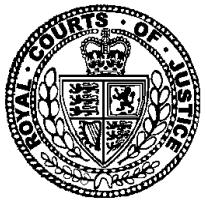

Neutral Citation Number: [2026] EWCA Civ 581

Case No: CA-2025-000581

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**COMMERCIAL COURT**
**Mrs Justice Cockerill**
**[2025] EWHC 283 (Comm)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/05/2026

**Before:**

**LORD JUSTICE POPPLEWELL**
**LADY JUSTICE ANDREWS**
and
**LORD JUSTICE NUGEE**

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**Between :**

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| **DEUTSCHE BANK AG** | **Claimant/ Applicant and Appellant** |
| **- and –** | |
| **MR ALEXANDER VIK** | **Defendant for costs purposes only/ Respondent** |

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**Sonia Tolaney KC, James MacDonald KC and Andrew Lodder** (instructed by **Freshfields LLP**) for the **Appellant**
**Tony Beswetherick KC and Rupert Hamilton** (instructed by **Brecher LLP**) for the **Respondent**

Hearing dates: 24 and 25 March 2026

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 12th May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Lady Justice Andrews:**

## INTRODUCTION

1. If an officer of a corporate judgment debtor, who has been validly served with an order pursuant to CPR r.71.2(1)(b) requiring them to attend court to answer questions on oath and produce documents, intentionally fails to comply with that order, does the court have the inherent power within the process thus initiated to make an order requiring them to attend for further examination on oath, with a view to obtaining the outstanding information which the original order was designed to obtain? That is the issue at the heart of this appeal.

2. For the reasons set out in this judgment, I would answer: yes, it does.

3. The answer is of practical significance if, by the time the order for further examination is sought, the individual concerned has ceased to be an officer of the judgment debtor or is outside the jurisdiction, or both, (the situation faced in this case by the judgment creditor and appellant, Deutsche Bank ("DB")). It is common ground that in these circumstances, DB cannot start the process under CPR Part 71 ("Part 71") afresh; Cockerill J ("the Judge") so held at [85] of the judgment under appeal, [2025] EWHC 283 (Comm).

4. There are three reasons why that is the position. First, there is no power to summon an officer of the judgment debtor who is outside the jurisdiction to come to court and provide evidence, because for the purposes of exercising extra-territorial jurisdiction, they are no different from any other third party witness: *Masri v Consolidated Contractors Int (UK) Ltd (No 4)* [2009] UKHL 43; [2010] 1 AC 90 ("*Masri (No 4)*"). There is no statutory power which may be exercised extraterritorially in this context (cf. the specific powers conferred on the court under insolvency legislation when a company is wound up, see *In Re Seagull Manufacturing Co Ltd* [1993] Ch 345, discussed and distinguished in *Masri (No 4)* at [20] to [23] and [26]).

5. Secondly, an order that initiates the process under Part 71 cannot be served outside the jurisdiction: *Masri (No 4)* per Lord Mance at [27] to [38], especially at [36], approving Tomlinson J's analysis of CPR r.6.30(2) (the predecessor to what is now CPR r.6.38) in *Vitol SA v Capri Marine Ltd* [2008] EWHC 378 (Comm) ("*Vitol"*). Thirdly, as Tomlinson J held in *Vitol* at [23], an order cannot be made under CPR r.71.2(1)(b) against someone who is not an *existing* officer of the judgment debtor company. Lord Mance expressed a concurring view, albeit *obiter*, in *Masri (No 4)* at [23].

6. However, neither *Vitol* nor *Masri (No 4)* was concerned with the situation in which the person concerned *was* an officer of the judgment debtor at the time of the original application and order for his examination under CPR r.71.2 (1)(b) and when that order was personally served upon him within the jurisdiction, which is the situation in the present case. That individual cannot escape the requirements of that order by resigning from their office or moving abroad before the date scheduled for the examination. Nor should they be able to do so by disobeying the order, whether the disobedience consists of failing to turn up for the examination, turning up and refusing to answer questions, or (as happened in this case) turning up and answering them untruthfully.

7. If the obligations under the order made under CPR r.71.2(1)(b) have not been discharged, and the process which was commenced by service of the order has not come to an end, the court retains personal jurisdiction over the individual who has disobeyed it. The questions which would then arise are (a) whether the court has an inherent power to make a further order designed to procure the provision of the information which the original order intended and required that individual to provide, and (b) if so, whether it should exercise that power.

8. If, on the other hand, a failure to adjourn the hearing of the examination (as expressly provided for in CPR r.71.7) means that the process begun by service of that order came to an end when the hearing concluded, and the order is spent, and if a fresh application under CPR r.71.2(1)(b) cannot be made, then the only means the judgment creditor has of seeking to secure compliance with the original order is to initiate proceedings for contempt of court in respect of the breaches. If, for whatever reason, the contempt proceedings do not bear fruit, the judgment creditor and the court are powerless to force the individual to disgorge the information they have deliberately withheld. That is the analysis for which the Respondent, Mr Vik, contends, and which the Judge accepted. However, for reasons I shall explain, it is fundamentally flawed.

9. In the Commercial Court, the main focus of the legal argument was upon whether the order for further examination which DB sought could properly be characterised as "ancillary to" the original order made for Mr Vik to attend for examination under CPR 71.2(1)(b), to which I shall refer, as it was referred to in the judgment below, as "the 2015 Order". The Judge decided that it was not, because it was not directed to doing something "on the way to" the original order, or something that was different in quality from that order, but complimentary to it, or subordinate in nature, see [86] to [96]. Whilst it is true that there are passages in the judgment which also address the question whether the order sought is "incidental" to the 2015 Order, that was not treated as a distinct concept. Indeed, the relevant passages of the judgment fall under the heading: "**Is what is being sought an Ancillary Order?**" and the issue is identified at [86] as "whether the order sought truly is ancillary".

10. The Judge was not assisted by the fact that the order which DB originally sought was couched in extremely wide terms: as she pointed out at [94], it went beyond the scope of any questioning that could have been ordered or carried out under the 2015 Order. The bulk of the reasoning in her judgment which addresses the question whether the order sought was "ancillary" is directed to that wider form of order. It was only after the Judge herself raised with the parties the question whether some narrower order might be regarded as incidental or ancillary to the 2015 Order, that DB sought to limit the order it sought to one requiring Mr Vik to be questioned further on four topics on which he had previously failed to answer questions truthfully.

11. It was against that background that the Judge decided that, because what was being sought under the narrower order was a sub-set of the answers Mr Vik should have given in 2015, even in this truncated form the order was not "ancillary or incidental" to the 2015 Order (applying her earlier interpretation of those concepts). In reaching that conclusion, she stated at [111] that it was important to ensure that the court "does not take to itself an excessive jurisdiction, perhaps particularly against a background where the 2015 Order was at the outer limits of the Part 71 jurisdiction in the sense that Mr Vik was only fortuitously in the jurisdiction at the relevant dates and where it is clear no fresh order could now be made". She then said that the narrower form of

order was neither subordinate to the 2015 Order, nor was it an essential part of that order [112]. The new order would in part reiterate and supersede the obligations under the 2015 Order and replace them with new and different obligations, and it was not directed in reality to securing compliance with the 2015 Order but rather, to securing compliance with the judgment [113].

12. In the light of the way in which the arguments developed before her were mainly focussed, particularly when the proposed order was couched in wide-ranging terms, it is perhaps understandable why the Judge reached the conclusions that she did. However, at the hearing of this appeal, the focus shifted to more pertinent considerations. In my judgment, the answer to the key issue which I have identified in paragraph 1 above does not turn on whether the order sought is to be labelled as "ancillary" or "incidental" to the 2015 Order, nor on whether it replicates aspects of that order by requiring the same questions to be answered as before, albeit necessarily on a different date from that set for the original examination. The proper focus should be on whether it is just and convenient to make the order sought in order to give effect to the 2015 Order, by achieving the purpose for which that order was made, namely, the disgorging of truthful information about the judgment debtor's assets which should have been provided on the first occasion. Had matters been approached in that way, and if DB had initially couched the order it sought in the more restricted terms it later sought after judicial prompting, the conclusion that the court does have the power to make such an order would have been more readily apparent.

## BACKGROUND

13. The factual background to the longstanding dispute between DB and Mr Vik is set out in some detail in the judgment below. For the purposes of this appeal, the following summary will suffice.

14. Mr Vik is a Monaco-based billionaire. The judgment debtor, Sebastian Holdings Inc. ("SHI") was his personal trading vehicle, which used prime brokerage services provided by DB. In October 2008, after SHI had incurred heavy trading losses, DB made a margin call which SHI did not pay in full. In 2009 DB started proceedings in the Commercial Court to recover the balance and interest. Following a 14-week trial before Cooke J, DB's claim was substantially upheld and SHI's counterclaim, brought through Mr Vik, was dismissed (the judge finding that the counterclaim was based on lies by Mr Vik, and documents he had fabricated in whole or in part).

15. On 8 November 2013, Cooke J ordered SHI to pay DB US$243 million ("the judgment debt") and 85% of its costs on the indemnity basis. On 28 November 2013, DB made an application to join Mr Vik to the proceedings against SHI for the purposes of costs only, pursuant to CPR r.46.2(1). That application was granted by Cooke J, and in due course DB obtained a non-party costs order against Mr Vik.

16. SHI still owes DB a significant sum. At the time of the hearing before Cockerill J, the amount due was in excess of US$360 million.

17. The 2015 Order, endorsed with a penal notice as required by Part 71, was made on 20 July 2015. It required Mr Vik, who was then still a director of SHI, to produce by 14 October 2015 all documents in [SHI's] control relating to [SHI's] means of paying the amount due under the judgment and order on judgment of Cooke J, and to attend an

examination before a judge on 28 October 2015 in order to provide information about SHI's means of paying the judgment debt. It was served personally on Mr Vik in London on 21 July 2015. As the Judge held at [14] of her judgment, it is therefore established that the 2015 Order was properly served on Mr Vik and that it conferred personal jurisdiction over Mr Vik in connection with its subject matter.

18. Mr Vik has done everything in his power to impede DB's recovery under the judgment, including asset-stripping SHI, and purporting to divest himself of control of SHI, in an unsuccessful bid to have the 2015 Order set aside: see the judgment below at [12] and the judgment of Cooke J dated 7 October 2015 setting out the reasons for refusing that application [2015] EWHC 2773 (QB).

19. The date of the CPR r.71.2 examination was changed to 11 December 2015 by order of Cooke J on 7 October 2015. By then, Mr Vik had already ceased to be a director of SHI and was outside the jurisdiction. Since those factors had not persuaded the court to set aside the 2015 Order, Mr Vik attended for examination before Cooke J on 11 December 2015. He lied repeatedly about the whereabouts and nature of SHI's current or former assets, and deliberately failed to provide key categories of documents.

20. When she had finished asking Mr Vik questions, DB's counsel, Ms Tolaney KC, said she wished to raise with Cooke J the question of contempt and committal. She submitted that Mr Vik had plainly been untruthful in some of his answers. She referred to the various options available to the court, including "reaching a conclusion on it [i.e. whether Mr Vik was in contempt] today", making a suspended committal order on terms, or adjourning the matter and giving directions for a further hearing. Cooke J refused to deal with those matters summarily using the process under CPR r.71.8. He said:

> "If you wish to make an application of any kind it seems to be in relation to enforcement or in relation to contempt of court, I think that needs to be properly formulated on notice, and I need to have it spelled out with a skeleton argument and everything else so that I have the opportunity to consider it against all the documents that I have seen for the first time today."

21. Following further discussions, Mr Vik's then counsel asked for him to be released from being on oath, so that his legal team could speak to him. Cooke J responded:

> "His examination has been completed. If it hadn't been, there wouldn't be an application of the kind being made. It would be continuing with more questions to be asked."

22. DB made an application under CPR r.81 to commit Mr Vik for contempt of court. He used every means that were open to him to resist that application, initially arguing that the court lacked jurisdiction to commit him for breaches of the 2015 Order on the basis that he was resident out of the jurisdiction, and that the process under CPR r.71.8 was the only available procedure for committal in this context. Those arguments were rejected by Teare J [2017] EWHC 459 (Comm) and on appeal by this court [2018] EWCA Civ 2011. The leading judgment on that occasion was given by

Gross LJ, with whom Lewison and Leggatt LJJ agreed. As the Judge did in her judgment, I shall refer to that decision as "*Vik 2*."

23. The Court of Appeal upheld Teare J's analysis that where an application incidental to the Part 71 order was issued, DB did not need to establish jurisdiction again simply because Mr Vik was now outside the jurisdiction. They held that since a court order had to carry with it the means to enforce it, those means were a necessary incident of that order. Since an order for committal was one of the means of enforcing court orders, the committal application was incidental to the 2015 Order, and DB did not require permission to serve it out of the jurisdiction: [2018] EWCA Civ 2011, per Gross LJ at [55] to [58]. He observed, at [57], that:

> "It would, at the least, be curious for the court to have jurisdiction to make the CPR Pt 71 order but to lack jurisdiction to enforce compliance with it. That there may be other occasions… where there are mis-matches between the jurisdiction to make an order and the ability to enforce it, seems to me to be neither here nor there; certainly there is no attraction in shaping a policy to increase the number of such examples."

24. Mr Vik next made an unsuccessful attempt to strike out the committal application, claiming among other matters that it was an abuse of process. The hearing of the strike-out application took place remotely during the pandemic, which gave rise to further delay. Eventually, Cockerill J rejected that application [2020] EWHC 3536 (Comm), and the Court of Appeal refused permission to appeal. This explains why the hearing of the committal application (over 11 days before Moulder J in 2022) did not take place until some 7 years after the examination of Mr Vik pursuant to the 2015 Order.

25. In her judgment [2022] EWHC 599 (Comm) Moulder J held that Mr Vik had deliberately breached the 2015 Order in multiple serious respects, identified by the Judge at [19] and [20] of the judgment below. She sentenced him to 20 months' imprisonment, but suspended the sentence on conditions, including that Mr Vik attend for a further examination by DB as to SHI's means of paying the judgment debt. This was reflected in an order ("the Committal Order") which provided that the examination should take place either within 6 months of 14 November 2022 or within 6 months of the final determination of any appeal against that order, whichever was the later. Mr Vik appealed against the findings of contempt and the Committal Order. That appeal was dismissed by a constitution of this court of which Nugee LJ and I were both members, [2023] EWCA Civ 191.

26. The deadline for the further examination set by the Committal Order expired on 24 August 2023. The fixing of the hearing of the further examination was delayed until such time as leading counsel for both parties were available. It was eventually listed for 19-20 September 2023, by agreement between DB and Mr Vik. Mr Vik then sought an order from the court that he could attend that hearing remotely by video link from the USA. Bryan J refused [2023] EWHC 2234 (Comm).

27. At that stage, the parties were proceeding on a common assumption that the suspended sentence was still in effect. However, at some point after Bryan J's decision, Mr Vik alighted on the argument that on the proper interpretation of the

Committal Order, his suspended sentence had come to an end on 24 August 2023, and he was not obliged to attend the examination. Henshaw J concluded that this was the correct interpretation, and refused to rectify or vary the Committal Order to produce a different result [2023] EWHC 2563 (Comm). Males LJ refused permission to appeal on 11 January 2024.

28. Henshaw J and Males LJ both assumed that it would be open to DB to obtain a further order for Mr Vik to attend court and provide the information. Both judges were aware that he was outside the jurisdiction and had ceased to be an officer of SHI. However, there is nothing to indicate that it had occurred to either of them that, because of those factors, there was a critical distinction between DB seeking another order within the existing Part 71 process, and making a fresh application under CPR r.71.2(1)(b).

29. The upshot is that Mr Vik has fortuitously avoided being forced to choose between providing the information sought by DB (which, on the Judge's findings, he is still able to do) or being committed to prison for his deliberate breaches of the 2015 Order. Of course, the desirability of ensuring that Mr Vik should not escape the consequences of his deliberate and dishonest disobedience to the 2015 Order cannot confer a power upon the court that it does not otherwise have. However, it could provide ample justification for the exercise of that power if it does exist.

## THE JUDGE'S DECISION

30. The Judge held that the court did not have the power to make the order for further examination that DB sought [129]. However, if it did have such a power, she would not have exercised her discretion to make the further order, on the basis that it would be "futile" [131]. She considered that a further order would "*almost inevitably* be an empty gesture" [131] though a few paragraphs later she moderated this to "*unlikely* to achieve the purpose for which Part 71 is intended" [143]. Finally she held that, to the extent this matter was relevant, the service of the application for the further order upon Brecher, the solicitors who were on the record as acting for Mr Vik in the underlying proceedings and who had represented him in the committal proceedings, was not good service.

31. DB challenges each of those conclusions on the following grounds:

    i) The Judge erred in law in holding that the court lacked power to order a further examination of Mr Vik. Her reasoning failed to reflect the breadth and purpose of the court's inherent jurisdiction to make orders protecting the court's jurisdiction and processes.

    ii) The Judge erred in the exercise of her discretion, among other matters giving inappropriate weight to irrelevant considerations, such as DB's approach to disclosure, and what she described as its "election" not to adjourn the original Part 71 hearing, and insufficient weight to Moulder J's assessment that, notwithstanding that he had lied again in his evidence before her, Mr Vik *would* comply with an order for his further examination if he faced being committed to prison if he did not comply;

    iii) The Judge erred in law in holding that DB's application had not been validly served on Mr Vik by service on Brecher, misapplying *Masri (No 4)*.

32. Mr Vik has served an Amended Respondent's Notice in which he seeks to advance further reasons for upholding the Judge's order, namely :

    i) That if the court's inherent powers are engaged, the order sought by DB does not fall within their scope because he is located outside the jurisdiction; and

    ii) DB's application has been made for the improper purpose of seeking a further committal order against him.

## THE ISSUES ON APPEAL

### A. Does the Court have power to make the order sought?

33. The key issue to be addressed is whether the process begun by the personal service of the 2015 Order on Mr Vik within the jurisdiction has come to an end. If it has, DB cannot seek a fresh Part 71 order against him. If it has not, the court retains personal jurisdiction over Mr Vik in respect of the subject matter of the 2015 Order and all matters incidental to it (including the power to enforce compliance that was recognised in *Vik 2*) and the fact that he is no longer within the jurisdiction is just as irrelevant as it was when Cooke J changed the date for his examination in the original order from 28 October 2015 to 11 December 2015.

34. If the court retains personal jurisdiction over Mr Vik, the factors which troubled the Judge at [111] of her judgment (namely, the fact that Mr Vik was served with the 2015 Order when he was fortuitously within the jurisdiction, and the fact that there is no power to make a fresh order under CPR r.71.2) cannot affect the question whether there is a power to make the order for his further examination in order to enforce compliance with his obligations under that order. Yet those factors plainly influenced the Judge's narrow approach to the scope of the court's inherent jurisdiction.

35. The purpose of the process under CPR 71 is spelled out clearly in CPR r.71.1:

> "This Part contains rules which provide for a judgment debtor to be required to attend court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him."

    If the judgment debtor is a company or other corporate body, it cannot attend court personally. That is why CPR 71.2(1)(b) enables the judgment creditor to obtain an order requiring an officer of such a judgment debtor to attend court to provide information about the judgment debtor's means, or "any other matter about which information is needed to enforce a judgment or order." There can be no doubt, therefore, that the purpose of the process is to extract information to assist with enforcement of the judgment or order.

36. Since the order made under Part 71 is aimed at enforcement of the judgment, there is no dichotomy between seeking enforcement of the order made under Part 71 and seeking enforcement of the judgment debt. The one is the means to achieving the other, and so any order designed to achieve compliance with an order made under CPR r.71.2(1)(b) will also be made to aid enforcement of the judgment debt.

37. CPR r.71.2(6) spells out what a person served with an order issued under that rule must do, namely: (a) attend court at the time and place specified in the order; (b) when he does so, produce at court documents in his control which are described in the order; and (c) answer on oath such questions as the court may require.

38. Mr Beswetherick KC, who appeared with Mr Hamilton for Mr Vik, characterised the obligation of the person served with an order under CPR r.71.2(1)(b) as an obligation to do something at a fixed time. Once that time has passed, the order is spent (irrespective of whether it has been complied with) particularly if the examination has taken place and the judgment creditor has finished questioning them. Under the terms of the 2015 Order, as varied by Cooke J, Mr Vik was obliged to answer questions about his knowledge of SHI's assets on 11 December 2015. Mr Beswetherick submitted that a new order to answer questions about what Mr Vik knows about SHI's assets on a later date creates new obligations, and would be tantamount to retrospectively adjourning the examination. The court could not use its inherent jurisdiction to make what was in effect a fresh order under CPR r.71.2, since it is not permissible to obtain through the inherent jurisdiction something which the rules do not permit: see *Raja v Van Hoogstraten (No 9)* [2008] EWCA Civ 1444 at [78].

39. Whilst Mr Beswetherick did not contend that if the original order was not complied with, the only means of enforcement available was committal for contempt, he did submit that the only alternative open to the judgment creditor within the existing Part 71 process was to seek an adjournment of the examination, which DB chose not to do. Since an adjourned hearing would be a continuation of the original examination, if an adjournment were ordered there would be no new obligation and no new order for attendance. He further submitted that if the examination were adjourned, the fixed date for the examination would be varied, and the person examined would not be in contempt of court for their failure to answer the questions (or answer them truthfully) on the first occasion.

40. Mr Beswetherick submitted that because the obligation under the original order is finite (and co-extensive with the examination) the judgment creditor is obliged to elect between seeking an adjournment of the examination and taking proceedings for committal, either under the summary procedure under CPR r.71.8 or the traditional procedure under CPR r.81. Cooke J had recognised this and put DB to its election, as the Judge found at [98], and DB had chosen to go down the contempt route. Mr Beswetherick also sought to place reliance on the fact that Mr Vik was "released" by Cooke J at the end of his questioning by Ms Tolaney, as an indication that the examination process envisaged by the 2015 Order had concluded.

41. There are a number of fundamental difficulties with that analysis. If any court order (not just an order under Part 71) endorsed with a penal notice requires a person to do something on or before a specified date, and prior to that date an application is made for an extension of time, which the court grants, the date for compliance will be varied, and therefore the person no longer has an obligation to perform the act by the original deadline (even if it has expired before the court grants the requested extension of time). The same is true if the court extends the deadline of its own motion before it expires, as Cooke J did when he changed the date of Mr Vik's examination to 11 December 2015. Mr Vik could not be said to have failed to comply with the 2015 Order on 28 October 2015; its terms were varied and he was no longer required to attend court on that date.

42. However, if the deadline for compliance passes *without* a prior application to extend time, and there is a failure to comply on that date, there is a breach of the order, irrespective of whether the court decides to set a new date for compliance with its requirements. The obligations under the order have not been satisfied and therefore remain outstanding. Proceedings for committal would be an option, though the aggrieved party might consider that step to be premature. They would not be forced to make a choice; they might ask the court to require the same action to be taken by a new deadline, and wait to see what happens. As Nugee LJ pointed out during the course of argument, if someone fails to comply with a court order to do something by a specific date, it is fairly common practice for the court to make another order requiring that action to be taken by a later date, in order to give effect to the provisions of the earlier order. In those circumstances, any order setting a new date will not vary the date for compliance set in the original order. It will be a new order, made under the inherent jurisdiction to enforce compliance that was characterised by the Court of Appeal in *Vik 2* as a power that arises as a necessary incident of the power to make the original order.

43. If there is non-compliance with both orders, the case for committal will be strengthened because the individual would be in contempt in respect of two orders and not just one. If, on the other hand, the individual complies with the second order, it is likely that they will have purged their contempt of the first order, and one purpose of any prospective committal proceedings (i.e. enforcing compliance) will have been achieved. That would not be a bar to the court punishing the individual for the earlier acts of contempt, if committal proceedings were to be initiated, but it would have an impact on the sentence.

44. Turning to the specific provisions of the CPR with which we are concerned, Part 71 cannot be interpreted as providing that so long as the person served with an order under CPR r.71.2(1)(b) attends and answers all the questions that the judgment creditor wishes to ask him on the specified date, even if he does so untruthfully, the process is complete. CPR r.71.8, the summary procedure for committal which is specific to Part 71, covers all types of non-compliance with the order under CPR r.71.2: that is made clear by CPR r.71.8(1)(c). Under that procedure, a judge who holds the person concerned in contempt is obliged to suspend the committal order on terms that he or she attends court at a time and place specified in the committal order and "complies with all the terms of that order *and the original order*." (CPR r.71.8(3)(a)(ii), my emphasis). On Mr Beswetherick's approach the person could not comply with the terms of the original order because the examination had ended and the time specified for doing so had passed. Yet CPR r.71.8 expressly envisages that the original order can be complied with on a later date and that a new order, in this case a committal order, can require such compliance.

45. There is nothing surprising about that. If a person who is subject to an order under CPR r.71.2 fails to attend on the specified date, or attends and refuses to answer questions, or answers those questions but does so untruthfully, the whole object of the process, i.e. the extraction of relevant information to assist in execution of the judgment, will not have been achieved. Indeed they will have deliberately undermined it. That person cannot be treated as having been discharged from their obligation under the CPR r.71.2 order to provide information and to answer the questions truthfully, on the basis that they were obliged to do those things *only* on the date that

was specified in the order. Therefore, if it transpires that they have given false or misleading information the judgment creditor does not have to seek a new order under CPR r.71.2(1)(b) and serve it personally within the jurisdiction in order to extract the information that was deliberately withheld.

46. In principle, the inherent power of the court to enforce compliance with an order under CPR r.71.2 which was recognised by this Court in *Vik 2* as including (but not limited to) the power to commit cannot depend on the nature of the non-compliance, nor can it depend on when the non-compliance becomes apparent to the judgment creditor. Nor can it depend on whether the order which seeks to enforce compliance is expressed as adjourning the hearing of the examination (either to a fixed date or generally, with permission to restore) or requires the witness's attendance on a future date to answer the questions that were not answered (or were not answered truthfully) on the date originally set for the examination. Although DB suspected at the time of the examination that Mr Vik had lied, in another case the fact that the examined person has lied or withheld information may not come to light until days or weeks after the examination, by which time an adjournment will no longer be available. The power of the court cannot depend on the fortuity of when it is suspected or discovered that the information given was untruthful, misleading or incomplete. On Mr Beswetherick's analysis, it would.

47. The process begun by personal service of the original order under CPR r.71.2 will not be complete until the person concerned provides the information it was designed to elicit, to the extent that they are able to do so. It is true that, under any order for future examination, the information they would be obliged to give in answer to the judgment creditor's questions would not be artificially limited to their state of knowledge on the date of the original examination. However, it does not follow from this that the further order cannot be treated as enforcing compliance with their ongoing obligations under the earlier order (which remains in force). The whole purpose of the process under Part 71 is to obtain information that will assist the judgment creditor in enforcing the judgment. The restrictive approach advocated by Mr Beswetherick would deprive that process of much of its utility.

48. It follows that although the examination of Mr Vik before Cooke J was not adjourned, it was not completed in the sense that the process under Part 71 had been concluded, because the information held by Mr Vik was never provided. Mr Vik's obligation to provide the information continued. DB's opportunity to ask questions did not come to an end, and the fact that Ms Tolaney told Cooke J that she had no further questions to put to Mr Vik at that juncture did not act as some kind of bar to DB seeking an order for his further examination.

49. I do not accept that, in the passage of the transcript of the examination relied on by Mr Beswetherick, Cooke J was in any sense putting DB to a formal election between alternative courses of action; he was doing no more than indicating to counsel that DB had certain options open to them at that stage and it was up to them to decide what they wanted to do. There was no question of DB being put to an election, because DB was not faced with a choice between seeking to ask Mr Vik further questions with a view to eliciting truthful information, or applying to commit him. It could do both, and it could choose which course to pursue first. In this case it decided to initiate committal proceedings.

50. The main purpose of those proceedings was to enforce compliance with the (continuing) obligation to provide the information sought in the 2015 Order. Contempt proceedings are one means, though not the only means, of enforcing compliance; the power to enforce emanates from the court's inherent jurisdiction, and not from CPR r.71.8, as the Court of Appeal recognised in *Vik 2*. Since one cannot enforce compliance with an order that is no longer operative, the fact that the contempt proceedings had that objective confirms that the 2015 Order did not expire on 11 December 2015, and the process which service of that order began is still extant.

51. Like Gross LJ in *Vik 2* at [58], I regard Mr Vik's release from being on oath after DB had completed its questioning of him as irrelevant. Just as it has no effect on the jurisdiction of the Court to entertain a committal application, it has no effect on the Court's inherent power to enforce compliance by means other than committal.

52. As the Judge correctly identified, the focus here is upon the inherent jurisdiction of the court to make orders in protection of its jurisdiction and processes. Some of the authorities in which that jurisdiction has been acknowledged and deployed were cases in which the orders granted could be described as ancillary to another order of a different type, in the sense that they were designed to give support to that order or make it effective. The classic example is *AJ Bekhor & Co Ltd v Bilton* [1981] 1 QB 923. However, that case simply decided that the inherent jurisdiction enabled the court to grant a certain type of order in a specific context, namely, what was then the relatively recently-recognised jurisdiction to grant a freezing order to preserve assets against which a judgment might be enforced.

53. A freezing order is unlikely to be of practical utility, and will be impossible to police, unless the person seeking it is able to discover information about the assets, such as their nature and location, their value, and whether they are subject to prior encumbrances. The Court of Appeal in *Bekhor v Bilton* confirmed that, in exercise of the inherent jurisdiction, the court has power to make an order for disclosure in support of a freezing order, though the majority decided that the power should not be exercised on the facts of that case. At p.940F-G Ackner LJ addressed the power of the court to grant injunctive relief under what was then s.45 of the Supreme Court of Judicature (Consolidation) Act 1925. He said:

> "To my mind there must be *inherent in that power*, the power to make all such ancillary orders as appear to the court to be just and convenient, to ensure that the exercise of the Mareva jurisdiction is effective to achieve its purpose." [Emphasis in the original].

In a later passage at p.942G-H Ackner LJ said this:

> "In so far as Mr Stamler contends that there is inherent jurisdiction in the court to make effective the remedies that it grants, this seems to me merely another way of submitting that, where the power exists to grant the remedy, there must also be inherent in that power the power to make ancillary orders to make that remedy effective. This I have accepted."

54. Ms Tolaney invited the Court to interpret the later passage as a statement by Ackner LJ that the same power that he had earlier acknowledged as inherent in the power under s.45 of the 1925 Act, also existed as part of the inherent jurisdiction of the court. That is the way in which Rix LJ interpreted it in *JSC BTA Bank v Ablyazov (No 8)* [2012] EWCA Civ 1411, [2013] 1 WLR 1331, ("*Ablyazov (No 8)*") at [125]. I consider the more natural reading of that passage as being a reference back to what Ackner LJ had stated earlier in his judgment at p.940F-G. However, the resolution of that issue of interpretation does not matter for the purposes of this appeal, because DB puts its case on the basis that the power to make an order for examination under Part 71 must include an inherent power to make such orders as are just and convenient to give effect to, or enforce compliance with that order. It is a power which is implicit in a power which has already been recognised and exercised by the court in respect of the subject of the examination.

55. In *Bekhor v Bilton* Stephenson LJ said at p.954 A-D:

> "In my judgment a judge has the duty to prevent his court being misused as far as the law allows, but the means by which he can perform that duty are limited by the authority of Parliament, or the rules of his court and of decided cases. Those means do, however, include what *is reasonably necessary to performing effectively a judge's duties and exercising his powers.* In doing what appears to him just or convenient he cannot overstep their lawful authorised limits, *but he can do what makes their performance and exercise effective.* He has a judicial discretion to *implement a lawful order* by ancillary orders obviously required for their efficacy, even though not previously made or expressly authorised. This implied jurisdiction, inherent because *implicit in powers already recognised and exercised*, and so different from any general or residual inherent jurisdiction, is hard to define and is to be assumed with caution. But to deny this kind of inherent jurisdiction altogether would be to refuse to judges incidental powers recognised as inherent or implicit in statutory powers granted to public authorities, to shorten the arm of justice and to diminish the value of the courts." [Emphasis added].

56. The existence and scope of the inherent jurisdiction recognised in that case was a broad one, aimed at ensuring that the original order made by the court is effective. It did not depend on the order that was sought being characterised as "ancillary" or "subordinate" to the order whose effectiveness the court was seeking to achieve, or, as the Judge put it: "something that has no function or purpose without the thing to which it is incidental or ancillary". On the contrary, what both Ackner LJ and Stephenson LJ recognised was that if the court has power to make a certain type of order, it has an inherent power to make another order which implements that order in whole or in part, or achieves (or assists in achieving) the purpose for which it was made. That power is wide enough to enable the court to make orders, such as orders for disclosure, in aid of freezing orders. It is hardly surprising that in that specific context the judges referred to "ancillary" orders, given that the type of order under consideration aided and supported an order of a different nature. However, the fact that the order for disclosure was different from and subservient to the freezing order was not the justification for finding that there was jurisdiction to grant it.

57. In subsequent decisions of this Court, *Bekhor v Bilton* has been recognised as laying down the general principle that the court has an inherent jurisdiction (in the sense of power) to do whatever is just and convenient to make its orders effective. Ms Tolaney referred to the decision in *Maclaine Watson & Co Ltd v International Tin Council (No 2)* [1989] Ch 286. I am not persuaded that it adds anything of substance to what was said in *Bekhor v Bilton*. In that case the Court of Appeal upheld an order made by Millett J for a judgment debtor, which was a body established by international treaty, to give disclosure of its assets, in circumstances in which it was not possible to use the process under what is now Part 71 to examine an officer of that body. They characterised the order as an order granted for the purpose of making some other order effective (in that case, the order on judgment), and rejected the argument that the existence of a freezing order was a necessary precondition to obtaining the order for disclosure.

58. The route used in *Maclaine Watson* was not open to DB because the only means of examining an officer of a corporate judgment debtor about the debtor's assets is that specifically provided for under Part 71. Therefore, if the process begun by the service of the 2015 Order had come to an end, it would not have been possible for DB to use the Court's inherent jurisdiction to make orders in aid of the order on judgment, to get around DB's inability to start the Part 71 process afresh. However, since the Part 71 process is ongoing, and Mr Vik has not been released from his obligations, the exercise of the Court's inherent jurisdiction in this situation does not conflict with any rule of the CPR, including CPR r.71.2; on the contrary, it supports it. *Raja v Van Hoogstraten* has no application in this context.

59. The next case on which DB relied was *Masri v Consolidated Contractors International (UK) Ltd (No 3)* [2008] EWCA Civ 625; [2009] QB 503, which concerned the court's power to grant post-judgment anti-suit relief to restrain foreign proceedings that were said to undermine the jurisdiction of the English court. Lawrence Collins LJ said at [26]:

> "… in my judgment the English court has power over persons properly subject to its in personam jurisdiction to make ancillary orders in protection of its jurisdiction and its processes, including the integrity of its judgments."

Again the use of the word "ancillary" must be considered in the context in which it was being deployed; the anti-suit injunction in that case was sought in aid of and in order to protect the integrity of a judgment of the English court. However, Lawrence Collins LJ was not suggesting that the Court's inherent power to protect its jurisdiction and its processes was limited to making orders that were subordinate to or different in character from the order which had been disobeyed. The case helpfully confirms that the power exists when a person is properly subject to the personal jurisdiction of the court (as Mr Vik still is).

60. Next, Ms Tolaney relied upon passages from the judgment of Rix LJ in *Ablyazov (No 8)* (above). The defendant, Mr Ablyazov, was facing proceedings in the Commercial Court in which the claimant bank made allegations of fraud against him. The court made a worldwide freezing order which contained provisions for disclosure of his assets. He gave some disclosure, but the claimant suspected that it was insufficient and sought an order for his cross-examination on oath, which was granted. He was

subsequently found to be in contempt of court by, among other things, lying during that cross-examination about his assets, and dealing with some of the assets in breach of the freezing order. He absconded before the sentencing hearing. Teare J made a number of subsequent orders, including an order that he surrender himself to the tipstaff, a further order for disclosure of his worldwide assets, and an "unless" order debarring him from defending all the claims brought by the claimant and striking out his defence if he failed to comply with those orders. He appealed unsuccessfully against the surrender order and the "unless" order.

61. There was disagreement in the Court of Appeal about whether Teare J was right to have ordered that unless the defendant complied with the surrender order, his defence should be struck out. Toulson LJ dissented on that issue, on the basis that if Mr Ablyazov complied with the order for disclosure, but failed to surrender to the tipstaff, it would be wrong in principle to debar him from defending the claim solely on the basis that he had failed to surrender. Toulson LJ thought that would be a form of additional punishment for his contempt. However, there was unanimous agreement that the court had power to order that Mr Ablyazov's defence should be struck out if he failed to comply with the further order for disclosure. Toulson LJ was also satisfied that the court had power to make the surrender order, describing it at [196] as "within the inherent jurisdiction that the court has to enforce compliance with its own orders."

62. Rix LJ, who delivered the leading judgment, said this at [168]:

> "In the light of the jurisprudence cited above it seems to me to be impossible to submit that the court lacks jurisdiction, whether under section 37 of the 1981 Act or under its own inherent jurisdiction, to do what is just and convenient and necessary to protect its own orders and to give effect to the interests of justice. *AJ Bekhor & Co Ltd v Bilton* [1981] QB 923 specifically considered these matters, and the question has never been doubted since."

At [171] he observed that:

> "The jurisprudence cited above is replete with confirmation of the power possessed by the court to make such orders as are necessary to make its own orders effective. At any stage of the developing jurisprudence it might have been said (and often was) that novelty was a bar to some particular order. The Mareva injunction was attacked on that basis. Then it was said that it could not be made effective by the inclusion of disclosure orders in support of it. In the present case, the question is whether the power to commit for contempt of court includes a power to order the contemnor to surrender to the tipstaff and to make that a condition of something else. I can see no reason why not. The question whether such an order can be properly made in a particular case, is a further question which I consider below."

63. In considering that question, at [187] and [188] Rix LJ addressed the argument that the debarring sanction was unnecessary or disproportionate because the defendant had made partial disclosure, and there were other means, such as third party disclosure or receivership, by which a fair balance could be achieved. He said this:

> "The judge was essentially *only asking Mr Ablyazov to do what he had always been ordered to do, and he was prepared to give him a last chance, but a real chance, of doing so.* In the light of the litigation that had taken place, there was a substantial risk that Mr Ablyazov's non-disclosure and dealing with assets was pervasive and corrosive to justice.
>
> 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 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."
>
> [Emphasis added].

64. In his concurring judgment Maurice Kay LJ said this at [202]:

> "It is difficult to imagine a party to commercial litigation who has acted with more cynicism, opportunism and deviousness towards court orders than Mr Ablyazov. Rix LJ has described in trenchant terms the factors which cause me to express myself in this way. There can be no complaint that Teare J decided that the court's powers should be deployed so as to put the maximum pressure on Mr Ablyazov to comply with its orders so as to endeavour to prevent its fair procedures from being subverted."

65. Those observations (which are similar to those made by Gross LJ in *Vik 2*) have a particular resonance in the present case. The orders in *Ablyazov (No 8)* were made prior to judgment, rather than in aid of enforcement, though Maurice Kay LJ envisaged that the defendant might commit further breaches of the freezing order so as to deny the claimant a significant part of any success it might achieve at trial. Mr Ablyazov was also a party to the underlying litigation, which was still ongoing. However, those factual distinctions do not matter if (as is the case) the process begun by service of the 2015 Order on Mr Vik was not exhausted when his examination came to an end on 11 December 2015, and the court therefore retains personal jurisdiction over him.

66. *Ablyazov (No 8)* confirms that the court's inherent power to enforce compliance with its own orders includes the power to make an order which repeats some or all of the requirements of an earlier order for disclosure that has been disobeyed. The fact that the person who disobeyed the order is now outside the jurisdiction is no justification for refusing to make such an order. The fact that the person who obtained the order has already gone down the route of seeking their committal for contempt is no bar to the making of a further order for disclosure.

67. Like Mr Vik, Mr Ablyazov had failed to comply fully with an order for disclosure of information made by a court which was exercising personal jurisdiction over him, and, as Rix LJ stated at [13], the claimant had sought to enforce compliance by way of an application to commit him for contempt of court. Teare J found the allegations of contempt proved to the criminal standard and made an order for Mr Ablyazov's immediate committal. He did not suspend the committal order on terms that disclosure be provided, though the order envisaged that the period of committal would be truncated if he purged his contempt. However, as in the present case, the committal order was ineffective to achieve compliance.

68. The fact that the committal order did not achieve its desired objective did not stop the claimant from subsequently seeking and obtaining further orders from the court which were designed to procure compliance. The further order for disclosure required Mr Ablyazov to do something he had already been ordered to do by an earlier deadline. It was irrelevant that the time specified for compliance with the earlier disclosure order had passed. The new order was made despite justified concerns expressed both by Teare J and the Court of Appeal that Mr Ablyazov would not comply with it. The court undoubtedly had the power both to make that order and to make an "unless" order in draconian terms which was designed to exert the maximum pressure on Mr Ablyazov to comply with it. Indeed, the power to make the repeat order for disclosure does not appear to have been disputed.

69. The Judge did not expressly address the critical question whether the original Part 71 order was still extant, perhaps because that was not the main focus of the argument before her, although it was a point addressed tangentially by DB. Instead, she approached the issue of the court's power from an incorrect starting point by asking whether the order sought by DB was "ancillary" or "incidental" to the 2015 order. In consequence, by focusing on what was meant by "ancillary", in particular, and then by applying a test which derives no support from the authorities, she took an unduly narrow approach to the ambit of the court's jurisdiction to make the order.

70. The existence of the inherent jurisdiction does not turn on whether the order being sought is different in quality to, or complementary to, or dependent upon the original order. The correct question to be addressed is whether an order of the type sought is just and convenient to make the CPR r.71.2 order effective or to protect its integrity. The answer to that question is plainly yes. At least once it had refined the scope of the order it sought, DB was asking for an order which was a subset, or a narrower version of the 2015 Order, but there was nothing objectionable about that. The court had an inherent jurisdiction to make that further order as part of its jurisdiction to make the order under Part 71 in the first place. That was all that DB was saying in the extract from its skeleton argument quoted at [89] of the judgment.

71. It would bring the system under CPR r.71.2 into disrepute if a person who was properly served with an order for his examination could frustrate the objective of that order by leaving the jurisdiction or resigning as an officer of the judgment debtor company, and then failing to comply with the order. The fact that Mr Vik is now outside the jurisdiction is no reason to decide that the court lacks the inherent power to enforce compliance with the 2015 Order that would exist if he were within the jurisdiction. Indeed *Vik 2* directly contradicts that proposition.

72. The Judge considered that the order for further examination of Mr Vik was not an order enforcing compliance with the 2015 Order, though she rightly accepted that the contempt proceedings were a means of doing so. However she failed to provide any cogent explanation of why an order requiring Mr Vik to answer questions which would supply the truthful information which he deliberately withheld at the initial examination is *not* a means of enforcing or giving effect to the 2015 Order, if it is still operative. Such an order would be no different in substance from the kind of order envisaged in CPR r.71.8. An order of the type made by Moulder J, making Mr Vik's submission to a further examination a condition of suspending the sentence, is of a different character but it is still aimed at achieving the same purpose – substantive compliance with the requirements of the 2015 Order.

73. Whilst the further order will duplicate some or all of the substantive requirements of the earlier order, it cannot be compared with making a duplicate freezing order, which was the analogy the Judge sought to draw. A freezing order contains a continuing prohibition on dealing with assets, and no useful purpose would be served by making more than one such order (in favour of the same applicant) over the same assets. By contrast, a mandatory order which requires positive action on the part of an individual *can* be made effective by an order requiring compliance with those requirements which have not been satisfied.

74. The analysis adopted by Teare J and approved by Gross LJ in *Vik 2,* which the Judge quoted at [75] and [76] but then failed to apply at [115] and [116], applies with equal force to this scenario: the means to enforce a court order are a necessary incident of the order, because otherwise there would be no utility in the order. Just as an order for committal is one of the means of enforcing a court order, so too is an order of the type made in *Ablyazov (No 8)* requiring compliance with those terms which were disobeyed, even if that order requires answers to be provided to the same questions as the first order. There is no basis for drawing the distinction between the committal proceedings and the order for further examination that the Judge sought to draw at [92] (iii).

75. I regret to say that I disagree with the Judge's reasoning from [114] to [125]. The reason why committal proceedings are incidental to the 2015 Order (in the sense explained in *Vik 2*) has nothing to do with the fact that the summary committal process under CPR r.71.8 has been included in Part 71. The application to commit Mr Vik was not made under that rule; indeed the fact DB proceeded under Part 81 (which stems from the court's inherent jurisdiction) was the foundation of the objection which was rejected in *Vik 2*. The further order sought by DB is neither "incidental" to the Committal Order nor (save indirectly) to the order on judgment. It is dependent upon, and stems from the jurisdiction to make the original order under CPR r.71.2. That is the order to which it is incidental, in the sense explained in *Vik 2*.

76. As to Mr Vik's suggestion that an order for further examination in order to elicit the information which he failed to provide in 2015 would give rise to issues of double jeopardy, Ms Tolaney rightly pointed out that any such order will be a separate order from the 2015 Order. In principle, breaches of that new order would be different from any past breaches of the 2015 Order, and would therefore expose Mr Vik to an application to commit him for any fresh contempt, though he could not be punished again for the lies he told on the first examination.

77. In *Wilkinson v Anjum* [2011] EWCA Civ 1196; [2012] 1 WLR 1036, the Court of Appeal held (by reference to earlier authority) that the court had the power to make successive mandatory injunctions requiring positive action, such as the disclosure of information, notwithstanding a past failure to comply with an *identical request*, and that a failure to comply with any fresh order would properly expose the defaulter to fresh contempt proceedings without infringing the double jeopardy principle. Whether a further term of imprisonment would be just and proportionate would be a matter for the court to decide on a case by case basis. That case does not assist in answering the question whether there is power to grant a further order for examination within the ambit of the original Part 71 process, but it does provide an answer to the double jeopardy objection to making an order requiring Mr Vik to answer the same questions or provide the same information as before.

78. It is conceivable that circumstances may arise in which it could be open to Mr Vik to argue that there was a sufficient overlap between the subject-matter of Moulder J's Committal Order and a future act of disobedience to engage the double jeopardy rule, but it cannot be assumed at this juncture that that situation is inevitable. It is certainly no justification for finding that the power to make the further order does not exist, or that any further order in the terms sought by DB would be unenforceable by further committal proceedings. Equally, it provides no justification for refusing to exercise that power.

79. For all those reasons, I accept DB's submission that the approach taken by the Judge was wrong in principle because it imposes an unnecessary and self-defeating limit on the court's ability to ensure that its own orders are complied with and protect its processes. I would therefore allow this appeal on Ground 1 and dismiss the first ground of the Amended Respondents' Notice. The second of those grounds, which seeks to impugn DB's motives for seeking the further order, is more appropriately considered in conjunction with the next issue.

## B. Should the order have been granted?

80. A party seeking to overturn a decision made in the exercise of judicial discretion faces formidable challenges, particularly where, as in the present case, the discretion is founded upon a multi-factorial evaluation of whether, in all the circumstances, the order sought would achieve its intention. In order to establish that the decision was "wrong", and thus susceptible to being set aside on appeal, it must be shown that the Judge took into account irrelevant considerations or failed to have regard to relevant ones; or that, by virtue of obvious errors in her reasoning or otherwise, the way in which her discretion was exercised has exceeded the generous ambit within which reasonable disagreement is possible.

81. Mr Beswetherick submitted that, whatever the views of other judges who heard applications in this case may have been about the utility of a further examination of Mr Vik, the Judge was entitled to form her own view of the evidence and reach the conclusion that she did.

82. The Judge's reasoning is set out at [131] to [143]. The essential basis for her decision to refuse the relief is that "any such order would almost inevitably be an empty gesture" and that it is inappropriate to devote more of the court's resources to what she described as "this futile pursuit". In support of that conclusion, she decided that

although (despite the passage of time) Mr Vik *could* still comply, see [132] to [135], the history of the proceedings showed that Mr Vik was more likely not to comply; that DB had no further material which could effectively "box Mr Vik into a corner"; that even if Mr Vik were put in peril of imprisonment for non-compliance, that did not appear to have made him more than slightly incentivised in the past; and that DB's own decisions not to seek further documents and to oppose any suspension of Mr Vik's committal, plus its delay in making the application for the further order, indicated that DB thought it would not get any further information out of him.

83. There is nothing in this line of reasoning to indicate that the Judge afforded any weight to the strong public interest to which Rix LJ referred at [188] in *Ablyazov (No 8)*, and Gross LJ referred extensively in *Vik 2*, namely, the importance of taking steps to enforce the Court's previous order, uphold its authority and protect the integrity of its processes. Failure to do so would enable people like Mr Vik to flout such orders with impunity and bring the process into disrepute. The inherent jurisdiction to enforce the 2015 Order and maintain the integrity of the Court's processes acknowledged by the Court of Appeal in *Vik 2* was a key element of DB's justification for the making of a further order.

84. When it came to exercising her discretion on the assumption that (contrary to her earlier findings) the power to make such an order in the terms sought by DB existed, the Judge should have treated the need to maintain the integrity of the court's processes and orders (and send out a strong message that disobedience will not be tolerated) as a factor carrying significant weight in favour of granting the order sought, and requiring it to be granted, unless there was some countervailing factor which was so strong as to overcome that policy imperative. The only part of the Judge's reasoning that even touches on that matter is a brief reference at [131] to the "instinctive unwillingness to allow Mr Vik to continue to evade his responsibilities." In consequence, a material factor was either overlooked, or afforded insignificant weight in the exercise of judicial discretion. This in itself was a material error.

85. The next problem with the Judge's approach is the way in which she reached her various conclusions that a further order would be futile, or that it was "almost inevitable" that Mr Vik would not comply with it (or unlikely that he would). The nub of the Judge's reasoning is at [140] of the judgment in which she made two points. The first is that no Part 71 questioning would itself incentivise Mr Vik by putting him in peril of imprisonment. That is possibly a reflection of her acceptance of the double jeopardy argument at [118] to [124]. I have already explained why it cannot be concluded at this juncture that Mr Vik could not be committed for breaches of a further order for his examination. A further order would therefore not be devoid of sanction. Insofar as the Judge's conclusion was based on the premise that it would, that premise was erroneous.

86. Secondly, the Judge said that even if committal were to result, the 2022 Committal demonstrates that Mr Vik does not seem to be "more than slightly incentivised" by that peril. I do not consider that the history recited in the judgment provides a reasonable justification for that finding, so as to bring it within the ambit of matters on which different judges might reasonably disagree. This is not a case in which the evidence demonstrates a dogged determination to go to prison rather than disgorge the information that would help DB. Nor does it demonstrate an entrenched willingness on the part of Mr Vik to give up the ability to visit this jurisdiction for the rest of his

life, so as to remove the possibility of a contempt sentence being executed (indeed, his engagement with Moulder J's suspended contempt order, see [91] below, suggests the contrary).

87. Even if it did, the importance of maintaining the integrity of the court's processes and powers has been regarded by the court as providing sufficient justification for making repeated orders to provide the same information, and repeated orders for committal for refusing to do so, even after the contemnor has already served one or more sentences of imprisonment. The case of *El Zubaidy v Borg* [2023] EWCA Civ 148, in which the contemnor served four terms of imprisonment and faced a fifth for "broadly the same" breaches of successive court orders to return his children, whom he had abducted from the jurisdiction, provides a particularly strong example of this. Of course, especially when faced with an unapologetically recalcitrant contemnor, the time may come in which the court can rationally conclude that no purpose can usefully be served by making further orders, but that stage has not yet been reached in the present case.

88. The pattern of Mr Vik's previous behaviour indicates that he has taken every opportunity to raise legal arguments contesting the orders made against him, but after those arguments failed, he has always attended court and answered the questions put to him. True it is that Mr Vik lied in his examination and when he was cross-examined in the contempt proceedings; but notwithstanding those lies and his determined resistance to providing the information sought by DB, Moulder J formed the view in 2022 that it was worthwhile giving Mr Vik a further opportunity to provide the information, and suspended the Committal Order in order to do so. Unlike the Judge, she had the advantage of seeing and hearing Mr Vik give evidence over 4 days, and was in a better position to gauge in 2022 whether the fact that he had a real prospect of immediate incarceration hanging over him were he to set foot within the jurisdiction would act as a real incentive to tell the truth. In the absence of a material change of circumstances since then, there was no evidence to displace that assessment.

89. Whilst Moulder J's evaluation was not binding on the Judge, if she was going to depart from it she should have explained why. She did not even mention it in this section of her judgment. I can find nothing in the Judge's reasoning or in the history up to that juncture which justifies taking a different view from Moulder J of the position as at the end of the sentencing hearing in 2022. The fact that in the committal proceedings, despite initially applying for a suspended sentence order, having heard his evidence DB sought Mr Vik's immediate incarceration, is irrelevant to an objective assessment of whether he would comply with an order for his further examination. Even if it could be inferred that DB thought by then that only the experience of imprisonment would bring him to his senses, that is not inconsistent with a belief that he would provide the information sought.

90. Once the Judge was satisfied that Mr Vik could still provide useful information, Moulder J's evaluation that a further examination might bear fruit should have been the starting point of her inquiry into whether the further order sought by DB would achieve its purpose. The question then is whether anything happened *after* the 2022 sentencing hearing to indicate that Mr Vik would lie again if he were forced to attend another examination under an order indorsed with a penal notice. The Judge did not say she relied on anything that had occurred since 2022. Instead she observed that

there was no evidence of any "sea change" in terms of the material available to DB for cross-examination purposes that would box Mr Vik into a corner (i.e. force him to tell the truth) regarding the topics on which DB now proposes to question him. If the Judge was wrong to consider that the die was cast in 2022, the absence of such material takes matters no further one way or the other.

91. After Mr Vik's appeal against the findings of contempt and the suspended Committal Order was dismissed, Mr Vik did take steps indicating that he *would* comply if the consequence of non-compliance would be imprisonment. Bryan J was not prepared to accept that Mr Vik would not attend an examination within the jurisdiction if his application to attend by video link was refused. He was influenced in reaching that conclusion by the fact that Mr Vik did at least purport to comply with the terms of the suspended Committal Order which required him to give disclosure. The Judge does not appear to have weighed these matters in the balance either. DB's dissatisfaction with the level of disclosure from Mr Vik and its decision not to ask for more documents from him sheds no light on whether Mr Vik would now truthfully answer further questions administered under oath if he were exposed to a real prospect of committal for contempt if he lied again – as he would be under a future order.

92. It was only after it transpired that Mr Vik was no longer in jeopardy of being sent to prison, because he was not obliged to attend the further examination on the agreed date, that he decided he was not going to attend. That is no basis for inferring that Mr Vik would run the risk of immediate imprisonment by lying again. At most it demonstrates that Mr Vik was not prepared to answer the questions if he could not be compelled to do so.

93. Of course the Judge was entitled to be deeply sceptical of Mr Vik's repeated assertions, including those made repeatedly through his counsel, (at a time when he thought the suspension of the Committal Order was still operative) that he would comply with the examination. However, looking at matters in the round, this was not a case in which it was reasonably open to her, on the evidence, to conclude that it was "almost inevitable" that he would lie again if faced with the real prospect of immediate incarceration if he did. Even if that view were properly open to her on the evidence, it was not reasonably open to her to conclude that the risk that DB would achieve nothing from the further order it seeks was sufficiently strong to outweigh the importance of sending out the strong message that court orders cannot be deliberately disobeyed with impunity. Her reasons, and the evidence, fell some way short of justifying the conclusion which she reached.

94. For these reasons, the Judge erred in law in the exercise of her discretion. I would allow this appeal on Ground 2 and exercise the discretion afresh by making an order for Mr Vik's further examination. Since we were not specifically addressed on the form that any such order should take, the parties will be given the opportunity to make written submissions on that issue. DB has asked the court to make an order in the narrower form that it sought from the Judge, and therefore it is appropriate that Mr Vik should first set out any objections he has to that form of order, and DB should be afforded an opportunity to respond to those objections.

95. It is appropriate at this juncture to deal with Mr Beswetherick's argument on the second ground in the Amended Respondent's Notice. He relied in particular on the fact that Mr Vik had previously offered to answer further questions from DB directly,

rather than being examined before the Court, but DB rejected that offer. That is hardly surprising, given that in those circumstances there would be no sanction attached to any failure to answer the questions truthfully. It does not follow from this that it can be inferred that DB's motivation in seeking an order to which a penal notice can be attached is to bring about Mr Vik's imprisonment, rather than to obtain the information he has not previously supplied.

96. In any event, the Court of Appeal is being asked to make a fact-finding that DB is acting for an improper purpose, for which there is no evidence. The Judge made no such finding. Mr Beswetherick told us that the argument was run before the Judge, but it can safely be inferred that she did not accept it, since her judgment makes no criticism of DB's motives and indeed, appears to be premised upon an acceptance that DB is indeed genuinely seeking the further information. If she thought this was not the case, she would hardly have spent time in considering whether DB was likely to extract that information from Mr Vik. Her findings that DB's own actions suggest that it did not believe that Mr Vik would comply with a further order fall a long way short of the type of material from which an inference that its real objective is not the one stated to the Court could be properly drawn. I therefore reject as wholly without foundation the second ground raised in the Amended Respondent's Notice.

## C. Was the application validly served on Brecher?

97. Like most of the technical objections taken by Mr Vik in the course of this litigation this point is deeply unattractive. The purpose of service of an application notice is to bring the application to the attention of the person against whom the application is being made. It does not establish the court's jurisdiction to make the order sought. That stems from the personal service upon Mr Vik of the 2015 Order within the jurisdiction.

98. Mr Vik has known from the start about the application made by DB for the order for his further examination. He has instructed solicitors and counsel to resist that application on jurisdictional and substantive grounds, raising numerous contentious issues which have had to be resolved by the courts. He has suffered no prejudice from the fact that service was effected on those solicitors rather than being served on him personally in Monaco. Thus, if ever there were a case in which to dispense with formal service, if for some reason it had not been effected, this is that case.

99. The Judge herself acknowledged that if, on the correct analysis, DB's application for an order for further examination was made within the Part 71 process to give effect to the 2015 Order, which itself gave rise to the Committal Application, the correct conclusion could be that the approach taken by Mr Vik to the issue of service was, as she put it, "overrefined". Nevertheless, she preferred the arguments advanced on his behalf [148].

100. The Judge decided that although Mr Vik was joined as a defendant to the main proceedings that gave rise to the judgment debt, because he was joined "for costs purposes only" he was not a party to those proceedings. He was only a party to "the proceedings commenced by DB's application for a third-party costs order against him" (which she termed "the Costs Proceedings"). He was also party to the Committal Proceedings. The fact that Brecher acted for him in relation to both those sets of proceedings did not mean that he could be served via Brecher with documents relating

to "other proceedings" [146]. The Committal Proceedings had run their course and on any analysis "what is sought now is part of the Part 71 exercise and not for costs purposes" [150]. *Masri (No 4)* made it clear at [36] that an application under CPR r.71.2 is not a claim form "and does not commence proceedings" and the same case at [26] made it clear that a Part 71 director is not a party but akin to a witness and need not give an address for service pursuant to CPR r.6.23 or have solicitors on the record [150].

101. The only provisions within Part 71 which deal with service of documents are CPR r.71.3, which requires personal service of the order to attend court "unless the court otherwise orders" and CPR r.71.5, which requires the judgment creditor to file an affidavit of service (which, as the notes in the White Book explain, is essential because of the sanction of committal). *Masri (No.4)* decided that service of the order under CPR r.71.2 (1)(b) which begins the Part 71 process must be effected within the jurisdiction.

102. Part 71 is silent on the question of how, once the process has been initiated by such service, any application made by the judgment creditor within that process is to be served on the person to be examined (for the purpose of bringing it to their attention). For example, CPR r.71.7 expressly envisages that the hearing may be adjourned. It provides that the court will give directions as to the manner in which notice of the new hearing is to be served on that person. However, it contains no provision as to how an application for the adjournment is to be brought to the attention of the person to be examined if it is made in advance of the scheduled date. There has to be some mechanism for doing so.

103. This is not a theoretical problem. For example, the judgment creditor may obtain a large quantity of documents from another source shortly before the date set for the examination, and there may be insufficient time to prepare questions about those documents. It may well be more efficient and cost-effective to seek an adjournment of the hearing so that it can be re-fixed for a longer period and all the questions may be asked on the same occasion, particularly if the person to be examined is travelling from abroad to attend the examination. But that person would be entitled to make representations about whether there should be an adjournment and if so, for how long. They might wish the court to give further directions. Plainly there should be some means by which the application can be brought to their attention before the adjournment is granted.

104. If the person to be examined is within the jurisdiction, the position is likely to be straightforward. The judgment creditor can rely on the general rules about service of documents other than a claim form within the jurisdiction. CPR r.6.20 is expressed in wide enough terms to encompass any documents, including an application notice. They can therefore be served in person, by post or by permitted electronic means. That rule also envisages that such a document may be served by "leaving it at a place specified in rule 6.23" or served by "any method authorised by the court under rule 6.27."

105. If the person to be examined is not the judgment debtor, and is not otherwise a party to the underlying claim, then it seems unlikely that they will have provided an address for service within the jurisdiction under CPR r.6.23. If they have not, that means of service would not be open to the judgment creditor. Whether, after they have been

personally served with the order for examination, they are *obliged* to provide such an address for service is a matter in issue between the parties. There is nothing in Part 71 which requires them to do so, or requires them to instruct solicitors, hence DB's reliance on CPR r.6.23.

106. It is not necessary to determine that issue on the facts of this case, for reasons I will explain, but it could be important in other cases. There may be situations in which the officer of the judgment debtor company has moved abroad after service of the order under CPR r.71.2 on them within the jurisdiction and before the date set for examination, for reasons other than a desire to escape being examined. For example, they may have been promoted to a different job within a multinational conglomerate which has offices in many different countries. In that scenario, service on a solicitor under CPR r.6.23, if possible, could well be a more efficient and effective means of notifying the person of the application than service of the application notice on them out of the jurisdiction.

107. At this juncture, I should mention that there is a special rule about service of an application notice on a non-party out of the jurisdiction. CPR r.6.39(1) provides that:

> "Where an application notice is to be served out of the jurisdiction on a person who is not a party to the proceedings rules 6.35 and 6.37(5)(a)(i)(ii) and (iii) do not apply".

[Those are the rules pertaining to filing an acknowledgement of service, an admission or a defence].

The effect of CPR r.6.39 is that an application notice can be served on a non-party outside the jurisdiction, and if that person wishes to dispute the court's jurisdiction to deal with that application they may do so under CPR r.11, but they would not be required to file an acknowledgement of service under CPR r.11(2). However CPR r.6.39 does not dispense with any requirement that would otherwise arise under the rules to obtain permission to serve the application notice out of the jurisdiction.

108. This rule might provide a means of service of an application notice within the Part 71 process on an officer of the judgment debtor outside the jurisdiction if, contrary to DB's submission, they are not a "party" to "proceedings" once the process under Part 71 has been commenced. However, it is easy to see how that route could be very cumbersome, and (depending on the location of the individual) it could cause unacceptable delay, particularly if permission to serve out were required. DB did not embark upon it.

109. DB's application for the further order for examination was made within the Part 71 process, which is still in train. Part 71 could be regarded as a self-contained process. However even if it is, that process does not exist in a vacuum; it is not purely an administrative process that forms no part of any proceedings. It either constitutes "proceedings" in itself, or it is part and parcel of the proceedings begun by service of the claim form in the underlying action. The Judge appears to have taken the former view.

110. The short answer to Mr Vik's objection is that if, as he contends, the process under Part 71 does not constitute "proceedings" within the meaning of CPR r.6.23, and

therefore he was under no separate obligation to provide an address for service within the jurisdiction in relation to any application made within the Part 71 process, that process must be characterised instead as a process within the main proceedings. That characterisation is consistent with the fact that the heading of the 2015 Order bears the same claim number and refers to the same parties as the claim in those proceedings. That is also the characterisation which Mr Hamilton, on behalf of Mr Vik, submitted was the correct one. If he is right, on the facts of this case it is fatal to Mr Vik's argument that he was not served with the application notice.

111. Mr Vik was joined as a second defendant to the underlying claim for the sole purpose of seeking the third party costs order against him. As he was obliged to do under CPR r.6.23, he gave an address for service within the jurisdiction, which was the address of his former solicitors. On 7 February 2017 he served a notice of change of legal representative on a standard form which referred to him as the second defendant "for costs purposes only". The form stated that Brecher had been instructed to act on his behalf "in this claim" in place of the previous firm. The box marked "address to which documents about this claim should be sent (including any reference)" gives Brecher's name, address, postcode, telephone fax and DX numbers and a reference. The phrase "documents about this claim" on the face of the form has not been qualified in any way. Mr Vik remains a defendant to the claim and Brecher were at all material times thereafter on the record as acting for him in that claim, with authority to accept service of documents about the claim on his behalf. The application notice was a document about the claim (particularly if the Part 71 process is to be treated as a process within that claim). On that analysis, the application notice was validly served on Brecher pursuant to CPR r.6.23.

112. Mr Hamilton sought to make something out of the fact that Mr Vik was described as the second defendant "for costs purposes only". But the fact that he was so described, in order to make it clear that the only relief sought against him by DB was an order for costs, did not mean that Brecher were on the record as acting for him *only* in relation to certain aspects of the claim, such as the costs application. The phrase "documents about the claim" is not confined to documents about the application for costs. Contrary to the Judge's analysis, the application for a non-party costs order against him did not give rise to separate proceedings, it was an application made within the same claim. If the Part 71 proceedings were also brought within the same claim, the fact that the costs application has been determined is irrelevant, and so too is the fact that the application for an order for further examination is brought within the Part 71 process and has nothing to do with that costs application.

113. It is no doubt fortuitous that Mr Vik had been joined as a defendant to that claim, and that in consequence he provided an address for service within the jurisdiction; but that is the position and that is enough to establish that service of this application notice on Brecher was valid service.

114. If that had not been the case, I agree with the Judge that the fact that Brecher acted for Mr Vik in the Committal Proceedings would not mean that service on them of the application notice was valid service. As the Court of Appeal confirmed in *Vik 2*, the Committal Proceedings were incidental to the Part 71 process as they arose out of contempt committed within that process, consisting of disobedience to the 2015 Order. However, under the Part 81 procedure, where the application for committal is made in the context of ongoing proceedings, as it was here, there is no mechanism for

solicitors for the alleged contemnor to notify anyone, including the party applying for committal, that they will accept service of documents on that person's behalf (even in connection with the committal application). That is unsurprising, because the solicitors in question would normally already be on the record in the ongoing proceedings within which the contempt proceedings were initiated. If the committal application is made other than in the context of ongoing proceedings, the Part 8 procedure would be used, and an address for service would be provided under that procedure.

115. Service on the alleged contemnor's solicitors is a step which is now specifically permitted in CPR r.81.5(2) if they are on the record in the proceedings in which, or in connection with which, the alleged contempt is committed, but the current version of CPR r.81 containing those provisions only came into force after the committal application in this case had been served in May 2019. In any event, whether they could or could not have been served with documents pertaining to the committal application, I do not consider that the fact that Brecher acted for Mr Vik in the committal proceedings would have provided a separate route for service on them of an application notice made within the Part 71 process.

116. DB and Mr Vik disagree about whether CPR r.6.23 applies to the Part 71 process so as to oblige Mr Vik, once he was served with the original 2015 Order requiring his attendance, to give an address for service within the jurisdiction. My conclusion that service was properly effected on Brecher because they were on the record and remained on the record as acting for Mr Vik means that it is not essential to decide whether the Judge correctly interpreted the decision in *Masri (No 4)*. However, since we heard full argument on the point, I shall address it briefly.

117. CPR r.6.23 (1) provides that:

> "unless the court orders otherwise, *a party to proceedings* must give an address at which that party must be served with *documents relating to those proceedings*". [Emphasis added].

CPR r.6.23(2) goes on to provide that unless another rule, practice direction or order makes different provision, a party's address for service must be the business address within the UK of a solicitor acting for the party to be served. There are then provisions dealing with the situation where the party to be served has no solicitor (CPR r.6.23 (2)(c) and (3)). The resolution of the issue therefore depends on whether the process under Part 71 constitutes "proceedings" and if so whether the person to be examined is a "party" to those proceedings. The Judge thought that both matters were determined against DB by *Masri (No 4)*.

118. Before considering whether the Judge was right about that, I should mention CPR r.6.27, which is entitled "service by an alternative method or at an alternative place." This provides that "Rule 6.15 applies to any document *in the proceedings* as it applies to a claim form, and reference to the defendant in that rule is modified accordingly". The Judge appears to have assumed that this rule was applicable, since at [153] she complained that DB's informal application for alternative service (made as a fallback) did not comply with CPR r.6.15 because it was not supported by evidence. If the Part 71 process is not "proceedings", then the only other "proceedings" that would qualify are the underlying proceedings which the Part 71 process is designed to support.

Either way, I consider the Judge was right to assume that the Court had jurisdiction to make an order for service of the application notice by alternative means under CPR r.6.27 because it is a "document in the proceedings".

119. Returning to the question whether Mr Vik is a "party to proceedings" for the purposes of CPR r.6.23, I agree with Ms Tolaney's submission that *Masri (No 4)* decided that an application made by the judgment creditor for an order under Part 71 could not be equated with a claim form for the purposes of establishing the court's jurisdiction via service on the person to be examined out of the jurisdiction. As she rightly pointed out, the application for the order under CPR r.71.2(1)(b), which is generally made without notice, does not initiate the process under Part 71; it is the personal service of the order which does that. Tomlinson J referred to both documents in *Vitol*.

120. In order to justify service of the documents initiating the process under Part 71 outside the jurisdiction, the judgment creditor in *Vitol* sought to rely upon what was then CPR r.30.2 , which provided that:

> "Unless paragraph 3 applies, where the permission of the court is required for a claim form to be served out of the jurisdiction, the permission of the court must also be obtained for service out of the jurisdiction of any other document to be served in the proceedings".

Tomlinson J decided that this provision was only concerned with documents to be served on parties to the proceedings initiated or to be initiated by service of the claim form outside the jurisdiction, and moreover there was no identifiable provision in the CPR under which permission to serve either an order or an application for an order under CPR r.71.2 (1)(b) out of the jurisdiction could be granted. Lord Mance, in *Masri (No 4)* expressly approved those findings and the reasoning for them. When that rule was re-enacted (in an amended form) as what is now CPR r.6.38, the position was made even clearer by referring to service of an application notice or other document on a "defendant" out of the jurisdiction.

121. Once it is appreciated that *Masri (No 4)* and *Vitol* were only concerned with whether the rules of procedure then in force enabled the document which started the process under CPR r.71.2 to be served outside the jurisdiction on the person to be examined, it becomes clear that Lord Mance's observations do not touch upon the position of a person who *has* been validly served, but has left the jurisdiction afterwards (see [6] above). At [36] in *Masri (No 4)* Lord Mance was not addressing the question whether the process under Part 71 initiated by the service of the order on the person to be examined falls within the meaning of "proceedings" in CPR r.6. Nor is that question addressed by Tomlinson J in *Vitol*. It did not arise for consideration, let alone determination, in either case.

122. On the question of what is meant by "proceedings" we were referred to the Privy Council case of *GFN SA v Bancredit Cayman* [2009] UKPC 39; [2010] Bus LR 587. The issue in that case was whether an application to the court by a creditor in a compulsory winding up, challenging a decision of a liquidator, was a "proceeding" in respect of which there was jurisdiction to make an order for security for costs against the applicant. It was held that it was. Lord Scott drew a distinction between an interlocutory action designed to regulate or assist in some way the conduct of the substantive action between the parties, which would not be a "proceeding", and an

application which, even though interlocutory in nature, raised issues as to the rights of the parties, which would be a "proceeding". Mr Hamilton contended that a process which was merely designed to extract information from a witness about the nature and whereabouts of assets fell on the wrong side of that dividing line.

123. Ms Tolaney submitted that the question of what is meant by "proceedings" in the CPR is context sensitive, and a degree of flexibility should be applied in construing the rules of procedure so as to allow a mechanism for provision of an address for service within the jurisdiction if that is necessary or desirable. She relied on the case of *Gotti v Perrett* [2025] EWCA Civ 1168, in which an urgent interim injunction was granted without the issue of a claim form under Part 7 or Part 8 and the court held that there were "proceedings" (initiated by the application for interim relief). Ms Tolaney submitted that once a Part 71 order is made and served, it starts a separate and independent enforcement process which is only available against certain persons, namely, judgment debtors and their officers, and that is not the same thing as an ordinary witness summons served within the context of ongoing litigation.

124. I accept that the word "proceedings" could be interpreted as applying to the process under Part 71, once initiated, and that *Masri (No 4)* is no bar to that interpretation. I have also acknowledged the practical desirability of the person who is to be examined providing an address for service within the jurisdiction. The more difficult question is whether that person is a "party" to proceedings. They are plainly not a party to the underlying proceedings, of which the process under Part 71 forms a part.

125. The observations of Lord Mance in *Masri (No 4)* about the role of the officer to be examined as being that of a "third party witness" were made in the context of drawing a distinction between that person and a judgment debtor who is already subject to the jurisdiction of the court, for the purposes of ascertaining if the court can assert an extra-territorial jurisdiction over them to compel them to give evidence to assist the judgment creditor. That is a different context. At the stage before any process is commenced under Part 71 the officer of the judgment debtor company is (usually) a stranger to the litigation and cannot be put on the same footing as an existing party. However, once that person is subject to the jurisdiction of the court, he does have some role to play in the litigation, albeit only for a specific and limited purpose. Lord Mance's observations and his reasoning are not fatal to DB's case on CPR r.6.23, though they undoubtedly lend support to Mr Vik's contention that that rule does not apply in the context of Part 71.

126. A "party" does not have to be someone against whom a claim is made or relief is sought or even someone with whom another party is in dispute. In analogous situations, e.g. when a third party is required to produce documents or information under the Bankers Books Evidence Act 2021 or a Norwich Pharmacal order, their function as a "witness" would not stop them being parties to the proceedings under which the orders are made against them. As Mr Hamilton pointed out, those proceedings would generally be commenced under CPR Part 8 so there would undoubtedly be a "claim" to which they are named as parties, even if there were no contentious issues to be resolved. But why should the means by which a person has become subject to the jurisdiction of the court to extract information from them make all the difference to the question whether they are a "party" to proceedings once the court has jurisdiction over them?

127. The answer may lie in the fact that Part 71 is properly to be treated as a process which forms an integral part of the underlying proceedings, and not as an independent set of "proceedings" with different parties from the parties to those underlying proceedings. On balance, for that reason, I incline towards the view that an officer of the judgment debtor who is liable to be examined under Part 71 is not a "party" to proceedings who becomes subject to the obligations under CPR r.6.23 once the order under CPR r.71.2(1)(b) has been served. Although it is unnecessary to reach a firm conclusion on the point, I consider that is the better interpretation of CPR r.6.23, however desirable it might be for such a person to be required to give an address for service within the jurisdiction of documents which would put them on notice of further applications that the judgment creditor might wish to make.

128. That view is supported by the existence of CPR r.6.39, which provides a mechanism for service of application notices outside the jurisdiction on someone who is not a party to proceedings. The commentary in the White Book indicates that that rule was specifically introduced because of the decision in *Masri (No 4)*.

129. DB has only succeeded on this ground of appeal because Mr Vik was joined as a defendant to the underlying claim for the purpose of making a costs application against him, and Brecher came on the record as acting for him in that claim. Other judgment creditors faced with officers of judgment debtor companies who adopt a similar attitude to that of Mr Vik may be less fortunate. In the light of the fact that it is unclear whether CPR r.6.23 is applicable in this context, the question whether to make any specific provision for the service of application notices within the process begun under Part 71 in order to overcome the problems identified in this case would be an appropriate matter for the Rules Committee to consider.

## D. Was the Notice of Appeal validly served on Brecher?

130. Mr Vik raised an objection that the Notice of Appeal was not validly served on Brecher, and that this was an additional reason why the appeal should fail. The parties agreed that this issue would effectively be determined in accordance with the dispute as to whether DB's application notice had been validly served on Brecher. Since I have concluded that it was, there is no merit in this additional objection.

131. I should add, however, that in any event Mr Vik submitted to the jurisdiction of this court in relation to the appeal for two separate reasons:

    i) Mr Vik issued an application notice seeking an order that DB's Part 71 application be struck out or dismissed. The grounds relied on included the full jurisdictional challenge and were not limited to the Brecher service point. That application was heard by the Judge and determined by her in Mr Vik's favour by her order dismissing DB's Part 71 application. DB appeals from that order. A party who makes an application, even if it is merely a jurisdictional challenge, submits to the jurisdiction of the Court of Appeal in an appeal from the determination of that application. That party has invoked the jurisdiction of the first instance court to determine their jurisdictional application, and in doing so necessarily and implicitly accepts the jurisdiction of any appellate court empowered to review the outcome of their application.

ii) Mr Vik's application to uphold the Judge's order for further and different reasons under the Amended Respondent's Notice means that he has submitted to the jurisdiction of this court in respect of this appeal, irrespective of how the Appellant's Notice was served on him.

## CONCLUSION

132. For the reasons set out above, I would allow this appeal on all grounds.

**Lord Justice Nugee:**

133. I agree.

**Lord Justice Popplewell:**

134. I agree that the appeal should be allowed for the reasons given by Andrews LJ. For my part I would prefer not to express even a provisional view on the issues which she addresses at [116] to [129], which it is not necessary to decide.