Neutral Citation Number: [2023] EWHC 1275 (Ch)

Case No: BL-2022-MAN-000067

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 30 May 2023

Before:

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

SAEED AKBAR

Claimant

- and –

(1) MOHAMMED SAJEAD GHAFFAR

(2) SAIRAH KANWAL SHAH

Defendants

- -
- -

Stephen Connolly and **Anja Lansbergen-Mills (**instructed by **Pannone Corporate LLP)** for the Claimant
Francis Hornyold-Strickland (instructed by on a **Direct Access** basis) for the Defendant

Hearing date: 24 April 2023 (further written submissions received up to 12 May 2023)

- -

Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.30 am on Tuesday 30 May 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

HHJ CAWSON KC:

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Introduction

1. On 11 August 2022, on a without notice application made by the Claimant, I made a worldwide freezing order, and granted a proprietary injunction against the Defendants. The relief that I granted was subsequently extended, albeit with some variations, by consent on 25 August 2022, 12 September 2022, 14 October 2022, 4 November 2022 and 8 December 2022. Paragraph 16 of the Order that I made on 4 November 2022 provided that the Defendants had liberty to apply to discharge the Order made on 11 August 2022 as varied as aforesaid ("**the Order**"), provided that any such application was filed and served by 4pm on 18 November 2022 (or such further time as might have been agreed between the parties in writing).

2. By application dated 18 November 2022 ("**the Discharge Application**") the Defendants applied to discharge the Order: *"as a result of the Claimant's deliberate and material breach of his duty of full and frank disclosure."*

3. The Discharge application is supported by the witness statement of William Matthew George ("**Mr George**"), a Solicitor at Addleshaw Goddard LLP ("**AG**"), Solicitors then acting for the Defendants, dated 18 November 2022.

4. In response to the Discharge Application, the Claimant relies upon the witness statement of his own Solicitor, Paul Daniel Jonson ("**Mr Jonson**"), Senior Partner of Pannone Corporate LLP ("**Pannone**"), dated 9 December 2022, and Mr Akbar's own witness statement also dated 9 December 2022.

5. At the hearing of the Discharge Application on 24 April 2023, the Claimant was represented by Mr Stephen Connolly and Ms Anja Lansbergen-Mills of Counsel instructed by Pannone, and the Defendants were represented by Mr Francis Hornyold-Strickland of Counsel, instructed on a direct access basis.

6. Mr Hornyold-Strickland applied for an adjournment on behalf of the Defendants on the basis that AG had come off the record as acting for the Defendants in February 2023, and the Defendants were seeking to instruct new Solicitors to represent them, but had been hindered in doing so to date through a difficulty in raising funds given the approach taken by banks to the existence of the Order. For reasons set out in an extempore judgment given on 24 April 2023, I dismissed the application for an adjournment, and continued to hear the Discharge Application, Mr Hornyold-Strickland ably representing the Defendants for the purposes thereof.

7. In order to compensate for any lack of time that Mr Hornyold-Strickland might have had to prepare for the hearing, and given in particular that Mr Hornyold-Strickland had said that he wanted to more thoroughly research the authorities relating to the discharge of a freezing order on the grounds of breach of the duty to give full and frank disclosure, I permitted the parties to provide short written submissions. I have subsequently received written submissions from Mr Hornyold-Strickland dated 2 May 2023, written submissions in response from Mr Connolly dated 10 May 2023, and written submissions in reply from Mr Hornyold-Strickland dated 12 May 2023, all of which I have considered for the purposes of this Judgment.

Background

8. The Claimant, Saeed Akbar ("**Mr Akbar**"), and the First Defendant, Mohammed Sajead Ghaffar ("**Mr Ghaffar**"), are cousins, and the Second Defendant, Sairah Kanwal Shah ("**Mrs Shah**"), is Mr Ghaffar's wife.

9. It is Mr Akbar's case that he and Mr Ghaffar have, historically, enjoyed an extremely close relationship, and that from time to time Mr Ghaffar would borrow money from Mr Akbar and invite him to enter into investment opportunities with him. It is Mr Akbar's case that in 2019, and following his exit from a family business, he was able to raise the sum of £3.5 million by way of loan from a company of which he is the sole beneficial owner.

10. It is his case that, thereafter, he entrusted the Defendants with sums of money in excess of £4 million for the purposes of identified and specified investments, which sums he alleges the Defendants have misused and/or misappropriated in the manner now alleged in his Particulars of Claim dated 9 December 2022. In summary, the sums alleged to have been so entrusted and alleged to have been so misused and/or misappropriated include the following:

    i) The sum of £380,000 paid by the Mr Akbar to Mr Ghaffar in December 2019 in respect of an investment in Flat 30 Thackery Court, Hanger Vale Lane, London ("**Thackery Court**"), which property, so it is alleged, the Defendants sold in March 2023 without informing Mr Akbar, and without accounting to Mr Akbar for his share, or indeed any part of the proceeds of sale;

    ii) The sum of £90,000 paid by Mr Akbar to Mr Ghaffar in March 2020 in respect of an investment in Flat 21 Bramerton, 213-215 Willesden Lane, London, which property, so it is alleged, the Defendants have failed to sell in accordance with the terms of an agreement between them, and in respect of which it is also alleged that the Defendants have failed to fully and properly account to Mr Akbar for rental income;

    iii) The sum of £310,000 paid by Mr Akbar to Mr Ghaffar in Spring 2020 for the purpose of contributing to the purchase of an unidentified commercial property in London, which such purchase never proceeded and where, so it is alleged, Mr Ghaffar has only returned the sum of £137,350 to Mr Akbar, leaving the sum of £172,650 outstanding;

    iv) The sum of £1 million and the further sum of £833,000 alleged to have been entrusted by Mr Akbar to Mr Ghaffar for the purpose of investment in or with

Richmond Point Capital ("**RPC**"), which sums have, so it is alleged: (i) as concerns the sum of £1 million, been paid by Mr Ghaffar to RPC, but without any reference being made to Mr Akbar as the investor, and then, on or about 21 September 2020, paid away by RPC to a person or persons unknown; and (ii) as concerns the £833,000 has been been paid and applied otherwise than to RPC, so as to have been dissipated by Mr Ghaffar otherwise than for the benefit of Mr Akbar;

v) The total sum of £975,000 paid by Mr Akbar to Mr Ghaffar in February 2021 for the purpose of purchasing shares in three companies, namely: NextSource Materials Inc (for which was paid £200,000), Pluto Digital Assets Plc (for which was paid £400,000) and 786 London Plc (for which was paid £375,000). It is alleged that, contrary to the basis upon which these monies were provided, Mr Akbar has received neither share certificates nor the return of his money;

vi) The sum of £315,000 entrusted by Mr Akbar to Mr Ghaffar between January and April 2021 for the purpose of investment in gold dealing, which sum, it is alleged, has been applied by Mr Ghaffar other than pursuant to the terms on which it was entrusted to him;

vii) The sum of £100,000 (representing the substantial part of the proceeds of sale of gold bars provided by Mr Akbar to Mr Ghaffar for sale on his behalf, and sold in January 2022), entrusted by Mr Akbar to Mr Ghaffar for the purpose of investment into a soft drinks business, which sum, it is alleged, has been applied by Mr Ghaffar other than on the terms pursuant to which it was entrusted to him.

11. Mr Akbar applied to me for a worldwide freezing order and proprietary injunction on a without notice basis on 11 August 2022. The application was supported by Mr Akbar's first affidavit dated 5 August 2022.

12. I would specifically note for present purposes, the following matters dealt with by Mr Akbar in his affidavit:

i) In paragraph 11, Mr Akbar sets out that, in short, his complaint is that: *"the Defendants dishonestly misled me in relation to a number of investments and have dishonestly appropriated money that belongs to me and which I entrusted to them for very specific purposes."*

ii) In paragraphs 26 and 27, Mr Akbar refers to Thackery Court, and to having received on 21 June 2022 Office Copy Entries that revealed that Defendants had sold the latter on 23 March 2022. He goes on to say that it is of grave concern to him that the Defendants did not advise him of the sale and have not accounted to him for any part of the proceeds thereof. He says that the discovery of this *"dishonest behaviour"* on the part of the Defendants was very much *"the straw that broke the camel's back"* that had led him to make the application for a freezing order rather than, *"as I had sought to do before, to try and resolve matters amicably with the Defendants (as to which see further below)".*

iii) In paragraph 41 et seq, Mr Akbar deals in some detail with the £1,833,000 paid to Mr Ghaffar for investment with RPC, referring to £1 million being paid to Mr Ghaffar on 1 September 2020, and £833,000 being paid to Mr Ghaffar on or

about 6 October 2020. In paragraph 51 he refers to chasing Mr Ghaffar extensively for updates without any success, and in paragraph 54 to Mr Ghaffar consistently making up excuses as to why Mr Akbar had received no returns. In paragraphs 60-62, Mr Akbar refers to continuing to chase throughout 2020, but to Mr Ghaffar continuously avoiding his questions and assuring him that his money would be returned, and to Mr Ghaffar saying, in or around November 2021, that RPC was saying to him that they were trying to get the money back for Mr Akbar, and Mr Ghaffar assuring him that his money should be *"sitting in a Swiss bank account"*, and that RPC was looking at other projects to try and get his money back.

iv) In paragraphs 63-65, Mr Akbar said this:

> *"63. The First Defendant has alleged for many months that he has attempted without success to contact various directors of RPC to enquire as to the status of the investment sum and then to require payment of the same.*
>
> *64. I have requested copies of the agreements, paperwork and correspondence in relation to this investment yet the First Defendant has been unable to provide this requested documentation.*
>
> *65. Given the inability of the First Defendant to return my money or to offer any credible explanation as to what became of it, I caused my solicitors to write to RPC and its directors on 8 February 2022 seeking the return of the sum of £1.833 million … . In response to that letter, RPC wrote to my solicitors … and said, inter alia, the following:*
>
> *i) That it had had no knowledge of and had had no dealings with me.*
>
> *ii) That it had received £1 million from the First Defendant and had paid that sum away on instructions from the First Defendant including a payment back to him of £38,450 under reference Dominic Builders.*
>
> *iii) That it had not received and had no knowledge of any further payment of £833,000.*
>
> *iv) That the Purported Joint Venture Agreement* [a document that Mr Akbar had earlier referred to in his affidavit as having been provided to him by Mr Ghaffar] *was a forgery and that it had not executed that agreement."*

I was taken to the letters dated 8 February 2022 and 14 February 2022 during the course of submissions on 11 August 2022.

v) In paragraph 66, Mr Akbar goes on to say that it appeared *"tolerably clear"* to him on the basis of the information that he had seen to date that Mr Ghaffar had defrauded him of the £1.833 million, setting out in sub-paragraphs 66(i) to (vii) various matters relied upon in support of that assertion, including the information provided by RPC's letter dated 14 February 2022, and documentation provided with that letter.

vi) In paragraph 68, Mr Akbar recognises that it is: *" ... perfectly possible that RPC are themselves fraudsters and have either themselves or in cahoots with the First Defendant defrauded me."* However, he goes on to say that: *"... based on the material I have seen to date, it does appear clear to me that I am the victim of a substantial fraud at the hands of the First Defendant, both in relation to the initial £1 million and in relation to the further £833,000. That fraud, particularly against a background of my family relationship with the First Defendant and the trust that I placed in him and which he knew I placed in him, is particularly egregious."*

vii) In paragraphs 101 to 114, Mr Akbar sets out what he describes as further examples of *"chasing"* Mr Ghaffar, including references to the following:

a) Mr Akbar, in June 2021, "… *becoming* increasingly *frustrated*", and Mr Akbar saying, at that time: "*I've had enough*" (paragraph 102);

b) "*I was suspicious and therefore on 5 July 2021 I attended the First and Second Defendant's home*" (paragraph 106);

c) Mr Akbar referred to having contacted Charles Proctor ("**Mr Proctor**") of Fladgate LLP, Solicitors, in July 2021 with regard to an email purportedly from Mr Proctor that Mr Ghaffar had provided to Mr Akbar, and to Mr Proctor having: "… *confirmed that he was totally unaware of the above matter, and he assumed the email was a 'scissors and paste' job on one of his emails and fraudulently used to deceive me*" (paragraph 108);

d) The fact that for two weeks in July 2021, Mr Ghaffar had "*evaded my calls*" (paragraph 111).

viii) At paragraph 124 et seq of his affidavit, Mr Akbar dealt with the timing of the application for a freezing order, and referred back to paragraph 27 of his affidavit and to the discovery therein referred to made in June 2022 that the Defendants had sold Thackery Court without telling him and then failed to account to him in respect of the proceeds of sale as being very much: *"the straw that broke the camel's back."* In paragraph 125, he says this: *"Prior to that, I was reluctant to bring proceedings against my cousin and his wife in the mistaken belief that they were honest, were acting in my best interests and would repay me and realise the investments that I had made with them. That may sound like gross naïveté or even gross stupidity on my part, but I would ask the Court to keep in mind that I was dealing with close family members whom I have a deep trust of and who I could not believe would act otherwise than in my best interests. To that I would add that my cousin, the First Defendant and his wife, like me, are practising and devout members of Islam. Family relations apart it was also inconceivable that my cousin and his wife would act contrary to the very foundation of our faith and to the teachings of the Prophet."*

ix) In paragraph 126, Mr Akbar went on to say: *"At every stage I have given the Defendants the benefit of the doubt and have been consistently reassured by the First Defendant that he and the Second Defendant were, like me, innocent and, like me, the victims of circumstance. I believed them and consistent with that*

> *belief I have sought to engage with them down to as recently as 9th of June 2022 to find an amicable solution. It was only when that amicable solution could not be found and when I discovered the sale Thackery Court that I reached the conclusion that I had no option but to bring these proceedings and to seek injunctive relief against the Defendants to preserve my assets and/or their assets as best as could be done in the circumstances."*

13. Pannone's note of the hearing on 11 August 2022 refers to me being taken in considerable detail through Mr Akbar's affidavit as one might have expected. The note does record me, at one point, suggesting that more might have been done when the reply dated 14 February 2022 was received from RPC, but it was emphasised by Counsel then appearing for Mr Akbar that it was the discovery of the sale of Thackery Court that triggered the injunction process, the point being repeated that, rightly or wrongly, Mr Akbar had up until then placed his trust in Mr Ghaffar.

14. The note records that when the submissions turned to the RPC investments, Counsel, by reference to the paper trail in respect thereof, described this as *"the smoking gun"* in the application. I was taken in some detail through the documents making up this paper trail.

15. The note refers to Counsel taking me to the evidence of the attempts made to chase Mr Ghaffar, and then to me being taken to paragraph 65 of Mr Akbar's affidavit, with it being said that it *"got to the point where the Claimant instructed solicitors to write to RPC"*, reference then being made to Pannone's letter dated 8 February 2022, and to RPC's reply dated 14 February 2022. Having referred to the contents of the reply dated 14 February 2022, Counsel submitted that it could be concluded from this that the joint venture agreement that Mr Ghaffar had led Mr Akbar to believe had been entered into in his name, was a forgery.

16. Pannone's note includes an unapproved note of my extempore judgment given in deciding that it was appropriate to grant the worldwide freezing order and proprietary injunction sought by Mr Akbar. It is to be noted that, in respect of the investments concerning RPC, I place considerable weight upon the evidence in relation to Charles Proctor's email and what had been said by RPC in their letter dated 14 February 2022, including in relation to the joint venture agreement.

17. It is clear from Pannone's note, and indeed my own recollection, that I did have concerns with regard to there being delay in the bringing of the application. I dealt with this as follows in my judgment (correcting some of the grammar from Pannone's note thereof):

> *"Weighing delay in the balance, it is a factor I take into account. These are circumstances where on the Claimant's case he placed a great deal of trust in the First Defendant in respect of the relevant dealings. Certainly, in the past, there were matters that might have given rise to suspicion that I can understand in the circumstances the Claimant being fobbed off until this year when having made enquiries of RPC he received their response, and then matters were really brought to a head in June of this year when he discovered the property had been sold without an attempt to account for monies. Clearly there was a delay between February and June. Even weighing that in the balance it does not detract from the solid evidence as to risk of dissipation that otherwise exists."*

18. There are a number of matters concerning the sending of Pannone's letter dated 8 February 2022, and the receipt of RBC's response dated 14 February 2022 that have been raised in the context of the Discharge Application that were not covered in the evidence in support of the application that I heard on 11 August 2022, or in the course of submissions that day, in particular:

    i) A meeting took place on 17 January 2022 at Pannone's offices, attended by Mr Akbar, Mr Ghaffar, Mr Jonson and Elizabeth O'Leary ("**Ms O'Leary**"), a paralegal with Pannone.

    ii) In paragraph 17 of his witness statement, Mr Jonson says that in January 2022, some 17 months after Mr Akbar had given the £1.833 million to Mr Ghaffar, Mr Akbar asked him to attend a meeting with both of himself and Mr Ghaffar in order to discuss the position. In paragraph 20, Mr Jonson goes on to say that Mr Ghaffar spent the majority of the meeting discussing RPC and his dealings with them and, in particular, that he explained that he had not been able to obtain an update from RPC as to the funds invested on Mr Akbar's behalf despite numerous messages to RPC. Mr Jonson says that Mr Ghaffar said that he had instructed his own solicitors, Allison Law to write to RPC, but that no response had been forthcoming. In paragraph 21, Mr Jonson said that both Mr Akbar and Mr Ghaffar appeared to him to be very concerned at RPC's lack of contact with Mr Ghaffar and the general lack of cooperation as to the sums invested, and that it became clear to him during the course of the meeting that both Mr Akbar and Mr Ghaffar wanted Pannone to send a letter to RPC to try and establish what had happened to the sum of £1,833,000. Mr Jonson says that he was concerned that RPC might not be a legitimate investment vehicle and that both Mr Akbar and Mr Ghaffar might have been the victims of a fraudulent investment scheme.

    iii) In paragraph 22 of his witness statement, Mr Jonson went on to say that, at this meeting, there was discussion as to the fact that RPC had had no direct dealings with Mr Akbar and that they might consider that Mr Ghaffar was their client, and concern that if Pannone wrote to RPC on behalf of Mr Akbar alone, there was a possibility that RPC would fail to engage. Mr Jonson goes on to say: *"We therefore discussed the possible practical benefit of a letter to RPC referring to the involvement of the First Defendant as well. This informed my decision to draft a letter to RPC which stated that the First Defendant was one of our clients. The Claimant and the First Defendant agreed to this."*

    iv) Ms O'Leary's note of the meeting begins at paragraph 1 thereof by recording the following, explaining the background to the meeting:

        > *"SA explained that SG was in attendance to give some background on the matter. PJ said that this was an open meeting and was not on a without prejudice basis and encouraged SA and SG to ask him anything. SA agreed that this was an open-ended conversation and he said they needed to sort this out. PJ asked if anything had changed since his last meeting with SA (this last meeting had taken place in November 2021). SA explained that he and SG had been actively attempting to work this matter out. PJ said that he seems a bit better for it. SA said that SG was fully on board in trying to get this matter resolved. SA added that this matter was a family matter as well as a financial."*

v) On behalf of the Defendants, reliance is placed upon the fact that the note of the meeting on 17 January 2022 records that Mr Jonson deliberated on the question as to who Pannone should act for. Thus, at paragraph 82 of the note, it is recorded that*: "PJ explained that he wanted to know who we should say we are acting for. If we write to them and say we are acting for SA then RPC could turn around and say that they do not deal with SA. PJ said he would need to think about this point."* At Paragraph 94 it is recorded that Mr Jonson: … *"Said he needed to think about who we represented. PJ said that we also needed to send a strong letter which would set out the background. This letter would need to set out and explain SA and SG's involvement. SG asked if we could block SA. SG said that this letter needs to come from his perspective. SA suggested it come from both. PJ agreed… ."*

vi) Following this meeting, Mr Jonson drafted the letter that Pannone sent to RPC on 8 February 2022. In doing so, he liaised with both Mr Akbar and Mr Ghaffar in respect thereof, and obtained the agreement of both of them as to its content before it was sent as referred to in paragraphs 23 and 24 of his witness statement.

vii) Although I was taken to the letter dated 8 February 2022 at the hearing on 11 August 2022, I did not notice, and nor was it drawn to my attention that, in the letter, Pannone referred to both Mr Akbar and Mr Ghaffar as their clients, and referred to acting on behalf of both of them in sending the letter, which sought a number of answers in respect of the £1.833 million that Mr Akbar believed had been invested with RPC. A response was sought by 15 February 2022. The letter concluded by saying: *"You should not contact our clients regarding this matter. All responses to the issue set out in this letter should be writing to this firm."*

viii) As above, the letter dated 8 February 2022 led to RPC's response dated 14 February 2022 to which the significance referred to above has been attached by Mr Akbar in pursuing his claim.

ix) In paragraph 24 of his witness statement, Mr Jonson refers to the letter dated 14 February 2022 as: *"a very unwelcome surprise for the Claimant as it stated that until receiving our letter, they had not heard mention of the Claimant and they did not believe that they had dealt with him. The letter went on to explain that documents previously provided by the First Defendant which apparently evidenced his dealings RPC did not appear to be genuine. I did not send a copy of RPC's letter to the First Defendant."*

The Discharge Application

19. The basis for the Discharge Application is set out in Mr George's witness statement.

20. In essence, what is said on behalf of the Defendants in Mr George's witness statement is as follows:

i) As to Pannone's letter dated 8 February 2022, is said that it expressly identified Mr Ghaffar as one of Pannone's clients, stated that Pannone acted for both Mr Ghaffar and Mr Akbar in relation to the RPC investment, and instructed RPC not to contact either of Pannone's clients (i.e., including Mr Ghaffar), but to

send all correspondence to Pannone. On this basis, Mr George contends that the letter placed Pannone in an *"obvious and irremediable"* position of conflict, in particular in acting for Mr Akbar for the purposes of the present proceedings.

ii) In response to a letter from AG dated 6 September 2022, Pannone responded by letter dated 7 September 2022, denying that there was any conflict, and (a) stating that Mr Ghaffar had never been its client; and (b) seeking to explain the terms of the letter dated 8 February 2022 on the basis that it was necessary to claim that it represented Mr Ghaffar because, if the latter only referred to Mr Akbar, then it was likely that RPC would have ignored the letter. Mr George contends, at paragraph 3.4, that this was a *"remarkable"* position for Pannone to take on the basis that it amounted to an assertion that Pannone knew and believe that Mr Ghaffar was not its client, also believed that it was essential that RPC believe that he was its client, and persuaded Mr Ghaffar to *"lend his name"* to the letter in order to fraudulently misrepresent the position to RPC, and thereby maximise the chances of RPC responding substantively, and providing Pannone with material which could then be used to formulate claims against Mr Ghaffar himself.

iii) At paragraph 3.5, Mr George contends that what appeared to be an *"admitted fraud"* on Pannone's part achieved the desired result of obtaining the RPC letter which was then placed at the heart of Mr Akbar's case.

iv) In paragraph 4 of his witness statement, Mr George refers to the final sentence of Pannone's letter dated 8 February 2022 requiring RPC not communicate with its clients, maintaining that the significance of this paragraph *"cannot be overstated"* given that it prevented, so it is suggested, Mr Ghaffar from investigating the RPC investment, and resulted in Pannone interposing itself between the parties to a dispute in circumstances where they did not act for either of them and were in fact advising in respect of claims against both of them.

v) Paragraph 5 of the witness statement is headed: *"Breach of full and frank disclosure"*. It is alleged in sub-paragraph 5.1 that neither Mr Akbar nor Pannone ever explained to the Court that:

> *"a) Key evidence in support of the Application had been procured by a fraud in which Pannone itself knowingly participated; and*
>
> *b) Pannone interposed itself between Mr Ghaffar and RPC, preventing him from making any progress in resolving these claims and providing further explanation to the Claimant (a matter relied upon by the Claimant in support of the Application)."*

vi) On this basis, in sub-paragraph 5.2 of his witness statement, Mr George contends that it is *"self-evident"* that these were material facts which required to be drawn to the Court's attention and that, given what he says is the apparent deliberate nature of Pannone's wrongdoing, it is hard to see how the failure to give full and frank disclosure could have been anything other than part of a *"deliberate strategy"*.

vii) Paragraph 6 of Mr George's witness statement goes on to submit that given the misconduct said to be identified above, and what is said to be the abusiveness of making an application for a freezing order by reference to information obtained through fraudulent conduct on the part of an officer of Court, it is the Defendants' position that the only appropriate course is to discharge the Order in its entirety, and order Mr Akbar to pay the costs of both the application for a freezing order and proprietary injunction, and the Discharge Application.

21. It is, I consider, relevant to note the following in respect of the Discharge Application, and how has come before the Court:

i) AG came on the record as acting for the Defendants on or about 6 September 2022. Apart the matters raised in AG's letter dated 6 September 2022 which ultimately formed the basis of the matters alleged in Mr George's witness statement dated 18 November 2022, no other allegations of failure to give full and frank disclosure were ventilated. For example it was not suggested that particular potential defences had not been properly identified in making the without notice application on 11 August 2022, and nor were any objections taken as to the scope of the worldwide freezing order or freezing order then made, save to the extent that certain variations were agreed when the Order was continued by consent, with agreed variations, on 12 August 2022, 12 September 2022, 14 October 2022, 4 November 2022 and subsequently in December 2020.

ii) The Order dated 4 November 2022, required the Discharge Application to be issued by 4 PM on 18 November 2022. The Discharge Application was made just in time, but it limited the allegations as to failure to give full and frank disclosure to the matters referred to in paragraph 5.1 of Mr George's witness statement.

iii) Directions were given for the service of evidence in response to the Discharge Application, and for the Defendants to serve evidence in reply if so advised. In response to the Discharge Application, Mr Akbar filed and served Mr Jonson's witness statement and his own witness statement, each dated 9 December 2022. I must, I consider, proceed on the basis that those witness statements were prepared in order to meet the case as to discharge as advanced in Mr George's witness statement.

iv) No witness statement of either of the Defendants was relied upon in support of the Discharge Application, only that of Mr George. No evidence was served in reply to Mr Jonson's and Mr Akbar's witness statements.

v) There was some considerable delay in the Discharge Application being listed for a hearing, with it ultimately being listed on 24 April 2023 to accommodate Counsel then instructed by the Defendants.

vi) In the event, as referred to above, AG came off the record as acting for the Defendants in February 2023, and Mr Hornyold-Strickland has more recently been instructed by the Defendants on a direct access basis: to draft a Defence, and to then represent the Defendants at the hearing on 24 April 2023. Mr Hornyold-Strickland has been instructed in place of Counsel previously instructed when the Defendants were represented by AG.

22. Before considering the principles to be applied, and the parties' respective cases in respect thereof, I consider it appropriate to outline the evidence, as it stands, as to what became of the £1 million and £833,000 paid by Mr Akbar to Mr Ghaffar for investment with RPC. The position, as I see it, as follows:

    i) So far as the £1 million is concerned:

        a) It is common ground that this was paid by Mr Ghaffar to RPC.

        b) In its letter dated 14 February 2022, RPC referred to *"redirecting"* £38,450 of this £1 million to Mr Ghaffar under the reference *"Dominic Builders"* but said nothing further about any application of the monies.

        c) It is Mr Akbar's understanding and case, as referred to in paragraph 68 of the Particulars of Claim that, on or about 21 September 2020, RPC paid away £940,822.28 of the £1 million to a person or persons unknown. This is based on the contents of a text message dated 29 September 2020 from Mr Littlejohns of RPC to Mr Ghaffar, a copy of which was provided by Mr Ghaffar to Pannone under cover of an email dated 19 January 2022. This text message is in the form of a statement, appearing to show the receipt of the £1m and then payment out of the sum of £940,822.28 described as *"Outgoing SEPA Payments"*, leaving a balance of some £59,000.

        d) The Defendants' Defence does not specifically plead to paragraph 68 of the Particulars of Claim and thereby answer the case advanced. Matters were put by Mr Hornyold-Strickland in the course of submissions of it being the Defendants' case that the monies remain with RPC.

    ii) So far as the £833,000 is concerned:

        a) Pannone's letter dated 8 February 2022 had referred to the £883,000 being sent to RPC's associate, Mr Hofer, at RPC's request. On Mr Akbar's case this was included based on what Mr Ghaffar had said, and Mr Ghaffar approved the letter including this reference.

        b) In its letter dated 14 February 2022, RPC said that it did not request a further payment of £883,000, and that it had no knowledge of the circumstances under which such payment was made.

        c) In paragraph 43.2 of the Defendants' Defence, the Defendants plead that the whole sum of £1,833,000 was paid to RPC. The statement of truth on the Defence was signed by both Defendants and dated 31 March 2023.

        d) However, at paragraphs of his first affidavit dated 1 September 2022, Mr Ghaffar said that he transferred an aggregate total of £833,000 (in various sums) to Fair FX to be converted to foreign currencies and then to be transferred onwards as directed by Mr Akbar to companies of which he had no material knowledge.

e) Then, at paragraphs 31-34 of his second affidavit dated 18 November 2022, Mr Ghaffar identified a number of transactions totalling £827,954.34 as being *"identifiable as being part of this sum"*, with a balance of £5045.66 referred to as having become became co-mingled with his own dealings. The list of transactions show the funds to have been dissipated to various sources including: (i) to what Mr Akbar contends is Mr Ghaffar's company, Pomona, (ii) to various third parties and (iii) via a Fair FX account, to an organisation called Atlantic Partners Asia based in Singapore ("**APA**"). However, Mr Ghaffar then also asserts that to the best of his recollection and belief, in accordance with Mr Akbar's instructions, he transferred the aggregate sum of £833,000*: "in various transfers via foreign exchange platforms to be converted into foreign currencies and then transferred onwards as directed by the Claimant to companies of which I had no material knowledge*". He then added: *"However, these transfers were co-mingled with my own dealings and I have not yet been able to identify the specific transfers which comprise this sum."*

The Principles to be applied

23. It is well settled that a party applying for a freezing order on a without notice basis has a duty to make full and frank disclosure. The relevant principles were summarised as follows by Ralph Gibson LJ in *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350 (at 1356-1357):

> *"In considering whether there has been relevant non-disclosure and what consequence the court should attach to any failure to comply with the duty to make full and frank disclosure, the principles relevant to the issues in these appeals appear to me to include the following.*
>
> *(1) The duty of the applicant is to make 'a full and fair disclosure of all the material facts:' see Rex v. Kensington Income Tax Commissioners, Ex parte Princess Edmond de Polignac [1917] 1 K.B. 48, 514, per Scrutton L.J.*
>
> *(2) The material facts are those which it is material for the judge to know in dealing with the application as made: materiality is to be decided by the court and not by the assessment of the applicant or his legal advisers: see Rex v. Kensington Income Tax Commissioners, per Lord Cozens-Hardy M.R., at p. 504, citing Dalglish v. Jarvie (1850) 2 Mac. & G. 231, 238, and Browne-Wilkinson J. in Thermax Ltd. v. Schott Industrial Glass Ltd. [1981] F.S.R. 289, 295.*
>
> *(3) The applicant must make proper inquiries before making the application: see Bank Mellat v. Nikpour [1985] F.S.R. 87. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries.*
>
> *(4) The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (a) the nature of the case which the applicant is making when he makes the application; and (b) the order for which application is made and the probable*

effect of the order on the defendant: see, for example, the examination by Scott J. of the possible effect of an Anton Piller order in Columbia Picture Industries Inc. v. Robinson [1987] Ch 38; and (c) the degree of legitimate urgency and the time available for the making of inquiries: see per Slade L.J. in Bank Mellat v. Nikpour [1985] F.S.R. 87, 92–93.

(5) If material non-disclosure is established the court will be 'astute to ensure that a plaintiff who obtains [an ex parte injunction] without full disclosure … is deprived of any advantage he may have derived by that breach of duty:' see per Donaldson L.J. in Bank Mellat v. Nikpour, at p. 91, citing Warrington L.J. in the Kensington Income Tax Commissioners' case [1917] 1 K.B. 486 , 509.

(6) Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to the issues which were to be decided by the judge on the application. The answer to the question whether the non-disclosure was innocent, in the sense that the fact was not known to the applicant or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the applicant to make all proper inquiries and to give careful consideration to the case being presented.

(7) Finally, it 'is not for every omission that the injunction will be automatically discharged. A locus poenitentiae may sometimes be afforded:' per Lord Denning M.R. in Bank Mellat v. Nikpour [1985] F.S.R. 87, 90. The court has a discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the ex parte order, nevertheless to continue the order, or to make a new order on terms.

'when the whole of the facts, including that of the original non-disclosure, are before [the court, it] may well grant … a second injunction if the original non-disclosure was innocent and if an injunction could properly be granted even had the facts been disclosed:' per Glidewell L.J. in Lloyds Bowmaker Ltd. v. Britannia Arrow Holdings Plc., ante, pp. 1343H–1344A."

24. In recently applying the above passage, the Court of Appeal in *Hunt v Ubhi* [2023] EWCA Civ 417, at [41], per Newey LJ, referred to the fact that:

i) In *Memory Corporation Plc v Sidhu (No. 2)* [2000] 1 WLR 1443, Mummery LJ had observed at 1459-1460 that *"[i]t cannot be emphasised too strongly that at an urgent without notice hearing for a freezing order … there is a high duty to make full, fair and accurate disclosure of material information to the court and to draw the court's attention to significant factual, legal and procedural aspects of the case"*.

ii) In *Fundo Soberano De Angola v Dos Santos* [2018] EWHC 2199 (Comm), Popplewell LJ had noted at [52] that, *"although the principle is often expressed in terms of a duty of disclosure, the ultimate touchstone is whether the presentation of the application is fair in all material respects"*.

25. In *Tugushev v Orlov (No. 2)* [2019] EWHC 2031 (Comm), Carr J (as she then was) summarised the relevant principles at [7] (by reference to the authorities referred to at [8]). This summary included the following:

> *"vii) A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits;*
>
> *viii) In general terms it is inappropriate to seek to set aside a freezing order for nondisclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself;*
>
> *ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;*
>
> *x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged;*
>
> *xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;*
>
> *xii) The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts;*
>
> *xiii) The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure".*

26. I would refer to the following matters raised in submissions:

i) Mr Connolly referred to *Behbehani v Salem* (supra) at 728F-G on the question of innocent non-disclosure, where Woolf LJ said that he was: *"not happy about the suggestion that it is appropriate to regard a disclosure as not innocent when the facts not disclosed were not known at the time to be material, albeit that it ought to have been known that they were material."* This provides authority for the proposition that a failure to provide full and frank disclosure is to be treated as innocent if the party in question did not intentionally omit information which they thought to be material.

ii) Further, Mr Connolly relies upon remarks made by Slade LJ in *Brinks Mat* at 1359, where he said: *"By their very nature, ex parte applications usually necessitate the giving and taking of instructions and the preparation of the requisite drafts in some haste. Particularly, in heavy commercial cases, the borderline between material facts and non- material facts may be a somewhat uncertain one. While in no way discounting the heavy duty of candour and care which falls on persons making ex parte applications, I do not think the application of the principle should be carried to extreme lengths."*

iii) Mr Hornyold-Strickland, on the other hand, refers to *Behbehani v. Salem* 1989] 1 WLR 723 [Note] at 729, where Woolf LJ said: *"[I]f the court does not approach the question of non-disclosure of a material matter in a way that has been indicated in early decisions, there will be little hope of solicitors who are subjected to such pressures appreciating the importance of making full disclosure and, more important, bringing home to the clients serious consequences of non-disclosure."*

iv) On the question of materiality, Mr Hornyold-Strickland relies upon a passage from Gee, Commercial Injunctions, 7th Edn at 9-003 for the proposition that the test is not whether the same result would have been achieved in any event. The duty is one of the utmost good faith (as in insurance contracts) and requires placing all matters relevant to the Court's assessment in front of it. This includes all matters which are important, and it is no defence for the Claimant or its solicitors to say that they did not think matters were important, the test being objective.

27. As to the principles to be applied, there is one difference between the parties as to whether the court has any discretion not to discharge a freezing order and/or to grant a fresh injunction where the breach of duty is non-innocent. It is Mr Hornyold-Strickland's submission, on behalf of the Defendant, that if there is a material non-disclosure, then when considering whether to exercise the discretion to keep in place a freezing order, notwithstanding non-disclosure, one needs go further than the analysis in *Brinks Mat*, and the Court only has a discretion in the matter where: (a) the non-disclosure was innocent; and (b) the Court would have continued order in any event. In support of this proposition, he relies upon the application by Mervyn Davies J in *Ali and Fahd Shobokshi v Moneim* [1989] 1 W.L.R. 710 at 719-720 of a passage from the judgment of Nourse LJ in *Behbehani v. Salem* 1989] 1 WLR 723 [Note], at 736B-E. In response, Mr Connolly, on behalf of Mr Akbar refers to the decision of Ferris J in *Lagenes v It's AT (UK) [1991] FSR 492, 502* for the proposition that there is no such hard and fast mechanical rule, Ferris J, there indicating that he considered that Mervyn Davies J's observations were informed by the facts of *Ali and Fahd Shobokshi v Moneim* (supra) itself. Mr Connolly also submits that this approach is consistent with

Carr J's summary of the relevant principles in *Tugushev v Orlov* (supra) at [7 x) – xiii)], whereas the approach of Mr Hornyold-Strickland is not.

28. I consider that, insofar as Mervyn Davies J was suggesting that there was a hard and fast mechanical rule to the effect that there is no discretion unless the non-disclosure was innocent and the Court would have continued the order in any event , this is inconsistent with the authorities, and that Mervyn Davies J should, as Ferris J suggested, be regarded as dealing with the facts of that particular case. I note that in the passage from *Behbehani v. Salem* (supra) that Mervyn Davies J sought to apply, Nourse LJ himself agreed that in order to get at the principles of discretion on which the court acts, one need now look no further than the decision of the Court of Appeal in *Brinks Mat*. Further, whilst referring to the remarks of Glidewell L.J. in *Lloyds Bowmaker Ltd. v. Britannia Arrow Holdings Plc.* [1988] 1 W.L.R. 1337, 1343H-1344A, Nourse LJ said that it would not be correct to treat Glidewell LJ's statement of the circumstances in which the Court may exercise its discretion as being exhaustive.

29. It is plain, not least, from what Carr J said in *Tugushev v Orlov* (supra) at [7 x], that in cases of deliberate non-disclosure or misrepresentation it will only be in exceptional circumstances that an order would not be discharged. However, to the extent that this might be relevant in the present case, a hard and fast mechanical rule of the kind suggested would, as I see it, insufficiently recognise that in considering whether a freezing order ought to be discharged, and whether, if it is, it ought to be re-granted, the Court is required to consider and bring into balance in exercising the relevant discretion a number of factors including those identified by Carr J in *Tugushev v Orlov* (supra) at [7 xii], namely: the importance of the facts not disclosed to the issues before the judge; the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance; whether or not and to what extent the failure was culpable; and the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets.

The Defendants' case for discharge

30. The Defendants' case, as put by Mr Hornyold-Strickland, is summarised in paragraph 2 of his Written Submissions dated 2 May 2023 as follows:

> *"2. In summary, the Defendants will say that:*
>
> *2.1 As regards the meeting of 17 January 2022:*
>
> *2.1.1. The Claimant failed to identify to the Court that its solicitors had represented that the First Defendant was also their client; that they had obtained documents which they subsequently used against the First Defendant to obtain a freezing order against him; and that they did so at a time when on an objective analysis the Claimant must have contemplated suing the First Defendant; and they then interposed themselves between the First Defendant and RPC;*
>
> *2.1.2. Pannone's/the Claimant's non-disclosure could not have been innocent; therefore the Court has no discretion and must discharge the freezing order and proprietary injunction. If the*

Court decides to reissue the freezing order and proprietary injunction it should be on different terms, to be determined either at a separate application by the Claimant, or at the CCMC; and the Claimant should bear its own costs relating to the freezing injunction and it should pay the First Defendant's costs of the discharge application.

2.2. As regards other breaches, the Claimant also failed to identify potential defences the First and Second Defendant might legitimately advance, including that: (a) the order could not possibly be against the Second Defendant for all the sums claimed since she was only party to the property transactions; (b) if the Claimant had any causes of actions, most of them were and remain against third-parties, not against the First Defendant (excluding the proprietary claims), since the First Defendant was acting as the Claimant's agent, and was (and remains) just as concerned about recovering the Claimant's monies as he was. To date, the Claimant has still not joined those parties to this action, though they should be."

31. It can be seen from this summary that the Defendants' case as now advanced in respect of the Discharge Application goes somewhat beyond the Defendants' case as set out in Mr George's witness statement, in particular in relation to the alleged breaches of the duty of full and frank disclosure identified in paragraph 5 thereof. Mr George did, at sub-paragraph 5.2, talk in terms of there having been a *"deliberate strategy"*, having at paragraph 3.4(b) talked in terms of Mr Ghaffar being persuaded to lend his name to the letter dated 8 February 2022 in order to maximise the chances of RPC responding substantively, and providing Pannone with material which could then be used to formulate claims against Mr Ghaffar himself. However, as I read his witness statement, the *"deliberate strategy"* that Mr George alleges appears to relate to the way that the application was presented rather than any strategy behind involving Mr Ghaffar in the sending of the letter dated 8 February 2022.

32. The case as now advanced is more specific in asserting that there was a failure to disclose to the Court that at a time when Mr Akbar contemplated suing Mr Ghaffar, Pannone either represented that Mr Ghaffar was their client (thereby misleading both RPC and Mr Ghaffar), and by doing so obtained documents to use against Mr Ghaffar, or did act for Mr Ghaffar and acted in gross breach of their professional duties by doing so. Further, Mr Hornyold-Strickland's Written Submissions dated 2 May 2023 allege for the first time that there were other breaches of the duty to give full and frank disclosure by failing to identify potential defences as referred to in paragraph 2.2 thereof.

33. Mr Hornyold-Strickland identifies what he describes as *"three key factual questions in issue"*, namely:

i) Whether, in or around January 2022, Pannone believed that Mr Ghaffar was its client and, if not, objectively construed, would a reasonable person in the shoes of Mr Ghaffar and RPC nevertheless assume that Mr Ghaffar was a client of Pannone, and what was the effect of that? Mr Hornyold-Strickland contends that a reasonable person in the shoes of Mr Ghaffar and RPC would assume that Mr Ghaffar was Pannone's client and that, either way, Pannone abused its position.

ii) When faced with the Discharge Application, did Mr Akbar and/or Pannone admit fault, or did they double down and insist that there had been no material nondisclosure? Mr Hornyold-Strickland contends that Mr Akbar doubled down and refused to admit fault, which reinforces his wrongdoing.

iii) At the time of the interview on 17 January 2022 and the creation of the letter dated 8 February 2022 shortly thereafter, is it credible that Mr Akbar did not contemplate suing Mr Ghaffar? Mr Hornyold-Strickland submits that the answer to this is *"No"*, although he says that this issue is not *"determinative"*.

34. Mr Hornyold-Strickland, referred, amongst other things, to the contents of paragraphs 101 to 114 of Mr Akbar's first affidavit referred to in paragraph 12(vii) above in support of his contention that, on objective analysis, it is untenable that Mr Akbar did not contemplate suing Mr Ghaffar in January 2022 when he had paid him £4 million for nothing in return.

35. Mr Hornyold-Strickland refers to Mr Jonson's deliberations at the meeting on 17 January 2022 referred to in paragraph 18(v) above regarding who Pannone should say they were acting for in support of an assertion that, Mr Jonson having set his mind to the question as to whether this firm represented Mr Ghaffar, either he thought that Pannone represented Mr Ghaffar, or he did not think that they did so, but chose to abuse his position and lied to RPC and Mr Ghaffar by his words and conduct, in order to obtain an advantage for Mr Akbar. He submits that the creation of the letter dated 8 February 2022 was a representation, express or implied, both to RPC and Mr Ghaffar, that Pannone represented Mr Ghaffar.

36. Mr Hornyold-Strickland reads paragraph 27 of Mr Jonson's witness statement as including a contention that, in January 2022, Mr Akbar did not contemplate suing the Defendants. He submits that this is objectively untenable on the evidence. Mr Hornyold-Strickland refers to Pannone's letter dated 7 September 2022 in response to AG's letter of 6 September 2022 having stated that: *"Your letter proceeds on a false premise as to your client ever having been a client of this firm"*. Mr Hornyold-Strickland submits that the letter dated 8 January 2022 stated precisely the opposite, and that it did so after Mr Jonson had actively considered whether Mr Ghaffar was represented by Pannone. He submits that whilst Mr Jonson nevertheless asserted in paragraph 30 of his witness statement that there was no *"deliberate wrongdoing or fraudulent behaviour on my part"*, that cannot, in the light of the above, be true.

37. As to the question as to whether there was non-innocent material non-disclosure, it is the Defendants' case that:

i) The RPC element of the claim against the Defendants was at the heart of the application for a freezing order and proprietary injunction, and central thereto was information obtained from RPC which had been acquired by Pannone's letter dated 8 February 2022 to RPC in which it was represented that Mr Ghaffar was their client. It is submitted that this was relevant and important information, because Mr Akbar did not come to court with *"clean hands"*.

ii) If that representation was untrue, which must be Mr Akbar's position because it is his case that Mr Ghaffar was never a client of Pannone, then Pannone had put itself squarely in breach of SRA Code of Conduct Rules 1.2 and 1.4, which

provide that solicitors should not take unfair advantage of clients or others, and should not mislead or attempt to mislead clients, the court or others.

iii) Assuming that Mr Ghaffar was not Pannone's client, it is submitted that Pannone nevertheless: (a) intimated by words or conduct that Mr Ghaffar was their client, by saying that they would think about who they represented and subsequently saying in the letter dated 8 February 2022 that Mr Ghaffar was their client, (b) did so in order to persuade Mr Ghaffar to lend his name to a letter to RPC to make it more likely that RPC would provide information which it could subsequently use against Mr Ghaffar, and (c) in doing so misled Mr Ghaffar.

iv) It is alleged that Mr Jonson failed to raise any of these alleged abuses of position in the application for the freezing order and proprietary injunction on 11 August 2022. Further, it is submitted that having put his mind to the question of who Pannone represented, Mr Jonson cannot claim ignorance of the question, and it is asserted that the position is exacerbated by Mr Jonson's refusal to accept any responsibility for wrongdoing, whether in Mr Jonson's witness statement or in the resistance to the Discharge Application.

v) Mr Hornyold-Strickland submits that it is no answer that the information might have been obtained by legitimate means, such as a *Norwich Pharmacal* Order. This is because an argument that one might obtain by legitimate means that which was obtained illegitimately is not a defence to an abuse of process, or conduct falling foul of the SRA Code of Conduct. Further, Mr Hornyold-Strickland says that it is non-responsive to the materiality test.

vi) Mr Hornyold-Strickland submits that it is clear on the authorities that the fact that the Order might have been granted anyway is no answer where there has been a breach of the duty to give full and frank disclosure, and specially a deliberate breach.

vii) Mr Hornyold-Strickland submits that either Mr Ghaffar was Pannone's client, in which case there was a serious conflict of interest in Pannone acting on the obtaining of the freezing injunction and proprietary injunction or, alternatively, Pannone did not believe that Mr Ghaffar was its client, but nevertheless acted towards him and RPC as if it was, and thereby obtained documents relied upon in support of the application for the freezing order and proprietary injunction by inducing Mr Ghaffar to believe he was its client, thereby putting itself in breach of SRA Code of Conduct Rules 1.2 and 1.4.

viii) Mr Hornyold-Strickland further submits that Pannone, in directing RPC by the language used at the end of their letter dated 8 February 2022 only to communicate with them, abused their position to gain access to information belonging to Mr Ghaffar, without him being able to gain access to that information.

ix) Mr Hornyold-Strickland submits that the fact that Pannone deemed it necessary to report themselves to the SRA is itself probative evidence that the matter is material.

x) Further, Mr Hornyold-Strickland submits that Mr Akbar ought properly to have, but failed to disclose to the Court potential defences that the Defendants had to the causes of action asserted against them as set out in paragraph 23 of his Written Submissions dated 2 May 2023, including that:

a) Mr Akbar has wrongly treated the Defendants as if they were one legal entity and as having collective responsibility for Mr Ghaffar's actions;

b) Mr Akbar has failed to identify that he was not the sole beneficial owner of Thackery Court or Flat 21, Bramerton;

c) There is a defence as to the width of the proprietary claim made against the Defendants; and

d) Specifically in relation to the RPC claim, Ghaffar had voluntarily provided evidence on 17 January 2022 that whilst he initially held Mr Akbar's monies on a Quistclose trust, he had complied with Mr Akbar's instructions, thereby extinguishing any proprietary claim, and that any action lay against RPC, thereby at least reducing the claim as against Mr Ghaffar.

38. Mr Hornyold-Strickland concludes by submitting that Mr Akbar and his solicitors are guilty of serious material non-innocent non-disclosure in their application for the freezing order and proprietary injunction on 11 August 2022. Mr Akbar did not attend at hearing with *"clean hands"* and so the order should not have been granted and the Court has been misled. If the relevant disclosure had been made regarding the letter dated 8 February 2022 and potential defences, then the Court should have been invited either not have made the Order, or at the very least to have made the Order on very different terms.

39. Mr Hornyold-Strickland further submits that if, contrary to the above, the Court is of the view that it would have continued the freezing order and proprietary injunction notwithstanding the non-disclosure, this is immaterial as the non-disclosure was not innocent. There is no discretion, and the Order must be discharged. If Mr Akbar wishes to apply to reinstate the Order, then an application should be made for an order in narrower terms.

Mr Akbar's response to the Discharge Application

40. On behalf of Mr Akbar, Mr Connolly, in his Written Submissions in response to those of Mr Hornyold-Strickland that repeat submissions made at the hearing on 24 April 2023, submits that it is important that the Court keeps in mind the scope and content of the application that the Defendants have actually made, and the narrow focus reflected in paragraphs 5.1 to 6 of Mr George's witness statement.

41. Thus, at paragraph 5 of his written submissions, Mr Connolly submits that:

> *"5. It is no part of the Defendants' application that, for example: (1) the First Defendant was a client of Pannone Corporate; (2) the First Defendant believed he was a client of Pannone Corporate; (3) the First Defendant was misled by Pannone Corporate or the Claimant into believing he was a client*

> *of Pannone Corporate; (4) Pannone Corporate abused their position at the meeting on 17 January 2022; (5) the Claimant and/or Pannone Corporate were contemplating suing the First Defendant at the date of the meeting on 17 January 2022; (6) the Claimant failed sufficiently to identify potential defences open to the Defendants (7) an Order in similar terms to that made against the First Defendant should not have been made against the Second Defendant; or (8) the form and/or substance of the Order made was materially incorrect."*

42. It is thus maintained on behalf of Mr Akbar that it is impermissible for the Defendants to introduce new matters such as the above into the Discharge Application at the late stage that they have sought to be introduced. Mr Connolly submits that it was incumbent upon the Defendants to identify clearly the alleged failures relied upon in November 2022 when the Discharge Application was made rather than, as they now seek to do, to adopt a wide-angled and scattergun approach contrary to authority – see *Tugushev v Orlov* (supra) at [7(vii)] per Carr J.

43. Mr Akbar's position is that, as at 17 January 2022, although he had been frustrated by Mr Ghaffar lack of response, and even had some suspicions regarding Mr Ghaffar, Mr Ghaffar had, as referred to in paragraph 12(iii) above, told him that RPC had said to him that it was trying to get money back for Mr Akbar, and looking at other projects to try and get his money back, and Mr Akbar continued to trust Mr Ghaffar as his cousin as referred to in paragraphs 12(viii) and (ix) above, including in relation to dealings with RPC. It Mr Akbar's evidence that this is the context in which the meeting with Mr Jonson on 17 January 2022 took place, with Mr Akbar asking Mr Jonson to attend the meeting together with himself and Mr Ghaffar to consider what action might be taken so far as RPC was concerned, and it being decided at the meeting that a letter should be sent to RPC raising appropriate questions.

44. Thus, at paragraph 27 of his witness statement, Mr Jonson says that there was no intent to procure evidence implicating Mr Ghaffar. Mr Jonson further says that it appeared to him that both Mr Akbar and Mr Ghaffar may have been victims of a fraud perpetrated at the hands of RPC. In paragraph 18 of his witness statement, Mr Akbar says that the position, as of January 2022, was that he was dealing with close family members, who he trusted deeply and who he could not believe would act otherwise than in his best interests. In this respect, Mr Akbar points to the fact that, in January 2022 and roughly contemporaneously with the meeting on 17 January 2022, he entrusted Mr Ghaffar with three gold bars for sale, which were then sold on 20 January 2022 with, according to Mr Akbar, it being agreed between himself and Mr Ghaffar at that time that a balance of £100,000 of the sale proceeds should be invested by Mr Ghaffar on Mr Akbar's behalf in a soft drinks business. The point is made on behalf of Mr Akbar that these are hardly the actions of somebody who, together with his solicitors, was contemplating suing Mr Ghaffar, or who had hatched up any plan to fraudulently misrepresent to RPC (and/or Mr Ghaffar) that Mr Ghaffar was a client of Pannone in order to obtain information and documents from RPC for the purpose of furthering a claim against Mr Ghaffar as maintained by Mr George in paragraph 3.5 of his witness statement.

45. It is thus Mr Akbar's case that the letter dated 8 February 2022 was sent with Mr Ghaffar's assistance in its preparation, and in circumstances in which Mr Ghaffar was prepared to lend his name to the letter because he was the party who had actually dealt

with RPC, and it had been discussed that this would improve the prospects of obtaining answers from RPC in order that Mr Akbar could seek to recover his money.

46. Mr Jonson's evidence is that Mr Ghaffar never was a client of Pannone, and in paragraph 29 of his witness statement he *"candidly"* acknowledges that the letter dated 8 February 2022 to RPC: *"could more accurately have said that the Claimant was our client and that the First Defendant had engaged with RPC on his behalf."* However, on behalf of Mr Akbar, it is submitted that there was no intention on Mr Jonson's behalf to mislead RPC, whether fraudulently or otherwise, but merely to get across that Mr Akbar was seeking information with the authority of Mr Ghaffar given that Mr Ghaffar had dealt with RPC in the past, which was indeed the case.

47. Thus, as Mr Jonson puts it in paragraph 30 of his witness statement:

> *"… in writing to writing to RPC there was no deliberate wrongdoing or fraudulent behaviour on my part, and it simply did not occur to me that there was any need to say anything more to the court about the correspondence with RPC when the Claimant applied for the Freezing Order."*

48. In paragraphs 32 and 33 of his witness statement, Mr Jonson deals with the suggestion, made by Mr George in paragraph 4.1 of his witness statement, that by asking RPC not to contact Mr Akbar or Mr Ghaffar about the matter, but instead to address all responses to the matters set out in the letter dated 8 February 2022 to Pannone, Pannone *"interposed"* themselves between RPC and Mr Ghaffar so as to prevent Mr Ghaffar from investigating matters with RPC, and so as to derive a benefit in the litigation. Mr Jonson does not accept that this was the position, and he explains that the purpose of asking RPC to correspond with Pannone was to try and elicit a response from RPC given that they were ignoring Mr Ghaffar and his solicitors. Mr Jonson goes on, in paragraph 34, to explain that when RPC did reply, it became apparent to Mr Akbar that he had *potentially* been defrauded by Mr Ghaffar, and it is elsewhere explained that there were then without prejudice conversations between Pannone and RPC, which did not, in view of RPC's response, include Mr Ghaffar.

49. In paragraph 35 of his witness statement, Mr Jonson accepts that he could have been *"more careful in how I worded the letter to RPC"*. However, he goes on to suggest that even if the letter had more accurately stated the involvement of Mr Ghaffar, the position would not be materially different, and that if the letter had been ignored, then he believes that he would have been instructed to seek pre-action disclosure or a *Norwich Pharmacal/Bankers' Trust* Order, so that, ultimately, Mr Akbar would have been the recipient of the relevant information and documentation in any event.

50. So far as Mr Jonson himself is concerned, he points out that he has practised as a specialist commercial litigation solicitor since 1994 and has an unblemished professional record.

51. As to the question of the materiality of the meeting on 17 January 2022, and the circumstances in which the letter dated 8 February 2022 came to be sent to RPC, it is emphasised on behalf of Mr Akbar that, as referred to in paragraphs 125 and 126 of his affidavit deployed at the hearing on 11 August 2022, notwithstanding the contents of RPC's reply dated 14 February 2022, he continued to trust Mr Ghaffar, and continued to be reassured by Mr Ghaffar that he and his wife were as much the victims of

circumstances as himself, hence continuing to engage with Mr Ghaffar until as late as 9 June 2022. However, the discovery of the sale of Thackery Court shortly thereafter, and the failure of the Defendants to inform him of the sale or to account for Mr Akbar's share of the proceeds of sale was the determining factor that belatedly demonstrated to him that Mr Ghaffar was the fraudster.

52. As to the question as to whether Mr Ghaffar was ever a client of Pannone, or ever thought that he was involved otherwise than for the purpose of lending his name to the letter dated 8 February 2022, it is, primarily, Mr Akbar's case that it is not open to the Defendants to maintain that Mr Ghaffar was a client of Pannone, or that Mr Ghaffar thought that he was, as the Discharge Application is framed on the basis that Mr Jonson fraudulently misrepresented to RPC that Mr Ghaffar was a client, in consequence of which the letter dated 14 February 2022 was procured by fraud.

53. However, to the extent that it is open to advance such a case, it is Mr Akbar's case, supported by the evidence of Mr Jonson, that Mr Ghaffar was not a client of Pannone, and did not consider himself involved as a client otherwise than for the purposes of lending his name to the letter dated 8 February 2022. Mr Akbar relies upon the fact that although it is asserted on behalf of the Defendants that Mr Ghaffar thought that he was a client of Pannone, he has not made a witness statement in connection with the Discharge Application explaining his state of mind, or the basis upon which he might have thought that he was a client of Pannone, or been involved otherwise than for the purposes of lending his name to the letter dated 8 February 2022, and that there is no evidence that he thought that he did.

54. On behalf of Mr Akbar, it is submitted that, in the above circumstances, there simply has not been the wrongdoing on the part of either Mr Jonson or Mr Akbar that is alleged by the Defendants, and that particularly in the context of the evidence that Mr Akbar continued to trust Mr Ghaffar up until June 2022, it was not necessary or material for Mr Akbar to have said any more in making the without notice application on 11 August 2022 about the circumstances behind the sending of the letter dated 8 February 2022 (including the meeting on 17 January 2022), the terms of that letter or otherwise.

55. In short, Mr Akbar maintains that there be no breach of the duty of full and frank disclosure. Alternatively, if there has been any breach, it is not a significant or serious breach, and it occurred innocently in that, as Mr Jonson put it in paragraph 30 of his witness statement, it simply did not occur to him that there was any need to say anything more to the court about the correspondence with RPC.

56. So far as the new points sought to be raised are concerned, it is submitted on behalf of Mr Akbar that the Court ought to decline to deal with them on the basis that they were not foreshadowed in any previous correspondence, or in Mr George's witness statement in support of the Discharge Application, and were only first raised in Mr Hornyold-Strickland's written submissions following hearing on 24 April 2023. In any event, it is submitted that there is no merit in the additional points raised for the reasons set out in Mr Connolly's written submissions.

57. For the above reasons, it is Mr Akbar's contention that the Discharge Application ought to be dismissed.

Determination of the Discharge Application

58. The Discharge Application, as robustly presented by Mr Hornyold-Strickland, does not pull any punches. Mr Jonson is accused of, amongst other things, lying to Mr Ghaffar and RPC with regard to Mr Ghaffar being Pannone's client, abusing his position in relation to Mr Ghaffar at a time when proceedings were contemplated against Mr Ghaffar in order to gain information to support such proceedings, making fraudulent misrepresentations to RPC (if not also Mr Ghaffar), contriving a situation whereby information emanating from RPC was withheld from Mr Ghaffar, and then pursuing a *"deliberate strategy"* to mislead the Court in the making of the application for the freezing order and proprietary injunction on 11 August 2022.

59. Mr Jonson is Senior Partner of his firm, and an experienced Solicitor of nearly 30 years standing with an unblemished disciplinary record. The allegations against him involve serious allegations of dishonesty. The Court must, I consider, proceed on the basis that if serious allegations of fraud or dishonesty are made against a person of previously good character, as in the present case, then, wherever the burden of proof may lie, more cogent evidence will be required to overcome the inherent unlikelihood of what is alleged. This is on the basis that the more serious the allegations, the less likely it is that the events alleged occurred and hence the stronger should be the evidence before the Court concludes that the allegation is made out – see Phipson on evidence, 20th edition, 6-57, and *H (Minors)* [1996] AC 563 at 586D-F, per Lord Nicholls.

60. Further, I consider that there is force in Mr Connolly's point that a focused case, based upon the contents of Mr George's witness made in support of the Discharge Application, has become a much wider one given the way that Mr Hornyold-Strickland has advanced the Defendants' case in his Written Submissions, and in particular by the Defendants alleging for the first time therein that there was a failure on Mr Akbar's behalf to draw the Court's attention to a number of identified defences.

61. In addition, having regard to what was said by Carr J in *Tugushev v Orlav (No 2)* (supra) at [7](viii)], I consider it to be inappropriate in determining the Discharge Application to begin to embark upon seeking to resolve questions of fact that relate to the underlying dispute between the parties, including, for example, the nature of the relationship between Mr Akbar and Mr Ghaffar that lies at the heart of the case, at least unless there is some clear weakness in any factual allegations that make the same unsustainable.

62. I see no good reason for not accepting Mr Jonson's evidence that Mr Akbar asked him to attend a meeting with Mr Ghaffar on 17 January 2022 in order to discuss the position with RPC. This ties in with paragraph 1 of the file note of the meeting prepared by Ms O'Leary of Pannone, and Mr Akbar's evidence as to what Mr Ghaffar had been telling him about the monies invested with RPC in the lead up to that meeting.

63. Further, I see no good reason for not accepting Mr Jonson's evidence in paragraph 27 of his witness statement to the effect that there was no intent to procure evidence implicating Mr Ghaffar, and that his perception was that both Mr Akbar and Mr Ghaffar had been victims of a fraud perpetrated by RPC. Not only is this consistent with Mr Akbar's evidence that the position as at January 2022 was that he was dealing with close family members who he trusted deeply and who he did not believe would act otherwise than in his best interests, but with the fact that such Mr Akbar's evidence is supported by the fact that, in January 2022, Mr Akbar entrusted Mr Ghaffar with three

gold bars for sale. I do not accept the submission made on behalf of the Defendants that it is plain that, in January 2022 and in the period leading up to the sending of the letter dated 8 February 2022, Mr Akbar was contemplating suing Mr Ghaffar. I accept that there is some support for this in Mr Akbar's evidence as to his suspicions and frustrations in paragraphs 101 to 114 of his affidavit. Further, I note that in paragraph 125 of his witness statement, Mr Akbar refers to being *"reluctant to bring proceedings against my cousin"* until the discovery in June 2022 of the sale of Thackery Court, suggesting that prior thereto proceedings against Mr Ghaffar had been at least in contemplation. However, for present purposes, I consider the evidence as to Mr Akbar's frustrations and suspicions are outweighed by his evidence as to the trust that he continued to place in Mr Ghaffar in January 2022, entrusting him with bars of gold etc., and that the reference to Mr Akbar's *"reluctance to sue"* must be taken to relate to the period prior to the discovery in June 2022 of the sale of Thackery Court, and after the receipt of RPC's letter dated 14 February 2022 in the light of Mr Ghaffar's continuing assurances as referred to in paragraph 126 of his witness statement. I do not consider that such factors lead to the plain conclusion that proceedings against Mr Ghaffar were contemplated in January 2022 as contended by the Defendants.

64. It is clear from the note of the meeting on 17 January 2022 that it was recognised by all concerned that, bearing in mind that Mr Ghaffar had said that he had had no success in getting information from RPC notwithstanding having engaged his own Solicitors for that purpose, the appropriate course in order to improve the chances of RPC engaging was for Pannone to write to RPC, not only on behalf of its own client Mr Akbar, but also with the authority of Mr Ghaffar who had had all the relevant dealings with RPC. It is, as I see it, in this context that Mr Ghaffar provided information, assisted with the drafting of the letter, and lent his name to it, albeit named therein as a client.

65. The letter dated 8 February 2022 does refer to Mr Ghaffar as one of Pannone's clients. Mr Jonson accepts that he should have been more careful how he worded this letter, and he acknowledges that he could more accurately have said that Mr Akbar was Pannone's client and that Mr Ghaffar had engaged with RPC on Mr Akbar's behalf. However, I am not persuaded that Mr Jonson, in describing Mr Ghaffar as one of Pannone's clients, intended to mislead RPC (or indeed Mr Ghaffar) into believing that Mr Ghaffar was a client when he was not, or that Mr Ghaffar was misled into believing that he was a client, at least for any purpose other than assisting with the putting together of the letter dated 8 February 2022, and lending his name to it in order to improve the prospect of RPC responding to it.

66. It is true that the notes of the meeting on 17 January 2022 referred to Mr Jonson deliberating with regard to who Pannone was going to act for, and certainly Mr Ghaffar was copied in on drafts of, and contributed to the terms of the letter dated 8 February 2022. However, apart from what was said in the letter dated 8 February 2022 as to Mr Ghaffar being a client, there is no evidence that Mr Ghaffar was formally treated as a client over and above for the purpose of providing assistance with and lending his name to the letter in order to assist Mr Akbar to find out what was going on. There is, for example, no client care letter or anything of that nature. Further, there is no evidence that Mr Ghaffar considered that he had become a client of Pannone, at least in any more general sense. As I have said, there is no evidence from Mr Ghaffar on this point, explaining his state of mind or otherwise. Mr Hornyold-Strickland relies on what is said in paragraph 44.2 of the Defence, and the allegations therein contained with regard to

Pannone acting for both Mr Ghaffar and Mr Akbar. However, this, as I see it, amounts to no more than unparticularised bare assertion without disclosing Mr Ghaffar's real state of mind.

67. Further, I do not accept that it has been shown that Mr Jonson set out to mislead either RPC or Mr Ghaffar. There was, as I see it, at worst some confusion or lack of thought on Mr Jonson's behalf as to Mr Ghaffar's status as a client or otherwise, but I do not consider that there is any cogent evidence that he knowingly or recklessly said anything to RPC, or indeed to Mr Ghaffar, that he knew or understood to be false. The reality was that he was writing to RPC as a Solicitor, with the authority of both Mr Akbar and Mr Ghaffar, to seek information from RPC to assist Mr Akbar, and that was the basis upon which RPC responded to the letter dated 8 February 2022, i.e., in an attempt to obtain information for his client, Mr Akbar, in order that Mr Akbar might seek to recover his money, but in circumstances where, at that stage, a claim against Mr Ghaffar was not a consideration.

68. In paragraph 30 of Mr Jonson's witness statement, he maintains that in writing to RPC by the letter dated 8 February 2022 there was no deliberate wrongdoing or fraudulent behaviour on his part, and I accept that that that is the case.

69. So far as it is alleged that Pannone interposed itself between RPC and Mr Ghaffar in some improper way, I do not accept that the evidence supports that contention that there was any impropriety on the part of Mr Jonson. On the basis of what Mr Jonson had been told, Mr Ghaffar's attempts to obtain further information, even with the assistance of his own Solicitors, had failed. In the circumstances, it is quite understandable that Pannone should have wanted to ensure that if there was a response from RPC, it came to themselves so that they could take any further action that might be required regarding RPC on behalf of their client Mr Akbar. It is not without significance that Mr Ghaffar approved the terms of the letter dated 8 February 2022, and must be taken to have been happy with the wording of the final paragraph thereof.

70. I can see that the position might be different if proceedings against Mr Ghaffar had been contemplated, Mr Ghaffar had been tricked in some way into lending his name to the letter dated 8 February 2022 (as appears to be now suggested on behalf of the Defendants), and/or the relevant wording was included at the end of the letter dated 8 February 2022 in a deliberate attempt to cut Mr Ghaffar out of the picture. However, I do not consider that the evidence supports any such case.

71. Considering then the Discharge Application as originally formulated by reference to Mr George's witness statement, and given my findings above:

    i) I do not accept that key evidence in support of the application for the freezing order and proprietary injunction had been procured by fraud in which Pannone knowingly participated;

    ii) I do not accept that Pannone did deliberately, or in any way improperly, interpose themselves between Mr Ghaffar and RPC so as to prevent him from making progress in resolving the claims and providing further explanations to Mr Akbar;

iii) On this basis, I do not accept the submission that the matters referred to in sub-paragraphs 5.1(a) and (b) of Mr George's witness statement were material facts that required to be drawn to the Court's attention.

iv) Further, I do not accept that it has been established that there was any *"wrongdoing"* of a *"deliberate nature"* on the part of Pannone, or that there has been any *"deliberate strategy"* to not provide full and frank disclosure as alleged in sub-paragraph 5.2 of Mr George's witness statement.

72. These conclusions are, to my mind, sufficient to dispose of the Discharge Application in Mr Akbar's favour by dismissing it on the basis that the Defendants cannot establish that there has been the failure on the part of Mr Akbar to give full and frank disclosure as alleged, This is because, as I see it, the matters that it is alleged should have been explained to the Court by Mr Akbar never, on proper analysis, pertained.

73. I do not consider that anything of significance turns on the fact that Pannone have self-reported themselves to the SRA. In the light of the serious allegations made against Mr Jonson, it is unsurprising that they should do so even if they do strenuously deny the allegations. There was, as I have identified above, some confusion and lack of thought on Mr Jonson's part as to Mr Ghaffar's status or otherwise as a client. However, I am not satisfied that he knew, or ought to have known that he had acted in breach of SRA Code of Conduct Rule 1.2 or 1.4 in that I am not persuaded that the evidence shows that there was a conflict of interest in Pannone acting as alleged by the Defendants as set out in Paragraph 37(vii) above if proceedings against Mr Ghaffar were not contemplated, and given Mr Ghaffar's limited role in the circumstances leading to the sending of the letter dated 8 February 2023. I return to this point in paragraph 80 below.

74. I accept Mr Connolly's submission that the Defendants ought to be limited to the case that had been ventilated in correspondence prior to the bringing of the Discharge Application that then formed the basis of the application as advanced by reference to Mr George's witness statement.

75. The difficulty with extending the scope of the Discharge Application is that the case addressed by Mr Akbar (and Pannone) in the evidence that Mr Akbar has put before the Court, and the case that Mr Akbar and those who represent him had to meet in preparing for and then presenting Mr Akbar's case at the hearing on 24 April 2023, was that as advanced by reference to Mr George's witness statement, and in particular paragraph 5 thereof, and not by reference to other more wide ranging matters.

76. I consider this certainly to be the case in respect of the defences that it is alleged that the Court's attention should have been drawn to in seeking the freezing order and proprietary injunction on a without notice basis. These alleged potential defences, save possibly that relating to RPC, do not relate to the events of January and February 2022 that formed the basis of the Discharge Application as originally formulated by reference to Mr George's witness statement. However, even in respect of the events of January and February 2022, a different and wider emphasis is now placed by the Defendants on matters such as Mr Jonson deliberating as to the identity of his client or clients, litigation against Mr Ghaffar actually being contemplated, and Mr Ghaffar being misled with a view to obtaining materials with which to better enable proceedings to be brought against him. One can well see how, if these sorts of matters had been presented in the

way now sought to be presented in Mr George's witness statement, then Mr Jonson and Mr Akbar would have had more to say about them.

77. Notwithstanding the above, should I be wrong about limiting the Defendants to the case as advanced by reference to Mr George's witness statement so far as the events of January and February 2022 are concerned, I will consider whether a case of breach of the duty to give full and frank disclosure, and a requirement to discharge the Order is established by the other matters summarised in paragraph 2.1 of Mr Hornyold-Strickland's Written Submissions.

78. On the evidence before me and on the basis of my findings in paragraphs 62 to 70 above, I am satisfied that a case for discharging the Order is not made out even if I proceed on the basis that the onus is on Mr Akbar, and those who represent him, to explain their actions.

79. For the reasons explained above, I do not accept that proceedings against Mr Ghaffar were in contemplation in January or February 2022, or at least until the receipt of RPC's letter dated 14 February 2022 at the very earliest. Even then, it is the evidence of Mr Akbar that he continued to trust what he was being told by Mr Ghaffar, and it was only when he discovered about the sale of Thackery Court in June 2022 that the penny finally dropped. There may be a dispute with regard to Mr Akbar's state of mind between February 2022 and June 2022, but that is not an issue that I can resolve at this stage.

80. Even if Mr Jonson is properly to be construed as having misrepresented Mr Ghaffar's status as a client, or otherwise led Mr Ghaffar to believe that he was Pannone's client, and/or allowed a conflict of interest to arise as between Mr Akbar and Mr Ghaffar which benefited Mr Akbar by enabling information and documents to be obtained, I am satisfied that Mr Jonson did not contemporaneously (in January/February 2022 or when the application for a freezing order and proprietary injunction was made), understand or appreciate this to be the case. Likewise, if it could properly be said that a reasonable person in the shoes of Mr Ghaffar or RPC would have assumed that Mr Ghaffar was Pannone's client, I am satisfied that Mr Jonson did not in fact contemporaneously understand or appreciate this to be the case, or understand or appreciate that there had been any breach of his professional obligations, if indeed there had been. Thus, even if, viewed objectively, Mr Jonson ought to have appreciated that these matters were all the case, and ought to have ensured that Mr Akbar gave full and frank disclosure in respect thereof, I am satisfied that any such failure to give full and frank disclosure would have been innocent in the sense referred to in paragraph 26(i) above.

81. Whilst not the Defendants' case as such, with hindsight in view, in particular, of the way that matters were put in paragraph 65 of Mr Akbar's affidavit, I do consider that more might properly have been said about Mr Ghaffar's involvement in the preparation of the letter dated 8 February 2022, and it might have been pointed out to me that he was referred to therein as a client, and an explanation provided in respect thereof. This is, arguably, material to the question as to whether Mr Ghaffar or RPC, or both, are responsible for Mr Akbar's monies going missing. However, bearing in mind the evidence as to Mr Akbar continuing to place his trust in Mr Ghaffar at the relevant time, including providing him with gold bars to sell, and Mr Akbar's evidence that it was not until June 2022 that the penny dropped, I consider this to be of somewhat marginal materiality.

82. Again, even if there ought to have been further disclosure in respect of these matters, I am satisfied that any non-disclosure was innocent. As I said, I accept what Mr Jonson says in paragraph 30 of his witness statement to the effect that: *"it simply did not occur to me that there was any need to say anything more to the court about the correspondence with RPC when the Claimant applied for the Freezing Order."*

83. In the circumstances, even if, on an objective view of what was material and required to be disclosed, there had been a breach of the duty of full and frank disclosure, I am not persuaded that a case would then be made out for discharging the freezing order and the proprietary injunction taking into account, amongst other things, that:

    i) The breach would have been, on the basis of my findings above, innocent, and not deliberate or part of a deliberate strategy;

    ii) I am not persuaded that the level of culpability would have been such as to require a penal approach to be applied;

    iii) I am satisfied that I would have made the Order in any event when provided with a full explanation;

    iv) The discharge of the Order would be liable to cause serious prejudice to Mr Akbar, and his ability to secure an enforceable judgment, through a dissipation by the Defendants of assets.

84. In the circumstances, I consider that the Discharge Application should be dismissed.

Conclusion

85. For the reasons set out above, I consider that the Discharge Application should be dismissed.

86. This Judgment will be handed down remotely by email to the parties or their legal representatives and released to the National Archives. No attendance will be required. I will deal with all consequential matters at the hearing listed on 6 June 2023. I will adjourn consideration of any applications for permission to appeal to this hearing and extend the time for filing an appellants' notice with the Court of Appeal until 21 days after the latter.