, and it is not credible to suggest, and indeed it is not suggested, that it would not be possible for him to make, and pay for, childcare arrangements for a grandchild for the two or three days that would be required for him to travel to and be present in England for the Further Examination. I do not consider that any weight can be attached to this alleged reason either, and regard it as "makeweight".

89. The third alleged reason, per Mr Clarke's evidence, is that:

> "Mr Vik has informed me that he needs to be in Connecticut to attend a board meeting and business meetings at this time", (Clarke 11, [21](d)).

90. No details were provided in Clark 11 as to those meetings, and equally Mr Vik's reply evidence to DBAG's application offered no details as to the unidentified "business meetings", but did reveal that the board meeting was seemingly for a cyber security company that at least historically has been controlled by Mr Vik and/or his family. It appears (somewhat ironically) that the company actively promotes arrangements for remote working (see Probyn 2, [9]-10]). Mr Vik has in fact given no details as to the date of this board meeting or when it was fixed. He has also offered no evidence to suggest that the meeting could not be rescheduled (given that the company appears to only have three directors) or that his attendance in person as opposed to on a remote basis is essential. In this regard I cannot but help take notice of the fact that Mr Vik has previously given evidence that he has conducted business from his Blackberry whilst "climbing a mountain in Chile" (Probyn 2, [10]). The evidence before me is also that previously Mr Vik has repeatedly disavowed having any business interests in Connecticut and downplayed his connections to that state (see Probyn 1, at [18]).

91. On any view, no reason has been given or justified as to why any board meeting could not be rescheduled or why Mr Vik could not attend remotely. Certainly, he does not suggest evidentially, any reasons why that could not be the case. I also cannot help but note of course that if he has to attend a board meeting and business meetings at that time, he won't be available for childcare during that period of time either. I do not consider this third alleged reason supports there being a good reason why he should be permitted to give evidence by videolink..

92. Fourth, Mr Clark contends the costs savings and Mr Vik's concern for the "impact on the environment", justify his remote attendance at the Further Examination. I do not consider that to be an attractive point based on the evidence that is before me, as set out in Probyn 1 and Probyn 2. The evidence before me is that Mr Vik travels frequently around the globe, for business and for pleasure, using both commercial and private jets (Probyn 1, [19]). This year alone Mr Vik has made multiple trips to Chile and to Brazil. The reality is that both the cost and environmental impact of Mr Vik's flights to the UK from America are small in comparison both to the impact of Mr Vik's normal lifestyle, the overall costs in a case such as the present, and the seriousness of the allegations which he must answer on the Further

Examination as well as the size of the outstanding judgment debt, which has still not yet been paid. I do not consider that this is a factor of any real weight.

93. It follows that good reason has not been shown on behalf of Mr Vik, for Mr Vik to attend the Further Examination by videolink nor has it been demonstrated that such a course would serve a legitimate aim (*Three Mile Inn v Daley* supra at [12]). Further, in the circumstances I have identified in this judgment, I do not consider that Mr Vik giving evidence by videolink would be likely to be beneficial to the efficient, fair and economic disposal of the matters, specifically the Further Examination (see Annex 3 to Practice Direction 32 at [2]). In such circumstances, such an order would not be appropriate in the exercise of the Court's case management discretion, not least in circumstances where Mr Vik is a person who has previously been found to have given dishonest evidence and is an admitted contemnor..

94. I reiterate once again, that there is no evidence from Mr Vik that he is unable to attend in England. I reject the suggestion that this is the effect or gravamen of his application notice supported by a statement of truth. It is not, for the reasons I have given. Equally, I do not consider it appropriate to infer that a good reason for him not attending would be a real risk or real fear of arrest (which is not advanced in evidence, still less established). For reasons I have already identified, I do not consider that is a realistic scenario, given the findings that would need to be made by any judge of this Court before making any such order.

95. Accordingly on the applicable principles, and for the reasons addressed above, I dismiss Mr Vik's Application. Conceptually that determines matters, as unless Mr Vik succeeded on the Vik Application and secured an order that he be permitted to attend by videolink he must attend in person.

96. I have already indicated my reasons why I consider under the Committal Order Mr Vik is required to attend at Court in person. However, had I been mistaken in my interpretation of the Committal Order that is in any event the consequence of my dismissal of the Vik Application.

97. Either way the DBAG Application, whilst properly brought, is not on the operative path and is academic. Nevertheless as it has been made, and for completeness, I will address it. The DBAG Application is for an order that pursuant to the Court's general case management powers under CPR 3.1(2)(c) Mr Vik be required to attend in person to be examined at the Further Examination hearing listed pursuant to paragraph [1] of Schedule B to the order Moulder J, dated 29 July 2022. If necessary, I am satisfied that I should make that order. The authorities that I have identified show that it is appropriate that a contemnor in a position of Mr Vik should attend in person and should be cross-examined in person in the context of the sentiments which have been expressed by both this Court and appellate Courts in the authorities that I have identified.

98. The circumstances are that the Further Examination forms part of a detailed set of conditions imposed by the existing Committal Order by which Mr Vik's term of committal was suspended. I am satisfied that the Court's ability to be in control of Mr Vik's evidence, and the likelihood of the truth and accuracy of his evidence being properly tested will be greatest if Mr Vik attends in person. I am also satisfied that it would be wrong to expose DBAG to the risks inherent in Mr Vik giving evidence remotely. Whilst it is true that the videolink proposals in rhe protocol are appropriate steps to take if videolink evidence was appropriate,

there can be no guarantee that there would not be difficulties arising from the technology during the two days of the Further Examination.. Experience shows that notwithstanding the advances in technology over the years, there can still be problems with bandwidth and there can still be time lags, however short. Counsel, particularly enthusiastic Counsel, often ask questions quickly, and on occasions over speak a witness over a videolink where the same is not true, or is less likely to occur, when the witness is in person. Witnesses on occasions find the experience more difficult over a videolink with a degree of disconnect that is not there when everyone is in person. As is reflected in the Practice Direction (as already quoted above), remote evidence is inevitably not as ideal as having the witness physically in the Court and equally the degree of control the Court can exercise at a remote site is more limited than it can exercise over a witness physically present before it.

99. In any event, in circumstances where Mr Vik is an admitted contemnor, I do not consider that DBAG should be exposed to any risk of technological failure or exposed to potential shortcomings in the process due to any potential time lags, overlapping questions and answers or the like. These are all risks to which there is no reason why DBAG should be exposed, and which are avoided by Mr Vik giving evidence in person. Accordingly, I am satisfied that it is also appropriate to grant the DBAB Application pursuant to my general case management powers under CPR 3.1(2)(c) whereby Mr Vik's attendance at the Further Examination is to be in person. Accordingly, and for those reasons, the DBAG Application (whilst academic) also succeeds.

100. I will now hear the parties in relation to any consequential matters arising out of this judgment.