Neutral Citation Number: [2026] EWHC 676 (KB)

Case No: KB-2023-001638

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday 23 March 2026

Before :

MRS JUSTICE EADY DBE

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Between :

JUSTICE INVESTMENTS LIMITED	**Claimant**
- and –	
(1) VISALIA ENERGIA SL t/a NACE **(2) PABLO ABEJAS GARCIA** **(3) ALEJANDRO ORTEGA HERRERO** **(4) CARMEN DONCEL RODRIGUEZ** **(5) FELPUDOS ABEJAS SL** **(6) VIVIER AND COMPANY (IN LIQUIDATION)**	**Defendants**

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Ian Andrews (authorised employee of the Claimant) for the **Claimant**
Simon Gilson (instructed by **Stone King LLP**) for the **First and Second Defendants**
No appearance or representation for the remaining Defendants

Hearing dates: 27-29 January 2026

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Approved Judgment

This judgment was handed down remotely at 2pm on Monday 23 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Eady DBE :

Introduction

1. This is my judgment on various interlocutory applications and matters arising in proceedings that were issued on 25 March 2023. Since February 2024, the proceedings have been managed by Master Dagnall, who (by order seal dated 14 October 2025) directed there should be a hearing before a High Court Judge, for determination and/or further direction in respect of the following:
   (1) any matters arising from the joinder of the sixth defendant ("D6") (joined by order of Master Dagnall seal dated 21 August 2025);
   (2) the 13 November 2024 application by the claimant ("C"), to restore a disposal hearing in respect of its entitlement to damages arising from its claims against the third, fourth, and fifth defendants ("D3", "D4", "D5") ("*the disposal hearing application*");
   (3) the application of the first and second defendants ("D1", "D2"), of 17 December 2024, for security for costs ("SFC") ("*the SFC application*");
   (4) directions in relation to a costs and case management conference ("CCMC"); and
   (5) any further applications post-dating Master Dagnall's order but made pursuant to his directions and "*which the Court considers can fairly and should be listed for directions or determination at the hearing*" (paragraph 7(5), order seal dated 21 August 2025).

2. As to (1), it is common ground that no matters arise at this stage in relation to the joinder of D6. As for further applications, as referenced at (5), there have been four such applications since Master Dagnall's order, as follows: (a) on 10 October 2025, D1 and D2 made an application pursuant to CPR 31.22(2) and/or CPR 3.1 for an order restricting or prohibiting C's use of documents disclosed in these proceedings, witness statements or transcripts of hearings of the proceedings ("*the CPR 31.22(2) application*"); (b) on 2 December 2025, C made a second application to strike out D1 and D2s' defence ("*C's second strike out application*"); (c) on 23 December 2025, D1 and D2 applied for permission to rely on the report of Nardello & Co dated 22 December 2025 as expert evidence ("*the Nardello application*"); (d) on 12 January 2026, D1 and D2 applied for permission to rely on the ninth witness statement of Mr Jonathan Copping ("*the Copping 9 application*").

3. In addressing the various applications before me, I have largely followed the same order as C adopted in its submissions, dealing first with C's second strike out application, and then with C's disposal hearing application, before turning to D1 and D2's CPR 31.22(2) application, and SFC application. The Nardello and the Copping 9 applications both relate to, and are therefore addressed alongside, D1 and D2's SFC application.

The parties

4. C is stated to be a holding company, incorporated in England. I am told that its sole director and shareholder is Mr Martin Haschka.

5. D1 is a company incorporated in Spain, which carries on business principally trading in energy provision in Spain; it was established by D3 in October 2018 and trades under the name "Nace Energía".

6. D3, who is a Spanish national, was CEO and Managing Director of D1 until January 2021, when he sold his stake to a Cyprus based private equity investment fund, "Greenmont".

7. D2 is also a Spanish national; he is an energy industry executive, recruited by D3 in 2019 to assist in expanding D1's business and to act as commercial adviser in relation to a business run by D3 and D4.

8. D4 is D3's long-term partner and is similarly a Spanish national; she owns and controls a substantial portfolio of companies active in the Spanish energy markets, including D5, a company founded by D4, which was at all material times owned and controlled by her, and she is, and was, its sole administrator.

9. D6 is a company registered in New Zealand, now in liquidation. It formerly operated by taking deposits from clients and making investments, principally in real estate. Prior to 6 September 2019, C owned 100% of the shareholding of the D6; thereafter, pursuant to agreements at the heart of these proceedings, C owned 49% of the shares in D6, with D5 owning the remaining 51%.

Representation

10. By email of 22 January 2026 (sent to the court office but not copied to those acting for D1 and D2), C (through Mr Haschka) explained as follows:

> "The Claimant wishes to be represented at the hearing by its Assistant Company Secretary, Mr Ian Andrews. With only one or two exceptions, this has been the position throughout the proceedings since 2023. We would be grateful if you could let us know if there is any difficulty with that arrangement continuing."

The first day of the hearing was assigned to be a reading day, and it was at this stage that I saw C's email of 22 January (it was also on 27 January 2026 that the relevant email chain was copied into those acting for D1 and D2).

11. At the hearing itself, Mr Andrews duly appeared for C, with Mr Haschka (with the court's consent) observing by CVP. At the outset of the hearing, I raised the question of Mr Andrews' ability to represent C, drawing the parties' attention to CPR 39.6, whereby it is stated that, with the court's permission, a company may be represented by a duly authorised employee (CPR 39.6 speaks in terms of representation at trial but, as observed by Adam Johnson J in *Arkeyo LLC v Metro Bank plc* [2024] EWHC 3182 (Ch), there would seem to be no principled reason why that provision should not also apply to other hearings before the court (an approach adopted in The Business and Property Courts of England & Wales Chancery Guide at paras 2.44-2.46)). Mr Andrews was unclear as to whether he was an employee of C, but, for D1 and D2, Mr Gilson observed that C's accounts showed that it had no employees, which suggested that any work Mr Andrews undertook as assistant company secretary must be on a contractor basis. In order to satisfy me as to Mr Andrews' ability to represent C at the hearing, Mr Haschka emailed the court to confirm that he had appointed Mr Andrews as an employee, attaching a copy of a contract of employment he had signed that day,

which seemed to record that Mr Andrews had been appointed with effect from 28 January 2026 "*to act as an authorised signatory of the company ... assisting in its legal proceedings*".

12. For reasons given orally at the hearing, I was prepared to accept that Mr Andrews was thus to be treated as an employee of C, authorised to represent its interests at the hearing (with Mr Haschka present, as an observer, throughout). Moreover, given (a) what I understood to have been a lack of objection to Mr Andrews appearing for C at a number of earlier hearings; (b) the need to try to ensure access to justice for C (it would find it difficult to obtain professional legal representation and Mr Haschka was unable to represent on health grounds); and (c) the delay that would occur if the hearing did not proceed, I was prepared to give permission for Mr Andrews to represent C before me, albeit I made clear the authorisation was limited to this particular hearing and should not be taken to bind any future judge at any later stage of the proceedings.

13. As the hearing progressed and I was taken to transcripts of earlier hearings before the Master, it transpired that this issue had been raised before, and that those acting for D1 and D2 had in fact previously raised concerns about Mr Andrews representing C, in particular given that (under the name Mr Ian Leaf), in 2005, he had been convicted of a tax fraud, for which he served a 10 year term of imprisonment. Moreover, at a hearing before Master Dagnall on 3 June 2025, although Mr Andrews was permitted to represent C, it was recorded that he was thereby acting as a director of C, which was not in fact the case. Troubled by this background, I asked Mr Andrews to provide a witness statement addressing the basis of the earlier permissions given for him to act on behalf of C. Pursuant to my direction, Mr Andrews provided a statement, dated 29 January 2026, which exhibits further correspondence relating to C's request that he represent its interests at previous hearings, pointing out that he has always been described by C as its assistant company secretary, and that this has been recorded in earlier hearing transcripts.

14. Allowing that the reference in the 3 June 2025 transcript to Mr Andrews being a director of C seems to have been an inadvertent error, I am, however, concerned by the fact that there may have been a misunderstanding as to Mr Andrews' employment status at earlier hearings when he appeared on C's behalf. Although this is not a matter I can sensibly re-visit at this stage, I re-emphasise the point made when permitting Mr Andrews to represent C's interests before me: it should not be assumed he will be permitted to act for C at any future hearing, and full disclosure should be given regarding the capacity in which he is appearing and of his authorisation by C to do so.

C's claims in these proceedings

15. By its amended particulars of claim ("APOC"), C pursues the following claims:
    (1) As against D5, it claims damages for breach of contract relating to payments due under a Loan Agreement ("LA") between D6 and D5, in respect of which C contends it has enforcement rights pursuant to the Contracts (Rights of Third Parties) Act 1999.
    (2) As against D1-D4, it contends they are jointly and severally liable for inducing D5 to act in breach of contract, in respect of its obligations under the LA, "*by intentionally causing D1 not to make the necessary funds available to D5 and/or*

otherwise preventing D5 from paying [C] any or all sums due under the Profit Share".

(3) As against D1-D5, it claims damages arising from what is said to be an unlawful means conspiracy, by which those defendants are jointly and severally liable for overt and covert actions causing D5 to breach its obligations, and/or D1-D4 to breach their fiduciary duties, causing harm to C's economic interests through the loss of the value of the profit share to which it was entitled under the LA.

(4) Alternatively, as against D1-D5, C claims damages for what is said to be a "*lawful means conspiracy*", whereby it is alleged that, in entering into the LA, D1-D5 acted with the predominant purpose of causing damage to C, and that those defendants, either acting as agents for D1 or working together as individuals in furtherance of their aims, caused C to be deprived of the payment of the profit share to which it was entitled under the LA.

(5) In the further alternative, as against D1-D3, C claims equitable compensation for breach of fiduciary duty, contending that, the loan funds having been received by D1, those defendants (D2 and D3 being said to be the controlling minds of D1) acted in breach of their duties to C to account for the profits generated by the use of those funds.

16. C's claims arise against the background of a commercial relationship dating back to 2016, when D3 and D4, in their own names and those of various Spanish companies they controlled, began to make deposits with D6, totalling something in the region of €1 million by June 2019 (in C's APOC the value is put at around €1.5 million; in the defence, D1 and D2 say the value was close to €1 million). It was in this context that C says negotiations were entered into between the parties, ultimately leading to the LA that lies at the heart of these proceedings.

17. There is a dispute as to who initiated the negotiations, and as to what was represented by those involved, but it is common ground that, during the course of the summer of 2019, discussions took place, resulting in three contracts relevant to these proceedings: (1) the LA between D6 and D5; (2) a share purchase agreement ("SPA") between C and D5, whereby (using the deposits held in D6 as consideration), shares in D6 were acquired from C; and (3) a joint venture agreement ("JVA") between C and D5. By the LA, it was agreed that D6 would advance €2 million by way of loan to D5; the term was just over four years, with interest payable at a rate of 7.35% per annum; the loan money was to be used to invest in D1; and a profit share (also described as an arrangement fee) was to be paid to C at 2.45% of D1's earnings before interest, taxes, depreciation and amortization ("EBITDA") for the following six years.

18. It is C's case that, during those negotiations, various representations were made by D2, D3 and D4. In particular, C says it was represented that all of the companies which had held deposits in D6 were ultimately owned and controlled by D2, D3 and/or D4; that this ownership and control would remain unchanged; that D5, the largest deposit holder, would be the majority owner of D6; and that, under the LA, D5 would be obliged to invest the loan into D1.

19. Following execution of the contracts, C says matters deteriorated and D2, D3 and D4, acting as agents of D1 or individually or in combination, took various steps in breach of the JVA, SPA, and LA, including stopping D1's payments of interest under the LA, and defaulting on the profit share payments. C alleges that, by March 2021, either alone

or with D3, D4 and others, D2 had used the funds introduced by C to transform D1's financial position and attract new shareholdings, and had jettisoned D3 as a director and majority shareholder of D1, breaching an undertaking that D3 would retain control. C says that, on 16 June 2021, D3 disclosed to Mr Haschka that D5 had routed the loan monies to D1, and D2 had planned and intended that D1 would have no liability to D5, or to C and D6, either to repay the loan or pay the related interest and profit share. It is said that D3 disclosed that he had been manipulated by D2 into transferring his shares in D1 to new shareholders, and this was part of a scheme by D2 to rid D1 of any links to D2, D4 or D5, or their other companies, and to consolidate D2's position at the head of D1.

20. Acknowledging that the LA is a contract between D6 and D5, C relies on a deed of assignment, dated 10 November 2021, between it and D6, by which it is said that D6 assigned to C all its rights and interest in the LA. Accepting that D6 was placed into liquidation in New Zealand in April 2022, and the liquidator has purported to void the assignment under New Zealand law, C contends that has no legal effect because the assignment is governed by English law.

The case for D1 and D2

21. For D1 and D2, it is contended that C is in fact a company that is, and was at all material times, really owned and controlled by Mr Andrews, a convicted fraudster, who, since serving a term of imprisonment imposed after his 2005 conviction, has continued to be the subject of reports alleging further fraudulent activities. It is the case for D1 and D2 that the contractual negotiations between the parties must be seen in the context of the difficulties experienced by D3 and D4 in attempting to disinvest deposits from D6 in 2019, when Mr Andrews (acting on behalf of D6) proposed the various contractual arrangements then entered into (D1 and D2 point out that at no time did they transact with D6 or with C). D1 and D2 take issue with the description of the negotiations set out in the APOC. In particular, they contend D1 was not party to those negotiations, and that D2 and D3 made clear that D1 would not be party to any arrangements with C or D6, and D6 would not be permitted to directly invest in, or loan any money to, D1 - the only link between the LA and D1 was the requirement that D5 was to invest the loan monies into D1's business, and D1's performance would be used as the index to establish C's remuneration as facilitator. D1 and D2 further contend that D3 and D4 hired D2 to assist in drafting legal agreements and to recover funds, but D3 was always in control of the negotiations: D2 was D3's subordinate and acted in accord with his instructions.

22. It is the case for D1 and D2 that, following execution of the contracts, on then gaining greater visibility over D6's affairs, it was soon realised all was not what it seemed, and, on 26 November 2019, D5 terminated the SPA and JVA, requesting a refund of the deposit sums.

23. D1 and D2 deny the alleged confession by D3 to Mr Haschka in a call on 16 June 2021; they put in issue the authenticity of the recording and transcript relied on by C in this respect, but, in any event, say D3 bears considerable antipathy towards D1 and D2 regarding the circumstances of his 2021 exit from D1 as part of its sale to Greenmont private equity fund. More generally, D1 and D2 deny all allegations of wrongdoing and claims against them.

The procedural history

24. The proceedings having been issued on 25 March 2023, on 11 April 2023, an order was made granting permission to serve D1-D5 out of the jurisdiction (in Spain). D1 and D2 were served on 31 May 2023.

25. D1 and D2 filed their defence on 31 July 2023; they plead that the particulars of claim are not compliant with the CPR and, in any event, deny numerous elements of the claims, and all allegations of wrongdoing. D3, D4 and D5 have never filed any defence to the proceedings and have never attended any hearings nor sought to be represented at any stage.

26. By order of 23 August 2023, the proceedings in relation to D1 and D2 were stayed by consent.

27. On C's application, at a hearing on 19 February 2024, by order of Master Dagnall (seal dated 26 February 2024), default judgment was entered against D3, D4, and D5, with damages to be assessed. A disposal hearing was listed for 2 May 2024 and directions given in that regard. I understand that D1 and D2 learned of the 19 February hearing two days beforehand, and attended by Mr Gilson to protect their interests. At D1 and D2s' request, at paragraph 8 of the order, a proviso was included, to the effect that the default judgment against D3, D4 and D5, and any resultant assessment of damages, should not be in any way binding on D1 and/or D2, nor affect or limit any defences advanced by them, and that no determination of fact or law would be binding against them.

28. In March and April 2024, C filed and served extensive factual evidence for the disposal hearing, which set out for the first time that C was now seeking a damages award for sums (in the region of £377 million) far in excess of those claimed in the original particulars of claim (just under £800,000). C also sought permission to rely on two accountancy reports from Ms Claire Berrington, dated 14 November 2023 and 7 March 2024 ("the Berrington reports"). These were provided to D1 and D2 on 22 April 2024. D1 and D2 object to the Berrington reports as prejudicial and misleading, saying they essentially reproduce (purporting to validate) C's allegations of accounting irregularities and other wrongdoing.

29. The hearing on 2 May 2024 was attended by counsel then instructed for C, along with Mr Andrews; no defendant was present or represented. By his order (seal dated 15 May 2024), Master Dagnall granted C permission to adduce the Berrington reports, and to file and serve an APOC, addressing the way C's case was then being put; the disposal hearing in respect of the default judgment against D3-D5 was otherwise adjourned to a further hearing, subsequently listed for 30 September 2024.

30. On 3 June 2024, C served its draft APOC, seeking to amend its claim against all defendants.

31. In July and August 2024, C sent letters to various entities in Spain, including D1's former and current auditors, and a range of Spanish banks and regulatory bodies, stating that, in defending these proceedings, D1 had made admissions of wrongful accounting,

and enclosing a dossier of documents relating to the proceedings, including the first Berrington report.

32. D1 and D2 say it was in light of these developments that, on 24 September 2024, they made the following applications: (1) that the stay of the proceedings against them be lifted; (2) for permission to make written and oral submissions regarding C's damages claim against D3-D5 at the 30 September 2024 hearing; and (3) for an order adjourning/dismissing C's damages claims against D3-D5.

33. At the hearing on 30 September 2024, Master Dagnall made an order (seal dated 21 October 2024), that (in summary and amongst other things): (1) lifted the stay against D1 and D2; (2) provided C with an opportunity to file and serve a revised APOC (referred to as "*APOC1B*") against D1 and D2; (3) directed that within 28 days of receipt of APOC1B, D1 and D2 should either file and serve an amended defence or make an application opposing the proposed amendments; (4) entered default judgment in respect of C's amended claim against D5 (but not D3-D4) and ordered an interim payment from D5 of €468,136.61; (5) otherwise adjourned the disposal hearing with liberty to apply. In his judgment explaining his decisions on disposal, the Master noted there were disputes between C and D1 and D2 relevant to the assessment of damages; in particular, there was a dispute as to whether the appropriate accounts were those of D1 alone or those of the group of companies which included D1, and there were issues relating to Ms Berrington's expertise and reports. Master Dagnall further considered he was not in a position to reach a conclusion on damages (interim or final) on the economic tort claims, not least as the way in which C's position was put at the hearing differed from its pleaded case, and as his determination on the issues raised could unfairly prejudice D1 and D2.

34. On 4 October 2024, C served a part 18 request, seeking responses to various questions. D1 and D2 replied on 24 October 2024 largely rejecting the requests as non-compliant and inappropriate. On 28 October 2024, C served a revised request with new questions and demands for documents.

35. On 11 November 2024, in accordance with the order made on 30 September 2024, C served a revised APOC.

36. On 13 November 2024, C made its disposal hearing application, seeking to restore the hearing of its damages claim against D3, D4, and D5, serving extensive further evidence a week later.

37. On 17 December 2024, D1 and D2 made their SFC application.

38. On 23 December 2024, in accordance with a direction from the court, D1 and D2 served a formal response to C's 28 October requests for information and documents. Less than two hours later, C issued its first strike-out application, asking that D1and D2s' defence be struck out for what was said to be non-compliance with court orders relating to the requests for further information.

39. There was a further hearing before Master Dagnall on 20 March 2025, to address the various applications and give further directions; the resulting order ultimately took the form of that seal dated 6 May 2025, requiring: (1) D1 and D2 to provide the information

and documents set out in the schedule to the order; (2) C to serve a further draft APOC; (3) that, by 1 May 2025, C confirm its position in relation to the SFC application (by email of 23 May 2025, C was given a further opportunity to file evidence in this regard, by 27 May 2025); and listing the matter for a one day hearing on 3 June 2025.

40. In a response of 10 April 2025, D1 and D2 provided the further information and disclosure ordered at the 20 March 2025 hearing.

41. On 1 May 2025, C filed submissions opposing the SFC application, followed by evidence on this application in the form of the several further witness statements from Mr Haschka, along with statements from Jean-Christophe Nivard (a director and joint shareholder in C until early July 2025, when he resigned his directorship and sold his shares to Mr Haschka, apparently for nominal consideration) and Ms Carlota Sánchez-Pego (a Spanish lawyer, instructed by C in that jurisdiction).

42. Subsequently, at the hearing on 3 June 2025, Master Dagnall: (1) gave C permission for its APOC (initially in the form referred to as "*APOC1E*"); (2) directed D1 and D2 to clarify/explain specified matters within its amended defence, but otherwise dismissed C's strike-out application; (3) heard partial submissions on the SFC application, before adjourning it to a further hearing (subsequently listed on 4 August 2025), directing C to file and serve any further evidence in opposition to the application by 1 July 2025, with D1 and D2 having permission to reply by 15 July. On 9 June 2025, before the 3 June hearing order was sealed, C served two further draft APOCs, (labelled "*APOC1D*" and "*APOC1E*"). In finalising the order on 18 June 2025, Master Dagnall provided for D1 and D2 to either consent to the further amendments in APOC1E, or make consequential proposals, within seven days. On 25 June 2025, D1 and D2 set out their position on the additional amendments, saying the pleading was unsatisfactory but proposing to consent, subject to ongoing investigations into the alleged assignment from D6 to C.

43. On 3 July 2025, C formally applied for permission for the further amendments in its APOC1E. The same day C also served additional evidence in opposition to the SFC Application.

44. On 8 July 2025, having made contact with D6's liquidators in New Zealand, D1 and D2 wrote to C explaining that D6's liquidators had stated that, on 18 May 2022, they had served Mr Haschka with a formal notice of avoidance of the assignment relied on by C; D1 and D2 invited C to withdraw the proposed new claims or explain the legal basis for continuing to assert them. C responded on 10 July 2025, not disputing it had received the notice of avoidance but saying the notice "*has no judicial effect and is inoperative*".

45. On 16 July 2025, D1 and D2 updated the court on the status of the investigations into the assignment and sought a direction that the deadline of 31 July 2025 for the amended defence be disapplied, and that the issue of whether C should be given permission to pursue the allegedly assigned claims be listed for directions. C objected to that request and pressed for D1 and D2 to be directed to provide their amended defence a week in advance of the then deadline.

46. On 17 July 2025, D1 and D2 served reply evidence on security for costs, which included a report by forensic investigations firm Nardello & Co LLP ("*Nardello*").

47. On 25 July 2025, C served a further witness statement, providing an update on the progress of enforcement proceedings against D5. On 29 July 2025, C served a further application for permission to rely on a digital forensics expert report (the "*Purdy report*") in relation to the metadata of some of the loan agreements previously disclosed by D1 and D2.

48. A further hearing took place before Master Dagnall on 4-5 August 2025. The resultant order, seal dated 21 August 2025 gave directions: (1) for joinder of D6 (given the contested assignment issues), and for service out of the jurisdiction (to be effected by D1/D2); (2) that C be granted permission to file and serve a further APOC ("*APOC1F*"); (3) that a hearing be listed to deal with the various outstanding applications; (4) that, for the purpose of that hearing, C should have permission to rely on the Purdy report, with permission for D1 and D2 to file a responsive report, if so advised; (5) in relation to evidence for the SFC application, including (a) provisionally allowing D1/D2 to rely on the Nardello report, but requiring the appropriate application if relied on as an expert report, and (b) directing C to file any further evidence in response to D1/D2's materials, including the Nardello report; (6) for other evidence.

49. On 28 August 2025, C sent a further letter, in similar terms to that circulated the previous summer, to 14 Spanish entities, including regulatory bodies, banks, accountants, law firms and a ratings agency, as well as sending a similar letter to five entities in Cyprus (where D1's owner, Greenmont, is located). On 10 October 2025, D1 and D2 issued their CPR 31.22(2) application, seeking an order restricting or prohibiting C and its representatives from using documents disclosed in the proceedings, witness statements, or transcripts of hearings, without the prior consent of D1 and D2, or the court's permission.

50. On 26 September 2025, D1 and D2 filed their amended defence. By a statement from Mr Haschka of the same date ("Haschka 15"), C filed a response to the Nardello report. On 10 October 2025, C filed its reply. On 2 December 2025, C issued its second strike-out application. On 23 December 2025, D1/D2 served further evidence exhibited to the eighth statement of Mr Copping ("Copping 8"), including a response to the Purdey report by Ms Samantha Hadfield, of Cyfor Forensics, dated 11 December 2025. On 23 December 2025, D1 and D2 applied for permission to rely on the expert report of Nardello (of 22 December 2025). On 12 January 2026, D1/D2 applied to rely on Copping 9.

C's second strike out application

The application

51. By C's second strike out application, made pursuant to CPR 3.4(2)(a), (b) and (c) and under the court's inherent jurisdiction, C seeks an immediate strike out of the defence, alternatively an unless order, by which it would be struck out *unless* D1/D2 file a re-amended defence meeting various requirements and providing extensive documentary disclosure. The grounds for the application are said to be: (1) abuse of process – documentary manipulation/repeated misleading of the court; (2) no reasonable grounds

– the defence is incoherent and provisional; (3) proportionality and changed circumstances.

52. In advancing the allegation of abuse, C relies on what is said to be an admission in the amended defence that agreements on which D1 and D2 relied were executed after the dates they bear and lack "date created" metadata, which D1/D2 cannot explain. C says this is contrary to the position previously adopted by those acting for D1/D2, who had misled the court in this regard. As for the contention that there are no reasonable grounds for the defence, C says it is pleaded on a provisional basis, and retracts an earlier assertion that "*all loans have been repaid*", relying on multiple loans between D1 and its associated companies without setting out a coherent case as to their terms, while accepting the execution dates of several of the agreements are false, with metadata that has been manipulated. C contends that strike out is proportionate given material developments since Master Dagnall declined to grant C's first application, namely: D1/D2s' admissions that core agreements were not executed on the dates stated on the documents and that metadata was missing; the inconsistent positions advanced by those acting for D1/D2; and the failure to remedy the defects in the defence notwithstanding court-provided opportunities to do so, and the further evidence regarding the metadata as provided in the Purdy report.

The case for D1/D2

53. For D1/D2 it is submitted that the grounds relied on by C in support of this application are both factually and legally misconceived, but that, even if any of the points had factual substance, they would be matters for C to pursue via disclosure requests and cross-examination of witnesses at trial; they are not appropriate bases for a strike-out application. This was, D1 and D2 contend, the conclusion reached by Master Dagnall in determining the first strike-out application, which raised essentially the same points, and it is said that this application should be dismissed as being totally without merit.

My approach

54. By CPR 3.4 it is provided that:

> "(2) The court may strike out a statement of case if it appears to the court- (a) that the statement of case discloses no reasonable grounds for ... defending the claim; (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; (c) that there has been a failure to comply with a rule, practice direction or court order; ..."

55. To the extent that C contends that D1 and D2s' defence discloses no reasonable grounds for defending the claim (CPR 3.4(2)(a)), my approach is informed by the guidance provided in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at paragraph 15 (Lewison J was concerned with a summary judgment application, but there is no difference in approach to that which applies on a strike out under CPR 3.4(2)(a); see per Coulson LJ at paragraphs 20-21 *Begum v Maran (UK) Limited* [2021] EWCA Civ 326). In (relevant) summary: (i) the court must consider whether the defence has a "*realistic*", not merely "*fanciful*", prospect of success; (ii) a "*realistic*" defence carries some degree of conviction, it is more than merely arguable; (iii) the court must not

conduct a "*mini-trial*"; but (iv) need not take at face value/without analysis everything a defendant says - in some cases it may be clear there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents; (v) the court must take into account not only the evidence on the application, but also the evidence that can reasonably be expected to be available at trial; (vi) although a case may not be particularly complex, that does not mean it should be decided without the fuller investigation possible at trial; (vii) it is, however, not enough to say it should go to trial because something may turn up.

56. Thus, although I must not conduct a mini-trial, I can critically consider documentary, witness and expert evidence to see if the factual case advanced by the defence is contradicted by the (likely) available evidence, provided I do not undertake a fact-finding mission or seek to assess the relative weight of the evidence. As Cockerill J (as she then was) observed in *King v Stiefel* [2021] EWHC 1045 (Comm):

> "21. The authorities ... make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that - even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial."

57. By CPR 3.4(2)(b), the power to strike out extends to those statements of case that are vexatious, scurrilous or otherwise obviously ill-founded. Although it is plainly in the public interest that the court should be able to strike out a statement of case for abuse of process (indeed, it is a power that falls under the court's inherent jurisdiction), it is a draconian remedy that must be seen as a last resort; per Lord Hope in *Summers v Fairclough Homes Ltd* [2012] UKSC 26:

> "48. ... in deciding whether or not to exercise the power the court must examine the circumstances of the case scrupulously in order to ensure that to strike out the claim is a proportionate means of achieving the aim of controlling the process of the court and deciding cases justly."

58. CPR 3.4(2)(c) can be seen to cover those cases where the abuse lies not in the statement of case itself but in the way the defence has been conducted. In determining an application for strike out for non-compliance, however, the *Denton* principles (*Denton v TH White Ltd* [2014] EWCA Civ 906) have a direct bearing, albeit on a strike out application under CPR 3.4 the proportionality of the sanction is an issue, whereas an application for relief from sanction proceeds on the basis that the sanction was properly imposed; see *Walsham Chalet Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607 at paragraph 44.

C's second strike out application: analysis and conclusions

59. The main focus of C's objections relate to paragraph 35 of the amended defence, by which D1 and D2 set out their case as to how the €2 million loan was invested in D1, referencing a series of loans and agreements between D1 and D3 and D4 and their associated companies. In providing particulars of such loans and agreements, D1 and D2 state that their pleaded case is:

> "35.8 ... based on their present understanding and the targeted document searches they have undertaken in response to the Claimant's queries and the Court's orders for further information and are subject to any amendment or supplementation that may come to light in particular following the solicitor-supervised document collection and review process that it is anticipated will be undertaken during the formal disclosure phrase in these proceedings."

60. In referring to the various loans and agreements, in many instances it is conceded (see paragraph 35.7 of the amended defence) that the agreements "*may have been executed after the dates which they bear*" and, in some cases, the "*date created*" metadata is not available in the document in question and D1 and D2 cannot presently state why this is.

61. In D1/D2s' original defence, the description of how the loan to D1 was effected was pleaded in more general terms, as follows:

> "35.2 [D5] subsequently made further loans to [D1] on 18 November 2019, 3 April 2020 and 29 April 2020. Although primarily a matter for [D5], [D1 and D2s'] present understanding, pending disclosure, is that the remainder of the [D6] loan was invested via loans to [D1] from Promenade (€645,000) and Heliopolis (€200,000). All the aforementioned loans have been repaid by [D1]."

Promenade was a company founded and controlled by D4; Heliopolis was jointly controlled by D4 and (indirectly via another company) D3.

62. For D1 and D2, it is contended that the details provided at paragraph 35 of the amended defence have no relevance to the issues raised by C's original claim (asserting a conspiracy to deny the profit share to which it was entitled); C's interest in the loan depends on its amended claim, and upon what is said to be the assignment to C of D6's right to sue on the LA with D5.

63. In any event, D1 and D2 point out that the information set out at paragraph 35 of the amended defence was provided to C on 10 April 2025, with C then raising questions about the true dates of the various agreements and the missing metadata in Mr Haschka's tenth witness statement ("Haschka 10"), of 28 May 2025, which were the subject of a response from D1 and D2s' solicitor (Mr Antony Pidgeon ("Pidgeon 2") on 2 June 2025. D1 and D2 say these points were before Master Dagnall at the hearing of C's first strike out application on 3 June 2025 and it is an abuse for C to try to re-litigate them. In its response, C contends, however, that there has been a material shift in the way the defence is put, with the amendments introduced to paragraph 35 asserting

a case that is provisional, and depends on various agreements that (as the pleading concedes) cannot be relied upon in terms of the relevant execution dates or in respect of the metadata for the documents disclosed.

64. Addressing first what is said to be the provisional nature of D1 and D2s' position, I note that was something identified at the hearing on 3 June 2025, when Master Dagnall recorded:

> "20. Mr Gilson [for D1 and D2], having taken instructions, says to me that his present position is that his side, [D1 and D2], owing to changes in ownership of [D1], simply do not know the position at all. They cannot even say that there was a loan from [D5] to [D3], let alone whether or not it was on any particular terms or whether those terms were, or were not, recorded in writing.
> 21. That position is, of course, a change from what is set out in the defence. However, while it seems to me that it needs to be stated clearly that that is their position, if indeed it is, that is something which can simply be done by actually making an appropriate formal statement.
> 22. ... Mr Gilson submits to me that ... it could be included within an amended defence .... As long as an amended defence is to be provided, it seems to me that that would be an appropriate course, since that will be a formal way in which [D1 and D2s'] case and position will be communicated both to the claimant and the court."

65. Sub-paragraph 35.8 thus provides the formal statement of D1 and D2s' position, as Master Dagnall's judgment envisaged. To the extent that C contends this ought to have been provided at an earlier stage, in response to the order made after the hearing on 20 March 2025, that was a point also addressed in Master Dagnall's 3 June 2025 judgment, in which he made clear that:

> "23. ... I do not regard that or other matters ... as justifying, as a matter of proportionality, the extreme sanction of striking out a defence."

66. In addressing other criticisms as to the generality of D1/D2s' response to C's requests for further information, Master Dagnall noted the peripheral relevance of the issues to which these points went, observing these were not matters that would "*in any way justify the defence being struck out*". As for the more specific criticisms made in Haschka 10, relating to execution dates of various agreements referenced in D1 and D2s' response to C's request for further information and to missing metadata from some of the documents disclosed, Master Dagnall addressed the issues raised in some detail. From the transcript of his judgment, it is apparent that, while not seeing this as "*a terribly important matter*", the Master considered it would be better if the limits of what was known by D1 and D2 was stated (judgment, paragraph 48). As for what appeared to be deleted metadata, or metadata suggesting a document was created later than otherwise suggested, the Master made clear these were matters that must await disclosure and could not properly be determined on a strike out application prior to that process (judgment, paragraphs 49-51).

67. Although the points identified in the second strike out application are said to relate to the way in which D1/D2 have set out their case in the amended defence, upon

investigation of the matters raised, it is clear there is no material difference to C's position on the first strike out application, and I respectfully agree with the conclusions reached by Master Dagnall. The various agreements referenced at paragraph 35 of the amended defence are, at most, of peripheral relevance to the issues to be determined at trial; at highest, as Master Dagnall identified, these might be relied on by C as demonstrating a course of conduct on the part of relevant defendants, although it is hard to see precisely where this can go.

68. In any event, even assuming relevance:

(1) Clarifying the limits of D1 and D2s' knowledge and, pursuant to the order of the court, formally stating their position in this regard at paragraph 35 of the amended defence, does not amount to an abuse of process.

(2) To the extent that D1 and D2 had failed to properly clarify their position in response to earlier court orders, it cannot properly be said at this stage that this amounted to an attempt to deliberately mislead the court (or C); this was, in any event, a point that was expressly considered by Master Dagnall, who did not consider any prior technical breach of the court's order would warrant the extreme sanction of striking out the defence. That, with respect, was plainly correct: a strike out is a draconian remedy that must be seen as the last resort (*Summers v Fairclough Homes*); this is not a case that would meet the *Denton* test, and the proportionate response to any earlier failure to fully set out D1 and D2s' position was to require that that be formally stated in the amended defence (as Master Dagnall ordered).

(3) In setting out the extent, and limits, of their knowledge (relevant to the various agreements referenced at paragraph 35 of the defence), D1 and D2 were appropriately complying with the requirement made of them in the court's order following the 3 June 2025 hearing; to the extent that they have thereby advanced a position that is "provisional" upon completion of the disclosure process, that does not mean there are no reasonable grounds for the defence, nor is it rendered incoherent. It is not fanciful for D1 and D2 to rely on what they understand to be the position in terms of the various agreements and arrangements made for the purpose of extending the loan monies to D1, and the detail thus provided must be considered not simply on the basis of the documents available at this stage but also on what might reasonably be expected to be available at trial, after the disclosure process has been completed (see the observations in *Easyair*).

(4) Accepting that D1 and D2 acknowledge that various of the agreements referenced at paragraph 35 of their defence were not created on the dates they bear, and/or lack accurate/any "date created metadata", which D1 and D2 are unable to explain, that does not necessitate a finding that there are no reasonable grounds for the defence, still less that D1 and D2 are guilty of "*documentary manipulation*" or have attempted to mislead the court. To the extent that this will be relevant to the issues to be determined at trial, it is plainly a matter that would need to be determined upon a fuller investigation into facts (*Easyair*); it is not an issue that can be determined (still less assumed) at this stage.

(5) Allowing that I am entitled to critically analyse the available documents (*Easyair*; *King v Stiefel*), I am unable to say the explanations provided in Pidgeon 2 (and the documents it exhibits) are incapable of acceptance.

(6) More particularly, having had regard to the digital forensic reports produced by the parties' respective experts (Purdy and Hadfield), I am reinforced in my view that this is not a matter that can be the subject of an on-paper, summary determination. I am by no means convinced that it is proportionate to permit expert evidence to be

adduced on this issue at trial (a point that can be more fully considered at a future CCMC), but, to the extent that it is relevant to my decision at this stage, it is apparent that this would require an assessment of the relative weight to be given to the expert evidence, something that would be inappropriate at this stage.

69. For all the reasons provided, I am satisfied that C's second strike out application must fail. Moreover, as this was essentially an attempt to re-run arguments that were the subject of determination by Master Dagnall at the hearing on 3 June 2025, I consider the second strike out application is properly to be characterised as being wholly without merit. Although C said there had been material changes since 3 June 2025, it failed to engage with Master Dagnall's reasoning on that occasion: D1 and D2s' compliance with the directions given on 3 June 2025 did not establish a change of circumstance so as to justify a second application to strike out the defence. Furthermore, to the extent that C sought to adduce expert evidence to bolster the criticisms earlier made in Haschka 10 (essentially an attempt to re-package the evidence relied on at the earlier strike out application), this simply underlined the fact that this was a matter for trial. **I therefore dismiss C's second strike out application as being wholly without merit**.

The disposal hearing application

C's position

70. It is C's case that the court should now proceed with the disposal hearing, determining the damages owed by D3-D5 following the judgments previously entered against them. C seeks awards in tort against D3-D5, and the balance of the award in contract against D5 for loss of the profit share under the LA (both accrued and for future periods). C says the disposal hearing is long overdue and there can be no unfair prejudice to D1/ D2 as their rights have been (and can be) preserved, notwithstanding any orders against D3-D5; on the contrary, C contends that further delay will reward D1 and D2 for their obstructive tactics, and D3-D5 for their non-engagement, while denying justice to C.

71. In articulating its claim for tortious damages, C relies on the default judgment entered against D3-D5 on the unlawful means conspiracy claim; it contends this caused loss of sums due under the profit share; although due from D5, this was based on D1's EBITDA and predicated on funds flowing from D1 to D5, and, but for the unlawful actions of D3-D5, "*D1 would have ensured D5 was in funds to make these payments*". Acknowledging its claim "*involves evidencing an agreement, understanding or clear factual matrix whereby D1 was to discharge the payment obligations under the LA*" ("*the D1 Agreement*"), C says this does not present "*a new hurdle to D3-D5's established liability for conspiracy*" but, rather, that the existence and terms of the D1 Agreement "*are essential components in proving the specific loss of the Profit Share and how that loss was directly caused by the conspiracy involving at least D3-D5*".

72. In then seeking to advance its case in this regard, C relies on what is said to be "*D3's confession*" (see paragraph 18 above), "*contemporaneous evidence*", the "*commercial imperative and inference of "automatic fraud*"", and "*D1/D2s' evasions*". As for the dispute regarding whether the profit share should be calculated on the basis of the accounts of D1 taken alone (as D1 and D2 contend) or on the consolidated group accounts (C's case), C places reliance on the Berrington reports and on what is said to

be D1 and D2s' "*concealment*" of D1's subsequent merger with some of its principal subsidiaries.

The position of D1 and D2

73. For D1 and D2 it is urged that the court should decline to restore the disposal hearing against D3-D5 and direct that the further assessment of damages should be adjourned to the trial of the claims against D1/D2, with liberty to apply only in the event the claims against D1/D2 are withdrawn or compromised prior to trial. In this regard, D1 and D2 point out that the subject matter of the proposed disposal hearing overlaps extensively with factual and legal issues arising in C's claims against D1/D2, both in relation to C's case as to its entitlement to tort damages from D3-D5 (replete with references to D1/D2) and as to the individual versus consolidated accounts issue (relevant to the quantification of the profit share claim). It is further observed that D1 and D2 have raised serious issues in respect of the evidence relied on by C and it is urged that the court should be reluctant to proceed to an assessment of damages as against D3-D5 when it will not be properly addressed on key issues of dispute.

74. As for the question of prejudice, it is noted that the claims against D1 and D2 are now progressing and are fully contested; any prejudice to C caused by its not receiving its claimed full damages from D3, D4 and/or D5 at this stage is limited and can be compensated by interest. Although C had said that the SFC application provided further reason why the disposal hearing should proceed (C would then be able to enforce the judgment and thus either meet the SFC application (on the ground that it was not impecunious) or meet any security ordered), that did not withstand scrutiny: (a) C already had the benefit of an interim damages award against D5, dating back to 30 September 2024, for nearly £500,000, but had not been able to enforce it; (b) D1 had faced its own difficulties in enforcing a (much smaller) judgment debt against D5 in Spain; and (c) the point did not address the question of prejudice to D1/D2.

75. Turning to the prejudice D1 and D2 might suffer, although provision could be made in any disposal judgment between C and D3-D5, so as to protect the interests of D1 and D2 as against C, that might not extend to possible claims against D1/D2 by D3-D5. Further, given how C has weaponised the proceedings against D1 and D2 in sending out prejudicial correspondence regarding the litigation to others, proceeding to a disposal hearing at which the interests of D1 and D2 were not represented would risk allowing further misrepresentation by C.

My approach

76. The concern expressed by D1 and D2 relates to the effect of a judgment that disposes of C's damages claim against D3-D5; notwithstanding the possibility of including a proviso to make clear that the judgment should not be taken to be conclusive in C's claims against D1/D2 (along the lines adopted by Master Dagnall in the order seal dated 26 February 2024), it is submitted that this would prejudice future determinations in the proceedings relating to D1 and D2, and/or could leave D1 and D2 vulnerable to subsequent claims on the part of D3-D5.

77. While acknowledging the strong public interest in consistency of judgments, in *Page v Champion Financial Management Ltd* [2014] EWHC 1778 QB, it was held that that

would generally be outweighed by the public policy interest in ensuring that a co-defendant should be able to defend itself. Acknowledging that there may be a complicating feature in the present case, arising from the various different defendants, with different interests, and thus the possibility of further, satellite litigation against D1 and D2, I have proceeded on the basis that, in a strict sense, it would be possible to ensure that the interests of D1 and D2 were protected in any decision reached by the court on the question of damages.

78. That said, while a judgment in default is conclusive on liability, damages still have to be proved to the civil standard, and it is relevant that I have regard to the court time and resources; as made clear at CPR 1.1(e), dealing with a case justly and at a proportionate cost includes:

> "allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

79. There is, further, a duty on the court to manage cases, which by CPR 1.4(i), includes:

> "dealing with as many aspects of the case as it can on the same occasion."

The disposal hearing application: analysis and conclusions

80. As C's submissions make clear, the subject matter of the proposed disposal hearing will extensively overlap with the factual and legal issues arising in the claims by C against D1/D2. C's case in support of its entitlement to tort damages from D3-D5 are replete with references to D1 and D2 and to the substance of the conspiracy allegations pursued against all Ds. The same can be said in respect of C's case as to whether the quantification of the profit share should be assessed on the basis of D1's individual accounts or on the basis of consolidation accounts. Determination of the issues thus raised on the disposal hearing will inevitably require the court to investigate and to make findings in relation to issues yet to be litigated as between C and D1/D2. Although, as C has emphasised, provision can be made to make clear that D1 and D2 are not bound by the assessment of C's claimed damages against D3-D5 (see *Page*), that is not the only consideration relevant to my determination as to how the court should proceed at this stage.

81. Having considered the evidence that has currently been filed on these issues, and the various arguments identified (at this and earlier hearings), the scale of the dispute between C and D1/D2 relating to the points that would have to be determined at any disposal hearing is readily apparent. D1 and D2 have raised detailed, and fundamental, objections to the expert evidence submitted by C, and there are a wide range of factual and legal points of dispute, often overlapping with issues of liability. The claims against D1 and D2 are now progressing (although they were stayed when default judgment was originally obtained in February 2024, that stay was lifted at the hearing before Master Dagnall on 30 September 2024) but there has yet to be a full CCMC, where proper consideration can be given to how hearings in those claims should proceed. It is, however, likely that determination of points of dispute between C and D1/D2 will largely, if not wholly, resolve the issues C has identified for the disposal hearing against D3-D5. There is, therefore, an obvious question as to why the disposal hearing should

proceed at this stage rather than being adjourned to the trial of the claims against D1 and D2.

82. For C it is contended that further delay in proceeding with the D3-D5 disposal hearing means that it is prejudiced: it is kept out of the monies that are properly due to it, and it may have to face an order for security for costs as a result of D1/D2s' SFC application, while, meanwhile, D3-D5 benefit from their non-engagement with the litigation, and D1 and D2 from conduct that C characterises as tactical obstruction. As D1 and D2 have observed, however, since the hearing of 30 September 2024, C has had the benefit of a not insignificant interim payment award against D5 (confirmed in the order seal dated 21 October 2024) but has apparently been unable to enforce it, and there is little evidential basis for thinking that C's position would be improved were awards to be made against D3-D5 following a disposal hearing (a point I consider in more detail when addressing the SFC application below). Otherwise, to the extent C is kept out of monies that are rightfully due to it, that will be compensated by the interest that would be part of any award. A real world assessment of the circumstances inevitably leads to the conclusion that C will in fact suffer little prejudice by a further delay to the disposal hearing. As for D1 and D2's conduct of the proceedings, I do not agree with C's characterisation of this as obstructive. Since the stay was lifted at the hearing on 30 September 2024, much (although not all) of the delay has related to changes in C's case, leading to various iterations of the APOC. Pleadings are now closed and there seems little reason why these proceedings cannot be case managed expeditiously going forward.

83. Looking at the other side of the balance, it is clear there are significant advantages to adjourning the disposal hearing relating to D3-D5, and to dealing with all the issues raised as part of the trial of the claims against D1 and D2. In contrast to the entering of judgment in default on liability, a damages disposal hearing will require C to prove causation and loss and will necessarily require detailed findings by the court; moreover, an investigation into the issues identified in relation to D3-D5 will necessarily involve the court investigating matters of causation and quantum that arise squarely in the claims against D1/D2. I cannot see that it would be in the interests of justice for the court to proceed with the D3-D5 disposal hearing when it will not have the benefit of full disclosure from D1/D2, and will only hear one side of the case (there seems little prospect of D3, D4, or D5 seeking to participate in the proceedings at this stage). Dealing with the outstanding issues raised in respect of D3-D5 as part of the proceedings involving D1 and D2 will be less wasteful of the court's resources (even if simply considering the issues as against D3-D5, C has raised a wide range of points, and has filed some 920 pages of witness evidence, exhibits and submissions; this has already been the subject of three hearings and is likely to continue to take a substantial amount of court time and resource to resolve); would ensure that both "sides" of the various points in dispute can be properly articulated (in contrast to the one-sided nature of any disposal hearing against D3-D5); and would avoid the possibility of inconsistent judgments.

84. For all the reasons given, I am satisfied that dealing with this case justly and at a proportionate cost entails adjourning the disposal hearing against D3-D5, to be determined as part of the proceedings involving D1 and D2**. I duly dismiss C's disposal hearing application**.

The CPR 31.22(2) application

The application and D1 and D2's evidence and submissions in support

85. By application notice dated 10 October 2025, D1 and D2 seek an order under CPR 31.22(2), alternatively pursuant to CPR 3.1(2)(p), or under the court's inherent jurisdiction, restricting C from sending documents disclosed in the proceedings to various specified entities. The application is supported by the seventh witness statement of Mr Copping, in which reference is made to two letters which C sent to various entities in Spain and Cyprus (initially, by letter of 9 September 2024, just to Spanish entities; subsequently, on 28 August 2025, to 14 Spanish entities and five entities in Cyprus), concerning these proceedings but containing, it is said: (i) inaccurate and selective misquotations of Master Dagnall from court transcripts; (ii) false and misleading statements regarding D1 and D2's solicitors and counsel; and (iii) false and misleading statements relating to the conduct of D1 and D2 and the proceedings. The recipients of the letters included various regulatory bodies, D1's auditors, and a number of banks, professional services firms and a ratings agency, and Mr Copping contends that the letters sent to the various Spanish bodies were plainly intended to damage D1/D2's standing in the Spanish business and investor community, whereas those sent out in Cyprus appeared to be intended to damage Greenmont (and, therefore, indirectly D1).

86. Mr Copping records that, on 26 September 2024, C's then solicitors confirmed that C would provide certain undertakings, which led D1 and D2 to take the view that no further action should be taken at that stage, but, upon the further sending out of letters on 28 August 2025, it was considered necessary to make the present application. Mr Copping further explains his understanding that C has no business interests in Spain (other than to enforce court orders in the current proceedings), and observes that the letters can have no legitimate litigation purpose other than to cause damage to D1/D2, possibly with the intention of pressuring them to settle these proceedings.

87. D1/D2 contend that the limited and focussed order sought is both necessary and appropriate to prevent C (and its representatives) from engaging in abusive and prejudicial contact with third parties, misrepresenting court statements, and other matters relating to the proceedings, with the apparent intent of putting improper pressure on D1/D2 and/or of maliciously seeking to damage their business interests. As for the suggestion that the application was not properly issued, it is observed that, although not sealed by the court, the application appears on CE-file as issued and has been served on C, with no suggestion that C would suffer any prejudice by this matter being addressed at this hearing.

C's position

88. C contends (albeit this was a point raised only shortly before the hearing before me) that there is in fact no application before the court: although the application had been served, it did not appear to have been sealed, and C says this demonstrates that the court had not seen fit to issue the application. In any event, C submits that D1/D2's request in this regard had no relationship with the other matters currently before the court and should be dealt with separately.

89. C does not dispute that it caused the letters in question to be sent out to the various entities D1 and D2 have identified, nor does it dispute the content, albeit that it takes issue with the characterisation of that content as false, inaccurate, or misleading. More generally, C argues that the application is overbroad, is contrary to the open justice principle, identifies no evidence of prejudice, and is part of a pattern of procedural diversion on the part of D1/D2.

The CPR 31.22(2) application: my approach

90. Documents received by way of disclosure in court proceedings are generally only to be used for the purpose of those proceedings, but may be used more widely if permitted by the court, agreed by the disclosing party, or if referred to at a public hearing (CPR 31.22(1)). More broadly, where documents have been read or referred to in open court, it is consistent with the open justice principle for such documents to be the subject of the wider reporting of the proceedings; the same is true of statements made at a public hearing in court, and of judicial pronouncements in such proceedings.

91. By CPR 31.22(2), however, it is provided that even where read to or by the court, or referred to at a public hearing, the use of a disclosed document may be prohibited or restricted by order of the court. Otherwise, by CPR 3.1(2)(p), it is made clear that the court's powers of case management include the ability to:

> "take any other step or make any other order for the purpose of managing the case and furthering the overriding objective ..."

Further, and more generally, the inherent jurisdiction of the court provides it with such powers as "*are necessary to enable it to act effectively*" within its particular jurisdiction, and thus to "*enforce its rules of practice and to suppress any abuse of its powers and to defeat any attempted thwarting of its processes*" (*Connelly v DPP* [1964] AC 1254 HL, per Lord Morris at p 1301).

92. Exercising the power provided under CPR 31.22(2) to restrict or prohibit the use of a document that has been referred to at a public hearing involves a derogation from the open justice principle. The same is true of any power possessed by the court to restrict or prohibit the reporting of what has taken place at, or said in the course of, a hearing held in public. The default position will be one of open access and any derogation from that position will require the court to undertake a proportionality exercise, to assess the risk of harm to the legitimate interests of the party seeking the restriction, balanced against the advancement of the open justice principle (*R (oao Guardian News & Media Ltd) v City of Westminster Magistrates' Court* [2013] QC 618; *NAB v Serco Limited* [2014] EWHC 1225, per Bean J (as he then was) at paragraphs 30-37).

93. Where a party misuses documents referred to in open court, or misrepresents statements made at a public hearing, that can amount to an abuse of the process, in respect of which the court has an inherent jurisdiction to strike out, dismiss, or stay the proceedings in question (a jurisdiction preserved by CPR 3.1(1), and which, as CPR 3.4(5) acknowledges, duplicates but is not limited to the express powers conferred by CPR 3.4(2)). As I have already observed when considering C's second strike out application, this is, however, a draconian power that is properly to be seen as the remedy of last resort.

The CPR 31.22(2) application: analysis and conclusions

94. I have considered the content of C's letters, cross-referencing the various passages that purport to set out transcribed statements by the Master, or by counsel for D1/D2, or to represent statements made by lawyers acting for D1/D2 during the proceedings that (the letters aver) were known to be false. I agree with Mr Copping that there are a number of citations in the letters (which C has sought to emphasise in **bold**), which can properly be said to misrepresent what was said: characterising observations made during argument (in an attempt to clarify C's position) as adverse judicial findings (which they were not), and failing to set out the relevant passage in full, so as to provide necessary context. I further accept that serious, but baseless, allegations have been made against both counsel and the solicitors instructed for D1/D2. I am unable to see any legitimate reason for C to send out these letters, and draw the inference that this has been done with the intention of in some way damaging the business interests of D1/D2 and/or putting pressure on them in this litigation.

95. Having accepted the criticisms D1/D2 make of the letters sent out by C, I have gone on to consider whether it is appropriate to make the order sought by this application. I do not agree that an apparent failure by the court to issue a sealed copy of the application is fatal in this regard: the notice of application appears on the court file as if issued, and there is no suggestion that it has not been properly served or that C is prejudiced in any way; in any event, the court has an inherent jurisdiction to prevent its process being abused, it is appropriate for this matter to be considered at this stage, and C has had proper opportunity to address the criticisms raised. The substantive question I have to address is whether it would be right to adopt the course that has been urged by D1/D2.

96. In considering this question, my primary concern relates to the derogation from the open justice principle that the application might seem to imply. I accept, however, that there is a countervailing public interest in not permitting the misuse of documents obtained in court proceedings or the selective and inaccurate presentation of statements recorded in transcripts of court hearings; and I further accept that D1 and D2, and their lawyers, have a legitimate interest in not having their position or conduct in these proceedings misrepresented. More specifically, I acknowledge that the restriction sought by D1/D2's application is limited to the use of documents disclosed in the proceedings (where this is intended to include transcripts of court hearings that have been obtained by the parties) to specific, named, entities. Indeed, that D1 and D2's real complaint is that C has sought to weaponise the court process by misrepresenting documents obtained for the purpose of this litigation and in unfairly presenting extracts from transcripts of court hearings (transcripts obtained to assist the parties' conduct of these proceedings), and that it has done this deliberately to put pressure on D1/D2 and/or to damage their interests.

97. In my judgement, the way in which C has misrepresented statements made in court (misusing the transcripts of court hearings supposedly obtained to assist its conduct of the proceedings) and documents provided as part, and for the purpose, of this litigation, amounts to an abuse of the process of this court. The abuse is, however, specific and relatively confined; it does not impact upon the court's ability to deal with this matter going forward, nor does it mean that there cannot be a fair trial of C's claims. Exercising the court's inherent jurisdiction to control the proceedings before it, an order along the lines proposed by D1/D2's application provides a proportionate response: it

addresses the abuse without impacting on C's ability to advance its case. That, I am satisfied, involves a minimal derogation from the open justice principle, and is justified by the countervailing public interest in the accurate reporting of statements made in open court, and in preventing the misuse of documents obtained in the litigation process or of transcripts of court hearings intended to assist the parties' conduct of the litigation. **Pursuant to the court's inherent jurisdiction, I therefore allow D1/D2's application, and order that C be restricted from using court documents, or documents otherwise disclosed in the proceedings (even where read to or by the court, or referred to at a public hearing), or transcripts of court hearings obtained for the purpose of the proceedings, in communications to or with the entities listed in the annex to D1/D2's proposed draft order**.

D1 and D2 application for security for costs

The SFC application and the evidence filed by the parties

98. The application notice of 17 December 2024 seeks an order requiring C to give security for D1/D2's costs. That application was initially supported by the third statement in these proceedings from Mr Copping, but further statements have since been provided, largely in response to evidence filed by C in respect of the SFC application. The evidence now filed on behalf of D1/D2 in this regard consists of the third, sixth, eighth and ninth statements (and exhibits) of Mr Copping (there being an outstanding application in respect of the last, "Copping 9"), and the third statement (and exhibits) of Anthony Pidgeon. For C, the evidence relating to the SFC application comprises the seventh, eighth, ninth, twelfth, thirteenth, and fifteenth statements (and exhibits) of Martin Haschka, a statement from Mr Nivard (formerly the other owner of 50% of the shares in C), the second and third statements in the proceedings (with exhibits) of Ms Sánchez-Pego, and the sixth statement (with exhibits) of Mr Andrews.

99. Mr Copping has recorded that C was incorporated on 31 July 2018, is said to engage in "*Other business support service activities*" (Companies House entry), has recorded an average number of "*0*" employees for each year, and has (including unaudited accounts filed for the year ending 31 December 2024) filed sets of accounts for six years, during which only those presented for 2023 and 2024 have shown net assets (for 2023: £35; for 2024: £1,928); all previous years have shown a negative net asset position. Mr Copping has further observed that, although C is described in these proceedings as a holding company, no evidence has been provided of any shares it holds in other companies.

100. That picture is not disputed by C's evidence; Mr Haschka has said (Haschka 7 paragraph 5):

> "[C's] filed accounts reflect its historic position as a holding company prior to the crystallisation or full recognition of assigned assets, they do not represent [C's] current ability to meet a costs order, given the value of the substantial debt assigned to it"

101. Clarifying the position in respect of C's assets, Mr Haschka says that these consist of (i) the interim award made in these proceedings in C's favour, as against D5, and (ii) a beneficial interest in the loan made by D6 to D5 under the LA, that being the subject of

a deed of assignment from D6 to C dated 10 November 2021. In respect of (ii), Mr Haschka acknowledges that the terms of the assignment provide for the "*net proceeds*" to be paid to D6, but says this still allows C to deduct recovery costs, which would include any adverse costs orders made against it. As for attempts to enforce the interim award against D5, both Mr Haschka and Ms Sánchez-Pego have explained that proceedings are on-going in the Spanish courts, but it is considered that D5 has assets such that there is a real prospect of recovery. More generally, Mr Haschka states that, once awarded final damages against D3, D4, and D5, C will immediately seek to enforce the order, observing that: "*The turnover of the companies belonging to the Third, Fourth and Fifth Defendants amounts to nearly EUR 60,000,000, whilst their gross assets total over EUR 24,000,000*".

102. Although relying on the interim payment award and C's assigned interest in the loan as demonstrating that C should not be treated as impecunious at this stage, Mr Haschka observes that neither those assets, nor any assets owned by C's "*shareholders and associated companies*", are sufficiently liquid for C to be able to meet a SFC award while also funding its own costs of the litigation. Explaining that C has made various attempts to secure "*third-party litigation funding*", without success, Mr Haschka says that the modest amounts C has spent on lawyers at certain points in this litigation came from monies held within C or borrowed from an associated company, Enque Investment Limited ("Enque"). He has said that Enque's (near) liquid assets are limited to around £50,000, which it is willing to make available to C to assist it fund the litigation, but that neither Enque, nor Mr Haschka, nor the (former) other 50% shareholder of C (Mr Nivard) would have the available capital to meet a SFC award (something confirmed by Mr Nivard in his short statement of 27 May 2025). Making an order for SFC would, Mr Haschka states, have the practical effect of stifling C's ability to pursue its claims against D1 and D2.

103. Updating the position in his statement of 2 July 2025 (Haschka 12), Mr Haschka has said that Mr Nivard withdrew from any involvement in C at some point after the hearing on 3 June 2025, resigning his directorship and selling his shares to Mr Haschka for a nominal consideration, because he did not wish to provide "*extensive personal financial disclosure*".

104. Mr Andrews has also provided a witness statement, stating that he is neither a director nor shareholder of C, but an advisor "*whose remuneration ... varies from month to month and is not contingent in any way on the success of this litigation*". Mr Andrews has said his financial position is precarious, he lives in a property owned by his wife (with whom he says he has a pre-nuptial agreement), and has no assets to enable him to support C on any order for SFC.

105. Further evidence filed by Mr Copping addresses the suggestion that C holds assets in the form of debts relating to these claims and the underlying LA between D5 and D6, said to be subject to an assignment from D6 in C's favour. Observing that C's accounts do not reflect the value placed on these "assets" by Mr Haschka, Mr Copping raises questions as to the deed of assignment (signed on behalf of both D6 and C by Mr Haschka with a consideration of £1), given that this (i) has been set aside by D6's liquidators; (ii) would violate a non-assignment clause in the LA; and (iii) requires the "*net proceeds*" to be paid to D6 (now D6's liquidators). More generally, Mr Copping expresses scepticism as to C's ability to recover sums from D5, pointing out that: (i)

the accounts referenced by Ms Sánchez-Pego dated back to 2023; (ii) there is no timeline for recovery (Ms Sánchez-Pego's statement was filed on 25 July 2025, and she has provided no update of the position), and (iii) D1 has experienced its own problems seeking to enforce a judgment debt against D5 for nearly two years (having thus far recovered €29,748.86, with €49,532.97 remaining outstanding). As for the prospect of ultimately recovering any damages awarded against D3 and D4, Mr Copping notes: (i) any such order would be against D3 and D4 personally, not any companies they might be involved in; (ii) no documentary evidence has been provided to demonstrate the personal worth of D3/D4; and (iii) D1's own investigations into the property assets of D3 and D4 in Spain showed neither had any registrations in their names.

106. Considering other possible sources of finance, and the evidence provided by Mr Haschka and Mr Nivard, Mr Copping objects that this provided no confirmation as to their respective sources of income (Mr Haschka has said he has a monthly income of €1,000 but this has not been further explained/corroborated), and expresses scepticism that Mr Haschka has no assets given he says he has had a long and distinguished career, with "*decades of experience as a financial services professional*". As for seeking third-party funding for the litigation, Mr Copping notes the dates referenced by Mr Haschka (between June 2023 and January 2024) were significantly in advance of the SFC application, with no evidence of attempts to obtain ATE insurance. Mr Copping further questions Mr Andrew's involvement, and interest, in C. He notes that C's accounts do not show payments to Mr Andrews, and, although he has said he has been receiving monies from C on a monthly basis, Mr Andrews has not provided further evidence of that remuneration. Mr Copping also notes that Mr Haschka has spoken of transferring money between Enque and C via Mr Andrews, which would be "*peculiar*", particularly given Mr Andrews' statement that his financial position was precarious. As for the evidence Mr Andrews has exhibited relating to his personal finances, Mr Copping observes these show he holds multiple personal and corporate accounts (savings and current) and credit cards (with significant credit limits), that he uses two different addresses, and that substantial sums have moved between his accounts.

107. D1 and D2 also rely on reports exhibited to Mr Pidgeon's third statement ("Pidgeon 3"): (i) an investigative journalist report by "interest.co.nz" ("*the Interest report*"), containing information relating to Mr Andrews, Mr Haschka, and their involvement in D6, and (ii) a report by Nardello, a forensic investigative firm instructed by D1/D2, relating to the asset position of various individuals associated with C.

108. The Interest report comes from a website described as "*the market-leading financial and economic news hub in New Zealand*"; it dates from April 2021 and is headlined:

> "NZ's Vivier & Company, allegedly run by a convicted British fraudster, is accused ... of failing to provide insurance and pay interest in $4m of deposits. ..."

The reference to "*a convicted British fraudster*" is to Mr Andrews; as the report explains:

> "The convicted fraudster alleged to be Vivier's puppet master is Ian Andrews, formerly Ian Leaf. He was convicted and jailed in 2005 for tax fraud valued at £76 million."

109. The Interest report goes on to draw on various sources, including a report by the Irish broadcaster, RTÉ, relating to an Irish company named Vivier Mortgages Ltd, which was considered to be associated with D6 and with Mr Andrews. The Interest report states:

> "People who have worked for and with Vivier have told interest.co.nz Andrews continues to pull the strings behind Vivier. ...
> Interest.co.nz has seen a significant volume of email correspondence about Vivier matters provide by several sources, in which Andrews appears to be playing a role in Vivier's day-to-day operations. Andrews doesn't, however, use a Vivier email address. Additionally interest.co.nz has seen bank records showing payments ... from Vivier to British property development company Monument Realty Ltd, which is associated with Andrews, and Irelands Elstree Mortgages Ltd, formerly Vivier Mortgages, in July 2019."

110. The report includes documents showing some of the payments said to have been made in July 2019, including two transfers of NZ$641,372 from a company called Vivier Capital Ltd (i) to Elstree Mortgages Ltd, and (ii) to Monument Realty Ltd. It refers to UK Companies House records listing Mr Andrews as "*a person with significant control*" in Monument Realty, and to a 2019 Irish High Court judgment in which Mr Andrews gave evidence on behalf of the plaintiff, Elstree Mortgages Ltd, leading Justice Eileen Creedon to record:

> "The Court did not find Mr Andrews to be a reliable witness. He conceded that he had been previously known as Ian Leaf ... despite questioning from the Court, the Court remains unsatisfied as to the precise nature of his role within the plaintiff company and his connection with this litigation."

As the Interest report then observes:

> "The judgment also says Andrews told the court he was neither a director or employee of Elstree Mortgages, but was more like a consultant working for a shareholder. Andrews indicated that his family trust owns the company, Justice Creedon said, adding no documentation was produced to underpin this evidence."

111. As for D6, the writer of the Interest report had tracked down a Mr Hart, who was a director between June 2002 and October 2015, and shareholder from January 2010 until October 2015, but who stated that:

> "... the ultimate shareholder, and controller, was a wealthy businessman based in London."

At the time of the Interest report (April 2021) official records showed Mr Haschka as the shareholder of D6, with Mr Haschka and a New Zealand resident, John Johns, as directors of D6 and sister companies Vivier Capital and Vivier Investments, albeit,

when approached, Mr Johns "*distanced himself from Vivier and said questions should be addressed to Haschka*".

112. Having approached Mr Andrews in respect of these matters, the Interest report records that he stated that he had no role within D6 or Elstree Mortgages (although had formerly acted as a consultant to the latter), and that he was merely a consultant to Monument Realty. The report goes on, however, to exhibit: (i) an email from Mr Andrews of 3 February 2020, apparently issuing instructions to four people with Vivier email addresses; (ii) an email from 2017, in which Mr Andrews expresses a desire to "*dispense with*" a former director and shareholder of the three Vivier companies; and (iii) an email exchange from January/February 2018, in which Mr Andrews instructs Mr Haschka to sign a letter on behalf of Elstree Mortgages Ltd in order to authorise the release of funds from that company, and Mr Haschka responds:

> "Ian
> As you might assume I am rather hesitant to sign for companies I have never heard of. [name redacted] went all in for you, but I do need some documentation as to why and in whart [sic] context I am the CEO of this company."

113. Turning to the Nardello report, as originally exhibited to Pidgeon 3, this was not presented as expert evidence and Master Dagnall permitted it to be relied on "*as a convenient way to present factual material*" but made clear the appropriate application would need to be made if it was sought to rely on this as expert evidence (see the order seal dated 21 August 2025). D1/D2 duly made that application ("*the Nardello application*") on 23 December 2025, seeking to rely on the Nardello report, exhibiting all source material, as expert evidence in support of their SFC application. C has previously responded to the Nardello report, by Mr Haschka's fifteenth statement). In its skeleton argument for this hearing, C has again set out its response to points made in the Nardello report (schedule B to C's SFC application skeleton), and objects that Pidgeon 3 (and, it is understood, the Nardello report): (i) "*relies on the legally irrelevant fallacy of 'wealth by association'*", (ii) "*substitutes evidence with speculation and expressions of incredulity*", and (iii) "*seeks to create prejudice by reference to irrelevant historic matters*".

114. I address the substance of the Nardello report below, but note that Master Dagnall expressly left open the possibility that D1 and D2 might apply to rely on the report as expert evidence, and that application was duly made on 23 December 2025. C has had the opportunity to respond to that report, both as originally presented (as a convenient way of presenting factual evidence), which it did in Haschka 15, and as advanced in the form of an expert report, to which it responded in its skeleton argument for this hearing. I can see no prejudice to C from admitting this evidence as an expert report, and it is of assistance to the court to have the source material presented in this way. **I duly allow the Nardello application**.

115. As for the substance of the Nardello report, referencing a further report by Interest.co.nz from May 2024, it records that this:

> "... cites quotes from the liquidator [of D6] in New Zealand ... who told Interest.co.nz that the "hottest lead" in his investigation was UK-

> registered Monument Realty Ltd which received c. NZD 2 million (c. GBP 885,000) from Vivier group company Vivier Capital (which is also in liquidation in New Zealand)."

The Nardello report goes on to note:

> "Andrews was a Person with Significant Control of Monument Realty Ltd between 5 June 2018 and 8 July 2022. Further Haschka has been the director of this company since 17 May 2023."

116. Referring also to the links drawn in the Interest report between D6, Mr Andrews, and Mr Haschka and Vivier Mortgages Ltd/Elsetree Mortgages Ltd (see above), the Nardello report notes that RTÉ had stated that the mortgages that were offered by Vivier Mortgages Ltd in Ireland were "*funded by the proceeds of one of Britain's largest ever tax frauds*", involving Mr Andrews (then Mr Leaf).

117. The Nardello report further observes that, in litigation before the Irish courts involving D6, it was claimed (by a former director of an associated company) that, although legally owned by a third party, D6 had been "*beneficially owned by one Ian Andrews*".

118. Identifying "*a series of direct and indirect corporate affiliations and other overlaps*" between Mr Andrews and Mr Haschka and Mr Andrews' wife (Susan Morris) that had not been disclosed in C's evidence, the Nardello report notes:

> "Haschka has held nine corporate directorships in the UK, four of which are still active. In at least two of these companies – Monument Realty Ltd and Secscan Ltd – Andrews was a Person with Significant Control ..., according to UK Companies House records."

119. Also looking at the identity of those controlling Enque, the Nardello report records that the shares in that company have passed between individuals who have been involved in other entities connected to Mr Haschka and/or Mr Andrews, and Mr Andrews' wife. Since 2023, the shares in Enque have been held by Mr Haschka (40%), who is also the sole director, and a Ms Chantal Marie Paule Caumet (60%), who is registered to the same address in Ireland as Mr Nivard. The report also raises a number of questions as to the apparent involvement of Mr Andrews and his wife in various projects that are either recorded as "assets" in the Enque accounts or have other connections with that company.

120. Turning to the role of Mr Nivard (formerly said to be the other shareholder in C), the Nardello report concludes that the evidence suggests that Mr Nivard's involvement in C was only ever that of a professional nominee: he is noted to have over 80 corporate affiliations (primarily in the US, but also in Panama, the UK, Ireland and France), and to control a company that provides numerous services including the holding of shares. The report further questions the bona fides of the share purchase between Mr Nivard and Mr Haschka, and provides evidence that it is Mr Andrews' practice to use nominees (including Mr Haschka and his wife) in respect of his interests in various companies.

121. As for Mr Haschka's stated personal financial position, the Nardello report: (i) questions his account of his residence in Austria, stating that he in fact resides in

Romania, where his wife has substantial properties and assets; (ii) provides some confirmation of his career in finance and insurance; (iii) raises further questions as to whether he has an interest in a property in Austria (given as his address in his witness statements), which was formerly owned by his parents but sold in 2023.

122. Similarly, in relation to Mr Andrews' financial position, the Nardello report identifies a number of addresses with which Mr Andrews and his wife have been connected.

123. C contends that this evidence is irrelevant. In Haschka 15, it is objected:

> "5.2 Assertions about Mr Andrews's remuneration are irrelevant: adviser fee levels do not affect the SFC test.
> 5.3 As regards references to assets belonging to Mr Andrews's wife, I understand that spousal wealth cannot satisfy a costs order, especially where subject to a prenuptial agreement.
> ...
> 5.5 Assertions about properties supposedly linked to Mr Andrews are equally vague, unsupported, untrue and/or significantly out of date.
> 5.6 The suggestion that he secretly controls this claim is unsubstantiated by anything other than an inadmissible 2018 email, which evidences something quite different.
> 5.7 Allegations that Mr Andrews holds hidden assets are contradicted by a public confiscation clearance.
> 5.8 Attacks on Mr Nivard are misconceived: the share purchase was bona fide, his affidavit on assets uncontradicted and no contrary evidence has been produced.
> 5.9 The insinuation of a sham corporate structure is wholly unsupported: no nominee agreement is produced.
> ...
> 5.11 Allegations that I am dishonest about my finances are based on incredulity, not evidence.
> 5.12 My reduced income is explained by my stroke and confirmed by bank statements.
> 5.13 References to my Austrian residence and tax status are irrelevant.
> 5.14 Assertions about my parents' house sale are baseless: no evidence is provided that I received the proceeds."

The "*2018 email*" (referenced at paragraph 5.6, Haschka 15) relates to the email exchange between Mr Andrews and Mr Haschka reproduced in the Interest report. Mr Haschka also points out that he is in fact divorced from his wife.

124. In a schedule to C's skeleton argument on the SFC application, the points made in Haschka 15 are repeated, and it is further contended: (i) any "*professional affiliation*" between Mr Andrews and Enque/companies associated with Enque is "*historic*" and has no bearing on any *current* ability to provide SFC; (ii) while referring to Mr Andrews' connection with various properties, the Nardello report fails to provide any evidence of any current, legally enforceable interest in such properties; (iii) the suggestion that Mr Andrews may control C (with Mr Haschka acting as a puppet or front) is a baseless and unsubstantiated allegation based on an unverified journalistic source, and there could be no suggestion that Mr Andrews has hidden assets given that

he had been the subject of confiscation proceedings pursuant to the Criminal Justice Act 1988 and had satisfied the order made against him.

125. Meanwhile, Mr Copping records that D1 and D2 have presently incurred costs in respect of advice from their English lawyers in the sum of £454,477.18, and £87,061.55 for advice from their Spanish lawyers; the anticipated costs to trial for D1/D2 are estimated to be in the region of £1,102,770.38, asking for SFC in the amount of £771,939.26 (representing 70% of that figure) (these figures are taken from Copping 8, which was dated 23 December 2025).

126. Finally, and for completeness, by his ninth statement, Mr Copping also refers to a conversation with a Principal Intelligence Officer at the Serious Fraud Office ("SFO") on 4 June 2024 concerning D6, and the consortium of companies to which it was related. Mr Copping says he was told that the SFO had undertaken an initial investigation into what is described as "*the Vivier fraud*" in 2019/2020 which estimated that this had involved approximately £7 million, using a complex web of companies. Although there were a number of investors from Spain, New Zealand, Japan and USA, D6 was run with a skeleton staff of two or three people out of rented premises in New Zealand, and funds ended up being deposited in Bulgaria or Slovakia, before ending up (in many instances) with a UK property development company called Monument Realty Ltd, albeit with little evidence of property development being carried out. Mr Copping says that he was told that the SFO could not, however, find any obvious victims in the UK and the matter did not progress to a formal investigation.

127. By application notice issued on 12 January 2026, D1/D2 applied for permission to rely on this ninth witness statement of Mr Copping, saying this provided "*important additional context*". I am, however, not persuaded that this further evidence does assist me on D1/D2's SFC application. The content of the conversation is denied by C, with Mr Andrews contending the evidence is unreliable. For my part, I cannot see that I can draw any certain conclusions from the account provided, nor that I can give much weight to the report of a conversation that took place over 18 months before the application to admit this statement; **I therefore refuse the Copping 9 application**.

SFC: my approach

128. Pursuant to CPR 25.27, the court may make an order for security for costs if (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and (b) one or more of the conditions at CPR 25.27(b) is satisfied. In this case, D1/D2 rely on condition CPR 25.27(b)(ii), contending that C is a company in respect of which there is reason to believe it will be unable to pay the defendants' costs if ordered to do so.

129. The conditions at CPR 25.27(b) set a threshold: they describe matters of fact, not discretion *(Infinity Distribution Ltd (in administration) v Khan Partnership LLP* [2021] EWCA Civ 565 per Nugee LJ at paragraph 30); they are for the party seeking the security to establish: *Rajabieslami v Tariverdi* [2023] EWHC 455 (Comm) at paragraph 31. The threshold condition at CPR 25.27(b)(ii) thus requires D1/D2 to show there is reason to believe C will be unable to pay if ordered to do so at, or after, the trial, which calls for an assessment of what C may be expected to have available for payment at that time, in the form of cash or other readily realisable assets: *Thistle Hotels Ltd v Gamma*

Four Ltd [2004] EWHC 322 (Ch) at paragraph 11. The burden on D1/D2 under this provision does not, however, require that they must prove C will not be able to pay an order for costs on the balance of probabilities, but that there is reason to believe it will be unable to do so: *Jirehouse Capital v Beller* [2008] EWCA Civ 908, per Arden LJ (as she then was) at paragraph 26.

130. If a threshold condition is established under CPR 25.27(b), the question is then a matter of discretion: whether the court is satisfied, having regard to all the circumstances of the case, that it is just to make an order for SFC.

131. In determining whether it would be just to make such an order, a delay in making the application for security can be a relevant factor, although as Peter Gibson LJ observed in *Keary Developments Ltd v Tarmac Construction Ltd* [1995] 3 AER 534:

> "7. ... what weight (if any) this factor should have and in which direction it should weigh must depend upon matters such as whether blame for the lateness of the application is to be placed at the door of the defendant or at that of the plaintiff. It is proper to take into account the fact that costs have already been incurred by the plaintiff' without there being an order for security. Nevertheless it is appropriate for the court to have regard to what costs may yet be incurred."

132. More generally, the merits of the case will not be a relevant factor unless it can be shown, without detailed investigation of the facts, that the claim is certain or almost certain to succeed or fail: *Chernukhin v Danilina* [2018] EWCA Civ 1802 per Hamblen LJ (as he then was) at paragraph 69 (and other cases, cited in the White Book at paragraph 25.27.3). If, however, the effect of a SFC order would be to stifle C from continuing its claim, then security should not be ordered: *Goldtrail Travel Ltd v Aydin* [2017] UKSC 57 at paragraph 12, albeit that it will be for C to prove that will be so; as was observed in *Goldtrail Travel*:

> "24. ... The court should ... not take the refutation at face value. It should judge the probable availability of the funds by reference to the underlying realities of the company's financial position; and by reference to all aspects of its relationship with its owner, including, obviously, the extent to which he is directing (and has directed) its affairs and is supporting (and has supported) it in financial terms."

133. It is, moreover, not sufficient for a claimant to show that it cannot provide security, it has to show that it cannot obtain appropriate assistance to do so; as has been emphasised in the case-law (see *MV Yorke Motors v Edwards* [1982] WLR 444 HL, per Lord Diplock at p 449H):

> "The fact that the man has no capital of his own does not mean that he cannot raise any capital; he may have friends, he may have business associates, he may have relatives, all of whom can help him in his hour of need."

See also, *Keary Developments*, at point 6, where Peter Gibson LJ observed:

> "... the court should consider not only whether the [claimant] company can provide security out of its own resources to continue the litigation, but also whether it can raise the amount needed from its directors, shareholders or other backers or interested persons."

134. Thus considering the contention that the SFC order sought by D1/D2 would stifle C's claim, it is for C to demonstrate the probability that this would be the consequence, it is not a point that I can assume in its favour; and this is a matter that must turn upon the evidence, requiring me to approach this question:

> "31. ... on the footing that there needs to be full, frank, clear and unequivocal evidence before I should draw any conclusion that a particular order will have the effect of stifling. The test is whether it is more likely than not."

See *Al-Koronky v Time Life Entertainment Group Ltd* [2005] EWHC 1688 (QB), per Eady J at paragraph 31.

135. Ultimately, per Peter Gibson LJ at point 3 *Keary Developments*:

> "The court must carry out a balancing exercise. On the one hand it must weigh the injustice to the [claimant], if prevented from pursuing a proper claim by an order for security. Against that, it must weigh the injustice to the defendant, if no security is ordered and at the trial the [claimant's] claim fails and the defendant finds himself unable to recover from the [claimant] the costs which have been incurred by him in his defence of the claim. The court will properly be concerned not to allow the power to order security to be used as an instrument of oppression, such as by stifling a genuine claim by an indigent company against a more prosperous company, particularly when the failure to meet that claim might in itself have been a material cause of the plaintiff's impecuniosity ... But it will also be concerned not to be so reluctant to order security that it becomes a weapon whereby the impecunious company can use its inability to pay costs as a means of putting unfair pressure on the more prosperous company ..."

136. As for the amount to be ordered by way of SFC, this is within the discretion of the court, which – as CPR 25.27(a) provides – will fix such sums as it thinks just, having regard to all the circumstances of the case.

137. As was observed in *Chernukhin*, in principle, security should be tailored to provide protection against the relevant risk, that is the non-enforceability of any order for costs. The starting point is thus that the defendant is entitled to security for the entirety of the projected litigation costs, although the quantum of any SFC order remains a matter of discretion and other discretionary factors, including the possibility of stifling the claim, may also be taken into account (and see the observations of Hamblen LJ at paragraphs 57 and 64 *Chernukhin*). At point 5 of the guidance in *Keary Developments*, it was made clear:

> "The court in considering the amount of security that might be ordered will bear in mind that it can order any amount up to the full amount claimed by way of security, provided that it is more than a simply nominal amount; it is not bound to make an order of a substantial amount."

138. This is not a case where the SFC application is limited to the extra burden or risk involved in seeking to enforce any future costs order, but where D1/D2 seek security for the total sums likely to be incurred in opposing C's claims; in such circumstances:

> "30. ... the court is bound to attempt to arrive at a figure which it is thought likely would be awarded by way of costs following a detailed standard assessment exercise. That, in turn, requires me to have regard to the degree to which costs are reasonable and proportionate in all the circumstances."

See *OCM Singapore Njord Holdings Hardrada PTE Ltd v Gulf Petrochem FZC* [2021] EWHC 2447 (Comm).
Although, in exercising its discretion:

> "(i) ... the court will not attempt to conduct an exercise similar to a detailed assessment, but will instead approach the evidence as to the amount of costs which will be incurred on a robust basis and applying a broad brush ...
> (ii) In some cases, the court may apply an overall percentage discount to a schedule of costs having regard to (a) the uncertainties of litigation, including the possibility of early settlement and (b) the fact that the costs estimate prepared for the application may well include some detailed items which the claimant could later successfully challenge on a detailed assessment ....
> (iii) ... the court may take into account the 'balance of prejudice' ...: a comparison between the harm the applicant would suffer if too little security is given and the harm the claimant would suffer if the amount secured is too high. ...
> ...
> (v) ..., the court must take into account the amount that the respondent is likely to be able to raise. The court should not normally make continuation of their claim dependent upon a condition which it is impossible for them to fulfil."

See the guidance provided in *Pisante v Logothetis* [2020] EWHC 3332 (Comm) per Henshaw J at paragraph 88.

Submissions

139. For D1/D2 it is contended that the evidence demonstrates that C is an opaque and apparently insubstantial entity, which appears to be impecunious (if not insolvent), without any assets that could be used to meet a substantial adverse costs order. On the evidence, D1/D2 submit that the threshold condition at CPR 25.27(b)(ii) is satisfied: as

matters stand there is every reason to believe C will be unable to meet an adverse costs order (although if C's asset position changes, security can be revisited or discharged).

140. D1/D2 further submit that it would be just in all the circumstances to make the SFC order sought, given that if security is not ordered, D1/D2 face the serious risk, if not probability, that they will be unable to recoup the substantial costs they continue to incur (and will incur to trial) in order to defend C's claims. D1/D2 urge that this is the paradigm case where justice favours ordering security to avoid this outcome (observing that the application was made promptly (17 December 2024) after the stay of the proceedings was lifted on 30 September 2024).

141. C contends, however, that the application should fail, submitting as follows: (i) it is procedurally improper, having been brought in the absence of a viable defence (since December 2024, D1 and D2 had spontaneously and repeatedly admitted that their defence was contradictory and defective, confirming that they would rectify it substantially, but had failed to do so) – this was a case where the relative merit of the claim and defence was a relevant consideration; (ii) the threshold condition is not met; (iii) an order for security would stifle a meritorious claim against admitted fraudsters; (iv) the evidence relied on by D1/D2 represented inadmissible, speculative and/or legally irrelevant innuendo; (v) D1/D2's stance on the assignment agreement was a legally irrelevant artifice (vi) the application was made far too late; (vii) the sum claimed by way of quantum of costs was grossly inflated and disproportionate. It is C's position that D1/D2's pursuit of this application rendered it an abuse of process, justifying dismissal and appropriate sanction.

The SFC application: analysis and conclusions

142. The first question I have to address is whether D1 and D2 have provided evidence that establishes, as a matter of fact, that C is a company in respect of which it is reasonable to believe it will be unable to pay D1/D2's costs if ordered to do so. In making this determination, I have to look forward (see *Thistle Hotels*), asking: as at the time when such an order might be made, is it reasonable to believe C would then be unable to comply?

143. As is effectively accepted, if a substantial costs award were to be made against it today, C would not have assets available to it to meet the court's order. Although described as a holding company, there is no evidence of any shareholdings in other companies that would provide a source of revenue to C, and C's own accounts show no reserves that would be available to it if faced with a significant adverse costs award. At most, C says it has access to around £50,000, which is the cash sum Enque (described as an associated company) is said to be willing to make available for C's conduct of the litigation.

144. Looking ahead, however, C says it has two sources of significant monies due to it: (i) in the form of the interim payment it has already obtained in these proceedings against D5, for €468,136.61; and (ii) by way of the loan, under the LA between D6 and D5, assigned to C on 10 November 2021. Although these cannot be described as assets that are available to C at present, I accept that it is necessary to assess the likely future position, relevant to the timing of any costs award at the end of this litigation, which I have allowed might not be for some 6-12 months (that seems to me to be an estimate

that errs in C's favour). I have also approached my decision on the basis that C will establish that it does have the entitlement it claims under the deed of assignment. Accepting that D1 and D2 have raised a number of points against C's case in this regard, these are not matters that I can properly determine at this stage and I have, therefore, assumed, in C's favour, that it will succeed in establishing that it has an interest in the loan (albeit, on its own case, limited to the costs of recovery), pursuant to the deed of assignment relied on.

145. Assuming that C can demonstrate a beneficial interest in monies due to be re-paid by D5 does not, however, establish that these will be assets available to it should any substantive costs order be made in D1/D2's favour. As Mr Copping's evidence makes clear, there is a very real question as to whether C will be able to enforce any sums awarded to it as against D5. Accepting that the burden of establishing this initial, threshold, condition remains on D1/D2 (see *Rajabieslami v Tariverdi*), it seems to me that the substantive issue raised on this preliminary question is thus whether D1/D2 have demonstrated it is reasonable to believe that, notwithstanding any awards made in C's favour against D5, C will in fact not be able to recover those sums such that it will remain unable to pay D1/D2's costs if ordered so to do.

146. In this regard, D1/D2 firstly point to C's failure to successfully enforce the interim payment award made by this court back on 30 September 2024. C has provided some evidence of the steps it has taken in the Spanish courts (both through Mr Haschka and through C's Spanish lawyer, Ms Sánchez-Pego), which provides some explanation of the delay, but there has been no up-dated evidence (Ms Sánchez-Pego's last statement was dated 25 July 2025), nor any time-line for enforcement. In its argument for this hearing, C has said that a "slower pace" is to be expected at an appeal stage, but there has been no lack of diligence on its part, and no reason to consider it will not ultimately succeed in obtaining the necessary order from the Spanish court.

147. Assuming in C's favour that matters will shortly be resolved in the Spanish courts, however, the question still remains as to whether C will actually be able to enforce the judgment against D5. In determining what it is reasonable to believe, I have to operate in the real world: my decision must be one of fact, not discretion *(Infinity Distribution*); thus having regard to the evidence available to me, I cannot ignore the fact that the accounts of D5 referenced by Ms Sánchez-Pego date back to 2023, and that there is evidence of the very real difficulties that D1 has itself experienced in seeking to enforce a judgment debt (for a much smaller sum) against D5 over nearly 24 months.

148. In order to address the potential difficulties in seeking to enforce against D5, Mr Haschka has also referred to the assets of D3 and D4, saying that the turnover of the companies that belong to D3, D4 and D5, taken together, amounts to nearly €60,000,000, with gross assets of over €24,000,000, and that D3 and D4 "*are worth even more than this, based on their extensive property holdings*". I am, however, unable to see that looking at the assets of D3 and D4, or those of the companies which they control, assists in my assessment of C's assets for the purposes of these proceedings. Even if I ignore the problems identified by Mr Copping in respect of the supposed assets of D3 and D4 (as he points out, any award in these proceedings would be made against D3 and D4 in person, not against their companies, and the evidence does not bear out the assertion that D3 and D4 have substantial assets in their own names), the fact is that,

for the purpose of this application, C's claimed assets primarily depend upon it being able to enforce awards against D5.

149. D1 and D2 do not have to prove on a balance of probabilities that C will be unable to pay a costs order made against it, but that it is reasonable to believe that will be the position. Having regard to all the evidence available to me – both as to the assets currently available to C (effectively none) and to those that might be available to C at the likely time of any substantive costs award in favour of D1/D2 (that is, the sum awarded to C by way of an interim payment against D5 in these proceedings, and any monies due to C from D5 by way of its assigned interest in the loan between D5 and D6) – I am satisfied that D1 and D2 have met the burden upon them, having established, as a matter of fact, that C is a company in respect of which it is reasonable to believe that it will be unable to pay their costs incurred in these proceedings if ordered to do so.

150. Having thus concluded that the relevant threshold condition under CPR 25.27(b)(ii) has been met on this application, the second question I have to address is whether I can be satisfied that, having regard to all the circumstances, it is just to make an order for security for costs in this case.

151. In this regard, C urges me to take into account what it says are the merits of the case; specifically, it is C's submission that the SFC application has been brought in the absence of a viable defence. I disagree; for the reasons I have already provided (in addressing C's second strike out application), I do not accept C's contention that D1 and D2 have no viable defence in these proceedings. More generally, I am clear that this is not a case where it can be said that – absent detailed investigation of the facts – C's claims against D1 and D2 are almost certain to succeed or fail; as such I do not consider that the merits of the parties' respective positions in the litigation are a relevant factor (see *Chernukhin*).

152. The application made by D1/D2 is for security to be ordered against C in the sum of £771,939.26, being 70% of the total costs it is estimated that they will incur in defending this litigation to trial. The grand total claimed includes sums already incurred (in the region of £550,000), with the application of a 30% reduction applied to the overall estimate in acknowledgement of the vagaries of litigation (the possibility of early settlement, and of possible challenges on any detailed costs assessment). Although, in principle, security should be tailored to prevent against the relevant risk (*Chernukhin*) – that is, the risk that D1/D2 will not be able to enforce any substantive order for costs made against C at trial – it is recognised that it would not be just to make a SFC order that would have the effect of stifling a claim; that, I accept, is a relevant consideration both in deciding whether to make any SFC order, and, if so, in determining the amount of such an order.

153. Where it is contended that the effect of a SFC order would be to stifle a claim, however, the burden is on the claimant (*Goldtrail Travel*). Moreover, on this question, the court's investigation will not stop with the legal entity that is itself bringing the claim. Recognising that an otherwise impecunious claimant may still be able to call upon the assistance of others, in considering the case of a corporate entity, this is an occasion where the court is entitled to look to see whether a company might be able to call upon the assistance of shareholders and others that would be willing to lend support to the litigation (*Keary Developments*, and, more generally, *MV Yorke Motors*). It is,

furthermore, relevant to also consider how the claimant is itself funding the litigation and to investigate what steps have been taken to obtain third-party funding, including ATE insurance. Once a defendant has established the relevant threshold condition for the SFC application, it is for the claimant to provide "*full, frank, clear and unequivocal evidence*" (*Al-Koronky*) that making the order sought would necessarily have the consequence of stifling the claim.

154. Accepting, as I do, that C does not have liquid assets in its own name, such as would enable it to meet an order for SFC, I have considered with care the evidence that has been adduced relating to potential alternative sources of funds. As will be apparent from my summary of the various statements and reports that have been filed, a full opportunity has been afforded to both sides to provide detailed evidence in this regard, with the court having expressly allowed additional opportunities for C to file evidence/submissions to either clarify its position and/or to rebut the points relied on by D1/D2. Having regard to all the material available to me, I am not satisfied that the evidence adduced on behalf of C has been full, frank, clear or unequivocal.

155. First, I do not consider that full explanation has been provided in respect of attempts to secure third-party funding/ATE insurance after January 2024. C's position in this regard might have seemed to be strengthened after judgment in default was entered against D3, D4 and D5 (in February 2024) and after the interim payment award against D5 (30 September 2024), but C appears to have taken no further steps to investigate this potential source of assistance.

156. Second, evidence has been adduced that strongly suggests that Mr Nivard acts as a professional nominee (that is the obvious inference from the Nardello report) and that he held his shareholding in C in that capacity (an inference that is supported by his resignation of his directorship, and disposal of his shares, apparently for nominal consideration). Having been given the opportunity to provide a response to the Nardello report, Mr Haschka has said that "*attacks on Mr Nivard are misconceived ... [and] no nominee agreement is produced*" (Haschka 15 paragraphs 5.8-5.9), but has otherwise chosen not to engage with the evidence that D1/D2 have thus adduced. Although it is hard for me to reach a final conclusion as to Mr Nivard's role, sufficient information has been provided such as to warrant fuller, frank disclosure on the part of C in this regard; that has not been forthcoming.

157. Third, and relatedly, the question mark over Mr Nivard's role inevitably raises further questions as to who really is the beneficial owner and/or controlling mind behind C; an issue that has obvious relevance when considering the credibility of C's assertion that a SFC order would necessarily stifle its ability to continue to pursue its claims. The evidence adduced through the Nardello report and the Interest report shows links between Mr Haschka and Mr Andrews that suggest a relationship going beyond Mr Andrews simply acting as a paid consultant or adviser to C. There is evidence (from both the Interest report and from Nardello): (i) relating to D6 (a wholly owned subsidiary of C until September 2019) that strongly suggests real control of that company vested in Mr Andrews; (ii) supporting the view that there are complex and opaque relationships between the various companies referenced; and (iii) that suggests a practice (on the part of Mr Andrews and/or Mr Haschka) of using of nominee shareholders and shadow directors. More specifically, the 2018 email exchange referenced in the Interest report suggests that Mr Haschka might indeed be someone

who acts on behalf of Mr Andrews in their dealings, accepting his instructions when acting as CEO of a company (and it is not a credible reading of that email to suggest – as C has sought to do – that this was simply Mr Haschka "*seeking professional input from an experienced advisor before a board meeting*").

158. Although the 2018 email is somewhat dated, the evidence suggests that Mr Andrews and Mr Haschka have had a coincidence of interests in various companies both before and after that date, and that this relationship continues to date (again, see the detail provided in the Nardello report). Countering that evidence by dismissing any suggestion that Mr Andrews "*secretly controls this claim"* as being *"unsubstantiated by anything other than an inadmissible 2018 email, which evidences something quite different*" (Haschka 15, paragraph 5.6) fails to assist the court in understanding the true nature of Mr Andrews' involvement and interest in C.

159. Fourth, given the opaque nature of the evidence as to who controls and/or has a beneficial interest in C (and, therefore, this litigation), it is highly relevant to have a clear picture of the assets available to those involved. That is all the more so given the evidence (documented in the Interest report and by Nardello) of substantial payments in July 2019 from associated companies of D6 (and, therefore, part of the group of which C was presumably the holding company) to Elstree Mortgages Ltd and Monument Realty Ltd, which are both companies that have been linked to Mr Andrews and Mr Haschka.

160. Although both Mr Haschka and Mr Andrews have provided statements relating to their personal finances, I have found this hard to follow. Mr Haschka has volunteered little by way of corroborative evidence regarding his income, and his contention that he has no assets sits uneasily with his long career in finance (even allowing for the fact that he has been able to do less in more recent years since suffering a stroke) and his continuing involvement in other companies to which substantial sums have previously been paid. Moreover, while he dismisses the question regarding his residence as irrelevant, that leaves me with no certainty as to the assets that might be available to him (and, although he criticises the apparent failure to find out that he and his wife have divorced, Mr Haschka does not engage with the evidence of his own social media posts stating that he has a wife and, therefore, fails to disclose any assets that might have been transferred into her name). Equally, Mr Andrews' evidence regarding his income is less than clear, and his suggestion that his wife's assets are irrelevant because there is a pre-nuptial agreement between them has not been supported by disclosure of that agreement. More generally, questions have been raised by both the Interest report and the Nardello report that are simply not addressed by C's response. Given the burden that lies on C to make good its contention that its claim will be stifled by a SFC order, I am not assisted by a response that simply dismisses as irrelevant information that suggests that Mr Haschka and Mr Andrews have not been transparent about their finances.

161. Thus having regard to all the evidence available, I am not persuaded that C's claim would necessarily be stifled by a SFC order in this case. I am not satisfied that I have been given the true picture as to who owns or controls C, or as to who might stand to benefit from C's pursuit of this litigation. Ultimately, I have reached the conclusion that, if a SFC order is made, it will largely be a matter of choice – not inevitability – should the decision then be made (by Mr Haschka and/or Mr Andrews) as to whether or not to comply with that order and to continue these claims. Moreover, considering

all the circumstances of this case more generally, I am satisfied that it is just to make a SFC order on this application. I do not agree that D1 and D2 delayed in making the application (made on 17 December 2024): until the stay was lifted, by order seal dated 21 October 2024, it would have been unnecessary; and I do not consider that the significant costs that have already been incurred should be seen as being due to obstructive conduct on the part of D1/D2.

162. Having determined that it would be just to make a SFC order in the circumstances of this case, I have finally turned to the question as to the amount of the security that should thus be ordered. Although a matter of discretion, I must still be satisfied that the quantum of such an order would be just in all the circumstances, something that again requires that I should not order a sum to be paid that would have the effect of stifling C's claims.

163. For the reasons I have already identified, I have found that C has failed to provide full, frank, clear and unequivocal evidence as to the potential sources of support that might be available to it. While that means that C has failed to meet the burden upon it to demonstrate that a SFC order would have a stifling effect in this case, it also means that I am left without a clear picture of what support might in fact be available. From the evidence available to me, however, I am not satisfied that Mr Andrews has no financial interest in this litigation, nor do I think that he would be unable to obtain funds to provide security if he so chose. Equally, I do not accept the assertion that Mr Haschka has no ability to support the provision of security for C if he wishes to do so. That said, I do allow that there may be practical difficulties in seeking to access the necessary funds for the security sought and/or to do so in the timescale required.

164. In assessing the appropriate level of any SFC order, I further bear in mind that D1/D2's estimated costs have not yet been the subject of any costs budgeting exercise and may include sums that would not ultimately be allowed. While any sum ordered should not be merely nominal (that would defeat the purpose of a SFC order), I am not bound to make an order of a substantial amount (*Keary Developments*), and I have therefore approached the exercise of my discretion by seeking to make an order that provides some security for D1/D2 while still (i) allowing sufficient time to access the necessary funds, and (ii) ensure that there is a real world choice for those acting for C as to whether they wish to comply with the order.

165. On that basis, and doing the best I can on the information available at this stage (and inevitably applying a broad brush (per *Pisante*)), I consider **it is just to allow the application, and to order C to provide security for D1/D2's costs in the sum of £250,000, allowing C a period of 42 days for payment**.

Disposal and further direction

166. For the reasons provided, I make the following orders:
(1) C's second strike out application is dismissed as being wholly without merit.
(2) C's disposal hearing application is dismissed, and it is directed that the further assessment of damages as against D3, D4 and D5 be adjourned to the trial of the claims against D1 and D2; there be liberty to apply to restore the disposal hearing against D3, D4 and D5 in the event that the claims against D1 and D2 are withdrawn or otherwise compromised or dismissed.

(3) Pursuant to the court's inherent jurisdiction, D1/D2's application for a restriction on C's use of court documents, documents otherwise disclosed in the proceedings (even where read to or by the court, or referred to at a hearing which has been held in public), or transcripts of court hearings obtained for the purposes of these proceedings, is allowed, to the extent that C is thereby restricted from using such documents in communications to or with the entities listed in the annex to my order on this application.
(4) D1/D2's application to rely on the Nardello report as an expert report is allowed.
(5) D1/D2's application to rely on Mr Jonathan Copping's ninth witness statement is refused.
(6) D1/D2's application for security for costs is allowed, and, within 42 days of the seal date of my order on this application, C is ordered to provide security for D1/D2's costs in the sum of £250,000.00; such security to be provided by paying the sum of £250,000.00 into the Court Funds Office by 4:00pm on the final day of the 42 day period allowed. All further proceedings be stayed until security is given as aforesaid. Should C fail to comply with the order within the time period required, it will be open to D1/D2 to make an application to the court for the striking out of the claims made against them.

167. Upon C's compliance with the SFC order made in this case, a CCMC shall be listed before Master Dagnall (who, for consistency, retains case management responsibility in this matter) for the first available date thereafter.

168. To the extent that the parties seek to make any applications consequential upon the order relating to this judgment, any such applications, with concise submissions in support, should be served on all other parties and filed with the court within 7 days of the seal date of my order, and the hearing at which the judgment is handed down is to be treated as adjourned for to permit such applications to be made. At the end of the 7 day period, this matter will be restored before me, at which stage all consequential matters may be dealt with on the papers and/or further directions provided.