Neutral Citation Number: [2024] EWHC 424 (Ch)

Case No.: BL-2023-000509

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD) (FS)

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

The Crown Court at Southwark
1 English Grounds, London, SE1 2HU

Date: 1 March 2024

Before:

HIS HONOUR JUDGE BAUMGARTNER
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

THE FINANCIAL CONDUCT AUTHORITY
(A COMPANY LIMITED BY GUARANTEE)

Claimant

- and -

(1) WEALTHTEK LLP (IN SPECIAL ADMINISTRATION)
(2) JONATHAN EDWARD DANCE

Defendants

- -
- -

Martin Evans KC with **James Purchas** (instructed by the **Financial Conduct Authority**) for the **Claimant**
Daniel Burgess (instructed by **Peters & Peters Solicitors LLP**) for the **Second Defendant**

Hearing date: 26 January 2024

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down (subject to editorial corrections) may be treated as authentic.

HIS HONOUR JUDGE BAUMGARTNER:

Introduction

1. This is an application by the Financial Conduct Authority (the **"FCA"**), the Claimant in these proceedings, to stay the proceedings for a period of 12 months (the **"Application"**). It is opposed by the Second Defendant, Jonathan Edward Dance (**"Mr Dance"**).[1]

2. Before I turn to set out the nature of the Application and its context within the FCA's claims against Mr Dance and other proceedings, it is helpful first to set out the background to these proceedings and the FCA's grounds in pursuing them.

Background

The FCA

3. The FCA is the United Kingdom regulator responsible for regulating financial services provided by "authorised persons" carrying on "regulated activities", under the Financial Services and Markets Act 2000 (the **"2000 Act"**). Such activities include the safeguarding and administering of assets by authorised persons, or arranging for others to do so. The FCA's claims against the Defendants in these proceedings are said to have been brought in exercise of its functions as regulator.

4. Under s.1B of the 2000 Act, in discharging its general functions the FCA must so far as is reasonably possible act in a way which (a) is compatible with its strategic objective of ensuring that the relevant markets function well, and (b) advances one or more of its operational objectives, which comprise the "consumer protection objective", the "integrity objective", and the "competition objective". The "consumer protection objective" includes "securing an appropriate degree of protection for consumers": s.1C(1). The "integrity objective" ("protecting and enhancing the integrity of the UK financial system": s.1D(1)) includes "its soundness, stability and resilience" and "its not being used for a purpose connected with financial crime": s.1D(2).

5. In addition to its regulatory powers under the 2000 Act, the FCA also may commence civil proceedings to seek injunctive, recessionary, and restitutionary relief from this Court under Part XXV of the Act (ss.380 and 382), and prosecute a range of criminal offences under Part XXVII of the Act (ss.401 and 402). Where there is potential criminal conduct, the FCA may also take civil or regulatory action, as set out in its published Enforcement Guide.[2] Paragraph 12.1.2 of the Guide provides:

> "*The FCA's general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate. …*"

Paragraph 12.1.4 provides:

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[1] The First Defendant, WealthTek LLP (**"WealthTek"**), is in special administration. The proceedings against WealthTek were stayed on 28 April 2023 following the appointment of joint special administrators.

[2] The Enforcement Guide sets out the FCA's approach to exercising the main enforcement powers given to it under the 2000 Act and other legislation, and is "general guidance" as defined in s.139B(5) of the Act, *i.e.*, a statement of the FCA's policy rather than binding rules. Chapter 12 of the Guide sets out the FCA's approach to the Prosecution of Criminal Offences: see https://www.handbook.fca.org.uk/handbook/EG/12/?view=chapter.

"*The factors the FCA may take into account when deciding whether to take such action, where criminal proceedings are in contemplation, include, but are not limited to the following:*

(1) whether, in the FCA's opinion, the taking of civil or regulatory action might unfairly prejudice the prosecution, or proposed prosecution, of criminal offences;

(2) whether, in the FCA's opinion, the taking of civil or regulatory action might unfairly prejudice the defendants in the criminal proceedings in the conduct of their defence; and

(3) whether it is appropriate to take civil or regulatory action, having regard to the scope of the criminal proceedings and the powers available to the criminal courts."

The Defendants

6. On 3 April 2023, the FCA obtained urgently, without notice and out of hours, a worldwide freezing order (the **"WWFO"**) and other interim injunctive relief against Mr Dance from this Court in support of claims made against the Defendants under ss.380 and 382 of the 2000 Act. The purpose of that relief was to prevent Mr Dance from continuing to source client money and from dissipating his assets. At the same time, the FCA obtained the appointment of interim joint managers over WealthTek. Those orders were made by Roth J.

7. On 4 April 2023, the FCA brought proceedings against WealthTek and Mr Dance in this Court under Part XXV of the 2000 Act by issue of a Claim Form (Claim No. BL-2023-000509) (the **"Claim Form"**) (*i.e.* these proceedings, the **"High Court Proceedings"**). The same day, Mr Dance was arrested on suspicion of committing various criminal offences and interviewed under caution. He exercised his right to silence in interview.

8. On 28 April 2023, Mr Dance consented to the WWFO and other interim injunctive relief being continued at the re-adjourned return date hearing.

9. The High Court Proceedings then took the following course. The FCA served Particulars of Claim (**"PoC"**) dated 4 May 2023. On 23 May, Mr Dance sought the disclosure of certain documents from the FCA before filing a Defence; those documents were his email drives, statements for the bank accounts referred to in the PoC, and WealthTek's daily reconciliation spreadsheets. He says he did so to enable him to answer the allegations set out by the FCA in the PoC. The FCA's position was that Mr Dance could properly plead his Defence by reference to the documents relied upon by the FCA. Mr Dance issued an application for specific disclosure on 8 September.

10. A further development then occurred. The FCA sought (on 13 October 2023) and obtained (on 8 November 2023) a criminal restraint order (**"CRO"**) against Mr Dance under s.41 of the Proceeds of Crime Act 2002 (the **"2002 Act"**) from the Crown Court sitting at Southwark (Case No. RO56/2023) (those proceedings, the **"Crown Court Proceedings"**). I made that order, and at the end of the hearing I sat as a judge of this Court in the High Court Proceedings and varied the WWFO and other interim injunctive relief so as to limit it to an interim prohibitory injunction (the **"IPO"**).

11. Meanwhile, on 18 October 2023, the FCA wrote to Mr Dance's solicitors that it was considering a stay of the High Court Proceedings. This was followed by a letter dated 16 November 2023, in which Mr Dance was invited to consent to a stay. On 24 November Mr Dance sought a listing of his specific disclosure application. The FCA notified the Court of its intention to issue a stay application (which it did on 4 December 2023), and asked that it be heard before Mr Dance's specific disclosure application. On 8 December Deputy Master Linwood directed that the stay application should be listed to be heard in Judge's Listing and that Mr Dance's specific disclosure application should not be heard in the meantime. The FCA's stay application then came before me for hearing on 26 January 2024.

The FCA's claims against Mr Dance

High Court Proceedings

12. The brief details of the claim in the High Court Proceedings, set out on the continuation sheet of the Claim Form dated 4 April, assert that:

    (a) WealthTek is an "authorised person" under the 2000 Act and, at all times material to the proceedings, had been granted certain permissions by the FCA to carry on regulated activities. Those permissions, however, did not include permission to carry on the regulated activity of safeguarding and administering assets, or arranging for others to do so;

    (b) Mr Dance is a designated member of WealthTek and one of two individuals performing senior management functions at WealthTek, with Mr Dance holding the FCA Significant Management Functions (**"SMF"**) 16 (Compliance Oversight) and 27 (Partner Function);

    (c) despite holding client assets (including client money) from at least 28 January 2020, WealthTek told the FCA in each of its five client money and client asset reports in the period 30 September 2020 to 30 September 2022 that it had not held client money or client assets in those periods;

    (d) WealthTek had concealed the existence of client money accounts; and

    (e) Mr Dance had fraudulently altered the FCA document setting out WealthTek's permissions, to the effect that the FCA had granted WealthTek permission to carry on the regulated activity of safeguarding and administering assets.

    The Claim Form sought declaratory, injunctive and remedial relief against the Defendants, as well as an account of profits.

13. The PoC assert that:

    (a) Mr Dance dishonestly made false statements to the FCA about his involvement in bankruptcy proceedings;

    (b) WealthTek's application form for permission to carry on regulated activities included an application that the firm "*not be subject to a requirement not to hold client money*";

(c) during the application process, Mr Dance agreed to withdraw WealthTek's application that its permissions should not be subject to a requirement not to hold client money, and to withdraw its application for permission to arrange safeguarding and administration of investments;

(d) from on or about 28 January 2020, the FCA's Register displayed the restriction on WealthTek's permissions, *i.e.*, that it could control, but not hold client money, and Mr Dance would have known of the same by that date or shortly thereafter;

(e) nonetheless, WealthTek held client money and arranged the safeguarding and administration of investments;

(f) Mr Dance dishonestly concealed from the FCA and persons appointed by the FCA that WealthTek had been holding client assets and/or client money, when Mr Dance had actual knowledge that WealthTek was so doing;

(g) Mr Dance dishonestly sought to mislead CACEIS Bank (one of WealthTek's bankers) about the FCA's List of Permissions by editing the same and presenting them to the bank;

(h) Mr Dance dishonestly sought to mislead the FCA that WealthTek had more than 235 clients with custody accounts held directly at Novia Financial, for which WealthTek was an agent; and

(i) Mr Dance misled Barclays Bank (another of WealthTek's bankers) as to transactions made in respect of a client money account held with the bank.

14. It is helpful to recall that the High Court Proceedings followed the very day after the FCA had obtained the WWFO and other interim injunctive relief from Roth J (and since continued (by consent) by Nicola Rushton KC sitting as a Deputy High Court Judge), the scope of which prevented Mr Dance from dissipating his assets.

Crown Court Proceedings

15. The FCA's application for a CRO under s.41 of the Proceeds of Crime Act 2002 in the Crown Court Proceedings was supported by the Witness Statement of Christopher Hollyoak dated 13 October 2023. At paragraph 4 of his Witness Statement, Mr Hollyoak set out what he said were reasonable grounds to suspect that Mr Dance had committed the following criminal offences:

(a) Mr Dance deliberately misrepresented to clients and prospective clients that their money or assets were held and administered by CACEIS Bank on their behalf in compliance with the FCA Client Asset Sourcebook rules and as part of a genuine custodian agreement, when in fact the money or assets were held on behalf of WealthTek (making misleading statements, contrary to s.89 of the Financial Services Act 2012);

(b) Mr Dance dishonestly represented to CACEIS Bank that WealthTek had permission to hold client assets and client money, including via an apparently forged scope of permissions document, when it did not (fraud by false representation, contrary to ss.1 and 2 of the Fraud Act 2006 (the **"2006 Act"**));

(c) Mr Dance dishonestly failed to disclose to the FCA the existence of the Barclays Bank client account and the true nature of the arrangement with CACEIS Bank, which he was under a legal duty to disclose by reason of his holding SMF 16 (Compliance Oversight) and SMF 27 (Partner Function) with the intention of making a gain for himself or exposing clients to a risk of loss (fraud by failing to disclose information, contrary to ss.1 and 3 of the 2006 Act);

(d) Mr Dance occupied senior manager positions at WealthTek (as SMF 16 and 27) in which he was expected to safeguard, or not act against the interests of his clients, but dishonestly abused that position by transferring significant sums of client money (from both the Barclays Bank client account and client accounts held with CACEIS Bank) direct to his personal bank accounts and to companies and other entities with which he is closely associated. He intended by so doing to make a gain for himself or cause loss to others or expose them to a risk of loss (fraud by abuse of position, contrary to ss.1 and 4 of the 2006 Act); and

(e) Mr Dance committed money laundering by converting or transferring the benefit of criminal conduct (namely the client money deposited in the Barclays Bank and CACEIS Bank client accounts) into his personal accounts (concealing, disguising, converting, transferring, or removing criminal property, contrary to s.327 of the 2002 Act).

16. Mr Dance did not challenge the evidence relied upon by the FCA in the Crown Court Proceedings to show, nor did he dispute that there were reasonable grounds to suspect he had benefitted from his criminal conduct as the test in s.40(2)(b) of the 2002 Act requires. Having considered the evidence, I took the view that that test was made out and I made the CRO sought.

17. It is evident from a review of the PoC and the grounds advanced by Mr Hollyoak in support of the CRO that there is an almost identical overlap between the facts and matters relied upon by the FCA, and a substantial overlap in the underlying nature of the claims advanced, in both sets of proceedings. Perhaps this is not surprising, given the FCA's enforcement powers and objectives, and the dual regulatory and criminal investigation into the Defendants' affairs since the FCA appointed investigators in March 2023.

The Application

Grounds

18. By the Application, the FCA submits that it is in the interests of justice to grant a 12 month stay of the High Court Proceedings on the following grounds:

(a) the existence of the CRO means that s.58(5) of the 2002 Act is engaged (or is at least a factor to be considered), and the legislative steer points to a stay being ordered given the inevitable and substantial additional depletion of Mr Dance's realisable assets by way of defence costs should the High Court Proceedings be permitted to continue;

(b) it is in the interests of justice that the FCA should prioritise its criminal investigation and future criminal proceedings over the High Court Proceedings;

(c) the FCA anticipates being in a position to determine whether to bring criminal charges within 12 months. Pending such a charging decision, it is not in the interests of justice for the High Court Proceedings to continue because:

(i) any such criminal proceedings would involve seeking relief (confiscation and/or compensation) that would, for practical purposes, "*substantially overlap*" with the relief being sought in the High Court Proceedings;

(ii) the strain on the FCA's resources as a regulator would be reduced;

(iii) continuing the High Court Proceedings at this juncture may be otiose, would result in the parties spending substantial and potentially unnecessary costs, and would potentially be a waste of the Court's valuable resources to the detriment of other court users; and

(iv) Mr Dance would not be prejudiced by such a stay.

19. In the event the Court grants the stay sought by the FCA, the FCA indicated that it will apply to discharge the IPO as against Mr Dance.

Mr Dance's position

20. Mr Dance opposes the Application for the following reasons:

(a) shortly put, Mr Dance submits that:

(i) even if a stay of the High Court Proceedings were to cause no prejudice to him, that could not justify a stay as a matter of principle; in fact, there would be considerable prejudice to Mr Dance because he would be unable to address properly the FCA's allegations, which are of the utmost seriousness and concern Mr Dance's honesty and alleged conduct;

(ii) the FCA cannot seek to stay a claim simply because it no longer wishes to use its resources to pursue it;

(iii) pressure on the Court's resources are unlikely to be reduced in the result; and

(iv) in any event, a stay would not prevent Mr Dance from incurring legal fees in defending the High Court Proceedings and thus preserve more funds for potential confiscation at the conclusion of any criminal proceedings;

and, alternatively,

(b) a stay of the High Court Proceedings at this stage would be premature and should more appropriately be considered at the point at which any criminal charges are in fact brought.

Evidence

21. Amongst the papers filed by the parties were the Second and Third Witness Statements of Anthony Williams (dated 4 December 2023 and 23 January 2024, respectively), filed on behalf of the FCA, and the First and Second Witness Statements of Paul Johnson

(dated 8 September 2023 (served in support of Mr Dance's specific disclosure application in the High Court Proceedings) and 19 January 2024), and their exhibits. Those Witness Statements, together with the Witness Statement of Christopher Hollyoak dated 13 October 2023 (served in supported of the FCA's application for the CRO) set out the primary factual bases upon which the parties rely in their submissions before me on the Application. A brief summary of some of the salient facts from those Witness Statements follows.

22. Mr Williams explains in his Second Witness Statement that, as the FCA's investigation has progressed since April 2023, the scale and extent of Mr Dance's suspected misconduct has become ever more serious, to the extent that the FCA now considers that this is potentially "*one of the largest frauds perpetrated by an FCA regulated individual at an authorised firm*". He summarises the key developments, including:

    (a) a shortfall of about £80 million in WealthTek's client assets;

    (b) an increase of about £25.6 million in the sums flowing from WealthTek to Mr Dance, taking the total to about £49 million;

    (c) the discovery of earlier misconduct, with suspicious flows of client money and assets of about £21 million from WealthTek to Mr Dance in the period between 2014 and 2020; and

    (d) the opening of a confiscation investigation under s.341 of 2002 Act, the grant of a CRO against all Mr Dance's assets in the Crown Court Proceedings on 8 November 2023, and the subsequent variation of the interim freezing relief against Mr Dance in the High Court Proceedings.

23. Mr Williams says that the purpose of the 12 month stay sought is to allow the FCA to focus its efforts on obtaining and analysing the necessary evidence to identify whether Mr Dance or any other individual should face criminal proceedings. He says Mr Johnson's contention that there has been no material change in the nature of the evidence proceeds on a misunderstanding of the numbers and evidence. He says the assertion that this Application does not meet the criteria for commencing criminal proceedings in the FCA's Enforcement Guide rather misses the point: that guidance expressly recognises the possibility, as here, that civil proceedings may be commenced where there is the possibility of a criminal case; it does not profess to be comprehensive, nor does it address subsequent case management issues.

24. Mr Williams says that, since the High Court Proceedings commenced in April 2023, Mr Dance has not given any indication of what his defence might be to the allegations of receiving and diverting tens of millions of pounds of client money to his personal bank accounts and the apparent forgery of a letter setting out his FCA permissions. Mr Johnson claims Mr Dance cannot plead his defence unless his lawyers are permitted to review his entire email accounts held with WealthTek and WealthTek's bank statements.

25. Having set out the nature of the Application and the facts and matters relied upon by the parties, I turn to consider the legal framework which applies to stay applications in circumstances such as this.

Legal framework

Introduction

26. There was a time when the general rule at common law (sometimes called the rule in *Smith v Selwyn*, or the inaptly named "felonious tort rule") was that, where there was an overlap between the facts and matters relied upon by a claimant in civil proceedings which otherwise would amount to criminal conduct and those relied upon by the prosecution in criminal proceedings, the civil proceedings should be stayed pending the outcome of the criminal proceedings: see *Smith v Selwyn* [1914] 3 KB 98, a 1914 decision of the Court of Appeal.[3]

27. That rule no longer obtains in England and elsewhere. The modern approach now leaves the matter of a stay to the discretion of the court, which in exercising its discretion is to weigh the competing considerations. In *Jefferson Ltd v Bhetcha* [1979] 1 WLR 898, Megaw LJ (with whom Brandon LJ agreed) held[4] there was no such established principle of law, but that proceedings should be stayed:

> "if it appeared to the court that justice – the balancing of justice between the parties – so required, having regard to the concurrent criminal proceedings, and taking into account the principle, which applies in the criminal proceeding itself, of what is sometimes referred to as the 'right of silence' and the reason why that right, under the law as it stands, is a right of a defendant in criminal proceedings. But in the civil court it would be a matter of discretion, and not of right."

Megaw LJ went on to say this:[5]

> "Of course, one factor to be taken into account, and it may well be a very important factor, is whether there is a real danger of the causing of injustice in the criminal proceedings. There may be cases – no doubt there are – where that discretion should be exercised. In my view it would be wrong and undesirable to attempt to define in the abstract what are the relevant factors. By way of example, a relevant factor telling in favour of a defendant might well be the fact that the civil action, or some step in it, would be likely to obtain such publicity as might sensibly be expected to reach, and to influence, persons who would or might be jurors in criminal proceedings. It may be that, if the criminal proceedings were likely to be heard in a very short time … it would be fair and sensible to postpone the hearing of the civil action. It might be that it could be shown, or inferred, that there was some real – not merely notional – danger that the disclosure of the defence in the civil action would, or might, lead to a potential miscarriage of justice in the criminal proceedings, by, for example, enabling prosecution witnesses to prepare a fabrication of evidence or by leading to interference with witnesses or in some other way."

28. In *Panton v Financial Institutions Services Ltd* [2003] UKPC 86, Sir Kenneth Keith (delivering the opinion of the Judicial Committee of the Privy Council[6] on an appeal from

[3] Kennedy, Phillimore, and Swinfen Eady LJJ.
[4] At 904.
[5] At 905.
[6] Lords Nicholls, Slynn, Hobhouse, and Rodger, and Sir Kenneth Keith.

the Court of Appeal of Jamaica) said this[7] in his review of the common law authorities on the point[8] as to why the rule had been done away with:

> "One of the Australian decisions is that of Wootten J in the Supreme Court of New South Wales in *McMahon v Gould* [7 (1982) ACLR 202]. He helpfully discusses the suggested rationales for the rule:
>
> > 'The origin of the rule in *Smith v Selwyn* has been the subject of a deal of consideration by learned writers ... Whether the rule was based upon "the public policy of a bygone age when no police existed", or whether the origin of the rule lay in the fact that the property of a convicted felon was forfeited to the Crown, its foundation has clearly disappeared, if indeed it ever existed, in New South Wales, despite our retention, for no discernible reason, of a totally artificial version of the archaic distinction between felonies and misdemeanours. What remains is the immutable principle that the common law will have regard to the requirements of public policy.
> >
> > I greatly sympathise with this view, and trust that the rule will stay buried, so that its ghost does not again rise to rattle medieval chains (albeit refurbished in Victorian times) in modern litigation.'
>
> He went on to set out guidelines bearing on the exercise of the inherent jurisdiction of the courts to grant stays of proceedings in the interests of justice."

29. Here, though, there are no *concurrent* criminal proceedings afoot aside the Crown Court Proceedings in relation to the CRO which I granted on 8 November 2023 sitting in private as a Judge of the Crown Court. This Application is founded on the basis that the FCA has been pursuing a dual regulatory and criminal investigation into the Defendants' affairs since it appointed investigators in March 2023, and that the FCA anticipates criminal proceedings being brought against Mr Dance within the 12 month stay now sought. I bear that important distinction carefully in mind.

Inherent jurisdiction

30. The parties agree the Court has a general power to stay proceedings "where it thinks fit to do so" as part of its inherent jurisdiction, recognised by s.49(3) of the Senior Courts Act 1981 (the **"1981 Act"**) which provides that (emphasis added):

> "Nothing in this Act shall affect the power of the Court of Appeal or the High Court to stay any proceedings before it, *where it thinks fit to do so*, either of its own motion or on the application of any person, whether or not a party to the proceedings."

31. Under its inherent jurisdiction, the Court has a wide discretion; the test is simply "what is required by the interests of justice in the particular case": see *Athena Capital Fund*

[7] At [8].

[8] A review which included the English Court of Appeal in 1979 in *Jefferson Ltd v Bhetcha* [1979] 1 WLR 898, the Supreme Court of New South Wales in 1982 in *McMahon v Gould* 7 (1982) ACLR 202, and the Federal Court of Australia in 1984 in *Re Cameron's Unit Services Pty Ltd v Kevin R Whelpton and Associates (Australia) Pty Limited* (1984) 4 FCR 428. See, further, *Debenho Pte Ltd v Envy Global Trading Pte Ltd* [2022] SGHC 7, a 2022 decision of Ang J in the High Court of Singapore.

SICAV-FIS SCA v Secretariat of State for the Holy See [2022] 1 WLR 4570, per Males LJ (at [48], [49] and [59]) with whom Birss and Peter Jackson LJJ agreed. A stay may be permanent or temporary and may be imposed in a very wide variety of circumstances.

32. The Application before me is not put on the basis that there may be the "real danger" of injustice identified by Megaw LJ in *Jefferson Ltd v Bhetcha* and Wootten J in *McMahon v Gould*, but for the wider reasons of the interests of justice based on the factors which I set out at [18] above.

Civil Procedure Rules and Practice Direction

33. Civil Procedure Rules r.3.1 sets out the Court's general powers of management. CPR r.3.1(2)(f) provides that, except where the rules provide otherwise, the Court may stay the whole or part of any proceedings or judgment either generally or until a specified date or event.

34. Practice Direction 23A makes further provision for applications to stay a claim where there are "related criminal proceedings". Paragraph 9 of PD 23A relevantly provides as follows (emphasis added):

> "9.1 An application for the stay of civil proceedings pending the determination of *related criminal proceedings* may be made by any party to the civil proceedings or by the prosecutor or any defendant in the criminal proceedings.
>
> 9.2 Except for the applicant, every party to the civil proceedings must be made a respondent to the application.
>
> 9.3 The evidence in support of the application must contain an estimate of the expected duration of the stay and must identify the respects in which the continuance of the civil proceedings may prejudice the criminal trial."

35. It could be said that paragraph 9 of PD 23A is not entirely apposite here as, while a criminal investigation by the FCA is underway, there are no "related criminal proceedings" afoot aside the Crown Court Proceedings. I am satisfied, however, that the Crown Court Proceedings are "related criminal proceedings" as the purpose of those proceedings is to preserve Mr Dance's "realisable property"[9] with a view to making it available to satisfy a confiscation order that might be made against him following conviction, and that the determination of those proceedings remain "pending" until the CRO is discharged.

36. The FCA is the Claimant in these High Court Proceedings, and the Prosecutor in the Crown Court Proceedings (having the hybrid role as regulator (and the associated power to commence civil proceedings) and criminal prosecutor which I described at [5] above). WealthTek is not a party to this Application, given the proceedings against it have been stayed. As I mentioned above, the estimate of the expected duration of the stay is 12 months. The evidence served by the FCA identifies the ways in which continuing the High Court Proceedings may prejudice "the criminal trial", *i.e.* the criminal proceedings

[9] As to which, see ss.58(5), 69(2)(b), and 82 to 84 of the 2002 Act, and the discussion and analysis of those sections which follows.

being taken in the Crown Court Proceedings, including by preserving Mr Dance's realisable property.

Section 58 of the 2002 Act

37. Martin Evans KC, with whom James Purchas appears for the FCA, further prays in aid s.58 of the 2002 Act, which provides in relevant part (emphasis added):

> "(5) If a court in which proceedings are pending *in respect of any property* is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.
>
> (6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to—
>
> (a) the applicant for the restraint order, and
>
> (b) any receiver appointed in respect of the property under section 48 or 50."

38. The effect of the provision was considered by Michael Green J in *Ahmet v Tatum* [2023] 1 WLR 3076, at [32] (again, emphasis added):

> "By section 58(5), where there are proceedings in another court, such as this court, *in respect of property that is subject to a restraint order*: 'the court may either stay the proceedings or allow them to continue on any terms it thinks fit'. By section 58(6), before exercising any power under section 58(5), the court must give the applicant for the restraint order and any receiver that has been appointed the opportunity to be heard. To my mind, that indicates that Parliament was assuming the primacy of the Crown Court proceedings. There may be any number of other pending proceedings concerning relevant property, but account must be taken of the restraint order and the CPS has to be heard. Section 58(5) does not give the green light to a claimant, such as the one before me, to start proceedings in this court following the making of a restraint order."

39. As Hughes LJ (as he then was) explained in *In re Stanford* [2011] Ch 33 at [205], s.58(5) contemplates that other litigation in respect of property which is subject to a CRO may, as a result of that order, need to be stayed or permitted to proceed only on terms: "the initiative is firmly in the hands of the Crown Court".

40. Mr Evans KC submits that, as s.58(5) of the 2002 Act applies in this case, its exercise should be in accordance with the legislative steer set out in s.69(2). This provides that the powers conferred on a court under ss.41 to 59 of the 2002 Act (which encompass criminal restraint orders, and includes s.58) (emphasis added):

> "(a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;

> *(b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property*;
>
> (c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant;
>
> (d) may be exercised in respect of a debt owed by the Crown."

41. Daniel Burgess, who appears for Mr Dance, accepts that the Court has a discretion to order a stay under its inherent jurisdiction pursuant to s.49(3) of the 1981 Act and CPR r.3.1(2)(f). Mr Burgess, however, submits that the High Court Proceedings are not "proceedings in respect of" the property which is the subject of the CRO and, consequently, s.58(5) of the 2002 Act does not apply. He argues that, properly construed, proceedings are only "proceedings in respect of … property" if those proceedings will determine the legal or beneficial ownership of property which is subject to the restraint order. Consistent with this submission, Mr Burgess relies upon the Explanatory Notes to the section, which state (emphasis added):

> "Section 58 prevents certain actions from being taken *against property* subject to a restraint order without the leave of the Crown Court. It also gives any court dealing with *property proceedings* the power to stay them, or allow them to continue, if it learns that a restraint order has been applied for or made. The earlier confiscation legislation is silent on this issue, but the High Court has in practice stayed other *property proceedings* occasionally where a restraint order has been made."

Mr Burgess submits it follows that a stay may be imposed under s.58(5) where, *e.g.*, a third party is seeking to establish an ownership interest in property which is subject to a CRO, or is seeking to bring a proprietary claim. Those, apparently, are the only factual circumstances in which s.58(5) has been addressed in the authorities (see, *e.g.*, *Serious Fraud Office v Lexi Holdings plc* [2009] QB 376; *Independent Trustee Services Limited v GP Noble Trustees Limited* [2009] EWHC 161 (Ch); *AA & Ors v BB and CC* [2021] 1WLR 5378 (which involved proprietary claims following an alleged fraud where monies were said to have been misappropriated); and *Ahmet v Tatum* [2023] 1 WLR 3076). He says it is understandable that Parliament would provide a power for a civil court to stay proceedings to determine the ownership of property in order that the Crown Court may first determine whether the property is the proceeds of crime. But, he says, that is not the situation here, as:

(a) there is no proprietary claim in the High Court Proceedings: no relief as to the legal or beneficial ownership of property subject to the CRO will be granted, and the FCA's claim is solely for compensatory and injunctive relief; and

(b) further, the High Court Proceedings are brought by the FCA, the same prosecuting authority as in the Crown Court Proceedings. There is, accordingly, no prospect of a third party using the High Court Proceedings to establish an ownership interest in property which might cut across the CRO and the Crown Court Proceedings.

Thus, submits Mr Burgess, the power to order a stay under s.58(5), and thus the legislative steer, does not apply.

42. I do not consider s.58(5) of the 2002 Act should be construed so narrowly. In my judgment, the words "proceedings in respect of any property" in s.58(5) clearly have a wider meaning and extend to proceedings whose object is the underlying property, whether it be establishing an interest in the property or requiring a defendant to take steps as regards that property. It applies to "realisable property", as defined by ss.82 to 84 of the 2002 Act: see *Re Sustainable Wealth Investments (UK) Ltd (In Liquidation)* [2015] EWHC 1674 (Ch), at [33] per Mr Registrar Jones. That the only reported authorities which consider the application of s.58 are ones confined to establishing an ownership interest in property or seeking to bring a proprietary claim is neither here nor there. Such claims would fall within s.69(3)(a), which allows:

> "a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him".

The purpose of a criminal restraint order made under the 2002 Act, however, is to prevent a defendant against whom proceedings have been started for an offence (or, where proceedings for an offence have not been started but a criminal investigation with regard to the offence has, an "alleged offender") from dealing with his property pending the conclusion of those proceedings and, ultimately, with a view to making them available to satisfy a confiscation order that might be made against him following his conviction.

43. While the FCA does not bring proprietary claims, it is clear to me that part of the High Court Proceedings are "proceedings in respect of … property" within the meaning in s.58(5), for these reasons:

(1) The High Court Proceedings concern the diversion of client funds in contravention of regulatory rules and Mr Dance diverting the same to himself or to entities associated with him. The relief sought by the FCA includes orders which will require him to take steps to remedy those alleged contraventions and, as I mentioned at [6] and [14] above, the interim relief obtained by the FCA prevents Mr Dance dissipating his assets.

(2) The relief sought under s.380(3) of the 2000 Act is directly referable to Mr Dance's property. It provides the Court with the power to:

> "*make an order restraining … him from disposing of, or otherwise dealing with, any assets of his.*"

(3) Whilst the relief sought under s.380(2) of the 2000 Act is not expressly stated as being relevant to Mr Dance's property, its substance is. It empowers the Court to direct Mr Dance to take steps to remedy the contraventions. Here, as in most such cases, that would require Mr Dance to take steps relating to his property so as to restore it to the victims.

(4) The relief sought under s.382(2) is to compensate the victims of those contraventions by paying from Mr Dance's property a sum of money to the FCA to be distributed under the Court's direction to those investors: see ss.382(3) and 382(8).

(5) In each of these cases, the High Court Proceedings relate to relief directly or indirectly sought in respect of diverted client monies currently held in accounts held by Mr Dance or others, or reflected in his other property, including horses, expensive motor vehicles and property etc.

(6) Those assets are the same property that is restrained under the CRO in the Crown Court Proceedings. Accordingly, the High Court Proceedings are "in respect of" such property.

44. Even so, Mr Burgess submits the legislative steer in s.69(2)(b) of the 2002 Act would at best be of peripheral relevance here, given the nature of the High Court Proceedings which he asserts. I cannot agree with that submission for the reasons which I have just set out: part of the High Court Proceedings are "proceedings in respect of" property within the meaning in s.58(5). As Hughes LJ said, the result is that other litigation in respect of property which is subject to a CRO may, as a result of that order, need to be stayed or permitted to proceed only on terms. Where Parliament has mandated that consideration be given to a stay in respect of certain types of proceeding, for other proceedings, this Court should not ignore the fact that a criminal restraint order has been made or the wider impact on the interests of justice of not granting a stay and, in that context, the legislative intent behind those proceedings.

45. Nor do I consider there is anything oppressive in the legislative steer applying in such circumstances, as Lord Burrows JSC cautioned against in *Luckhurst* [2022] 1 WLR 3818: as I pointed out at [17] above, there is an almost identical overlap between the facts and matters relied upon by the FCA, and a substantial overlap in the underlying nature of the claims advanced, in both sets of proceedings. Should the Court grant a stay on the terms sought, Mr Dance will have ample opportunity to set out his position in the event criminal proceedings are brought against him; if he is not charged, then the High Court Proceedings will revive and the CRO will most likely be discharged.

Other potentially relevant principles

46. In any event, Mr Burgess submits that, where a party to civil proceedings makes serious allegations (such as fraud, dishonesty or criminality), it is of particular importance that there be no delay in bringing those allegations to trial. In a case concerning parallel civil proceedings abroad, Gloster J (as she then was) held[10] in *Klöckner Holdings GmbH v Klöckner Beteiligungs GmbH* [2005] EWHC 1453 (Comm) that:

> "A Defendant against whom a serious allegation (such as deceit) is made is entitled to an expeditious hearing, and should not be left for years waiting for the outcome of another case over which he (and the Court) has no control. An action alleging fraud should come to trial quickly; thus unwarranted delay may lead to an action being dismissed for want of prosecution even before the limitation period has expired: *e.g.* Clerk & Lindsell on Torts (18th ed., 2003) 15-38, *Yiannides v Radley Gowns Ltd* (1975) 119 SJ 711, the overriding objective (CPR 1.1, 1.2 and 1.4(2)(l)) and Article 6 of the ECHR."

[10] At [21(vi)].

Mr Burgess further submits that similar considerations apply where a party obtains interim relief. The "*general principles*" are that:

> "(1) a claimant who has obtained an injunction, search order or other interim remedy is bound to get on with his action as rapidly as he can; (2) he is not entitled to retain the relief except on the basis that the proceedings are progressed promptly and without unnecessary delay".[11]

In my judgment those cases can, however, be properly distinguished on the basis that the Defendant in these proceedings, Mr Dance, is likely to have the allegations against him determined one way or another in criminal proceedings promptly brought by the FCA or, failing that, in the High Court Proceedings, even in the event a 12 month stay is granted. And, as I mentioned, in the event the Court grants the stay sought by the FCA, the FCA will apply to discharge the IPO as against Mr Dance.

47. Mr Burgess also submits that, where a stay of civil proceedings is sought pending the resolution of criminal proceedings, the relevant principles to follow are set out by Gloster J in *Akciné Bendrové Bankas Snoras (In Bankruptcy) v Antonov* [2013] EWHC 131 (Comm), at [18]. He submits that, as far as presently relevant, the principles from that judgment are as follows (my emphasis):

    (1) "The court has a discretion to stay civil proceedings until related criminal proceedings have been determined, but it 'is a power which has to be exercised with great care and only where there is a real risk of serious prejudice which may lead to injustice'…";

    (2) "The discretion has to be exercised by reference to the competing considerations between the parties; the court has to balance justice as between the two parties; a *claimant* has a right to have its civil claim decided; the burden lies on a *defendant* to show why that right should be delayed";

    (3) "A *defendant* must point to a real, and not merely notional, risk of injustice…";

    (4) "It is not enough… that both the civil and criminal proceedings arise from the same facts…"; and

    (5) "In the event that the court were to be satisfied that there would be a real risk of serious prejudice leading to injustice if the civil proceedings continue, then the proceedings should nevertheless not be stayed if safeguards can be imposed in respect of the civil proceedings which provide sufficient protection against the risk of injustice".

48. As to those submissions, Mr Evans KC says they are relevant only to a defendant's application to stay. I agree, in part. Those general principles are applicable where the stay is sought by a defendant rather than a claimant, as was the position in *Bankas Snoras*. But the quite unique position in a stay application brought by a claimant who is a regulator and criminal investigator performing its statutory functions as mandated by Parliament distinguishes the general approach that might otherwise be taken on a defence application to stay and the principles which Mr Burgess submits are relevant where a stay

[11] See *Gee on Commercial Injunctions* (7th edition) at 24-049, cited with approval by Popplewell J in *Phoenix Group Foundation v Cochrane* [2017] EWHC 418 (Comm), at [46] (referring to the 6th edition of the work).

of civil proceedings is sought pending the resolution of criminal proceedings. Had those distinguishing features not been present and the application to stay been made by Mr Dance rather than the FCA, I would have found Gloster J's overall approach in *Bankas Snoras*[12] persuasive and followed it, including the selected principles quoted and relied upon by Mr Burgess set out above.

49. It is remarkable that, in almost all the relevant authorities on the general jurisdiction to grant a stay, the application is made by a defendant and resisted by the claimant. Mr Evans KC told me that he was unable to identify a reported case dealing with the opposite situation – where the party seeking a stay is a regulator who has commenced civil proceedings and seeks to stay them because of its intent to prioritise its criminal investigation – let alone where the party is a regulator who has commenced civil proceedings, obtained a criminal restraint order and seeks to prioritise the criminal investigation with a view to bringing criminal proceedings.

The correct approach

50. Thus, I find the correct approach on applications of this nature (*i.e.*, where a criminal restraint order is in place in "related criminal proceedings" in the Crown Court), and in the Application before me is that:

    (a) s.58(5) of the 2002 Act applies;

    (b) the same test applies as for a general stay, *i.e.* whether a stay is "what is required by the interests of justice in the particular case", per Males LJ in *Athena Capital*;

    (c) that test involves an exercise of the Court's discretion, which must be exercised with great care; and

    (d) in considering whether to stay the High Court Proceedings or to allow them to continue, I must do so with a view to securing there is no diminution in the value of "realisable property" pursuant to the legislative steer set out in s.69(2) of the 2002 Act.

51. In determining here "what is required by the interests of justice in the particular case", and as Mr Evans KC submits, it seems to me that the Court is entitled and should have regard to:

    (a) the fact that the application for a stay is made by the party bringing the High Court Proceedings;

    (b) the fact that that the applicant is a regulator acting not for its own personal ends, but to fulfil the regulatory duties imposed upon it by Parliament;

    (c) the regulatory rationale for seeking to stay the High Court Proceedings; and

    (d) what, if any, substantial prejudice a stay would cause Mr Dance.

[12] And cases which have considered and applied it, such as *Polonskiy v Alexander Dobrovinsky & Partners LLP* [2016] EWHC 1114 (Ch) and *Republic of Mozambique v Credit Suisse International* [2022] EWHC 3094 (Comm).

I shall do so. In considering what, if any, substantial prejudice a stay would cause Mr Dance, I will consider whether there is a real risk of serious prejudice to him which may lead to injustice, in line with the test adopted by Gloster J in *Bankas Snoras*.

52. Having set out my approach, I turn to consider in greater detail the grounds for the stay relied upon by the FCA.

Discussion and analysis

Section 58(5) and the legislative steer

53. The ambit of the CRO against Mr Dance is very wide: it applies to all of his assets, whether or not specifically described in the order, whether or not they are in his name, and whether or not they are solely or jointly owned by him or beneficially held by anyone else. As such, the CRO applies to any remaining client money held by him originating from WealthTek.

54. The CRO does not prevent Mr Dance from "*spending a reasonable sum for the purposes of reasonable legal expenses*" in respect of, amongst other things, the High Court Proceedings, in the event no stay is ordered: see *Luckhurst* [2022] 1 WLR 3818. As Mr Williams identifies in his Second and Third Witness Statements, Mr Dance has incurred legal fees and expenses in the order of about half a million pounds in the High Court Proceedings (all of which is coming out of his realisable property), which I find remarkable given he is yet to file a Defence. The evidence of Mr Hollyoak relied upon by the FCA in the Crown Court Proceedings suggests that very significant sums have been transferred from WealthTek's client accounts to Mr Dance and dissipated by him. Mr Dance has not advanced any proper justification for those transfers.

55. Given the almost identical overlap between the facts and matters relied upon by the FCA, and the substantial overlap in the underlying nature of the claims advanced, in both sets of proceedings that I identified at [17] above, in my judgment the legislative steer in s.69(2)(b) points towards a stay being ordered given the inevitable and substantial additional depletion of Mr Dance's realisable property should the High Court Proceedings be permitted to continue.

56. As I have found, the existence of the CRO means that s.58(5) of the 2002 Act is engaged, or is at least a factor to be considered. If I am wrong about that, and the High Court Proceedings are not proceedings "pending in respect of … property", for the reasons which follow I am satisfied that the High Court Proceedings in any event should be stayed on consideration of "what is required by the interests of justice in the particular case" in accordance with the test laid out in *Athena Capital*.

Prioritising the criminal investigation

57. Mr Evans KC submits that, where, as here, the FCA considers in line with its statutory duties that it is likely to be in the public interest to bring criminal charges, it is in the interests of justice that the FCA should prioritise its criminal investigation and any future criminal proceedings over the High Court Proceedings.

58. In this regard, Mr Evans submits that:

(a) it is in the wider interests of justice and consistent with the public interest that serious crime such as that suspected in this case (and found in the Crown Court Proceedings) is investigated and prosecuted, assuming the "Full Code Test" in the Code for Crown Prosecutors test is met; and

(b) this is reinforced in this case in the light of Parliament's clear imposition on the FCA of the FCA's statutory operational objectives, which include protecting and enhancing the integrity of the UK financial system and the relevant prosecutorial powers in Part XXVII of the 2000 Act.

59. Mr Burgess did not directly address this ground in his written submissions, though he touched upon it in his oral submissions. He said that, in the event the FCA wishes to pursue a criminal investigation, the proper course for it was to discontinue the High Court Proceedings rather than for those proceedings to be stayed.

60. It is evident from what I have already said that the FCA's unique position as regulator and criminal investigator (and, ultimately, prosecutor) makes it distinct from claimants who do not fulfil such statutory functions. The FCA's decision to prioritise the criminal investigation is made on substantial grounds. It considers the conduct which it has uncovered to be one of the most significant frauds ever carried out by an approved person at an FCA authorised firm. As Mr Williams says, the extent of the wrongdoing and the amounts suspected of being transferred out of WealthTek's client account are now considered to be in the order of £62 million. And, as I mentioned, Mr Dance does not dispute there are reasonable grounds to suspect that he had benefitted from his criminal conduct as the test in s.40(2)(b) of the 2002 Act requires, although he makes no admission of civil or criminal liability.

61. For all those reasons I accept Mr Evans KC's submission that, in the circumstances, the criminal investigation should be prioritised over the High Court Proceedings, which were commenced urgently by the FCA on the information then known to it and pursuant to its statutory obligations and published guidance.

Period of stay

62. Mr Williams says the FCA anticipates being in a position to determine whether or not to bring criminal charges within 12 months. His evidence is that:

(a) criminal proceedings against Mr Dance would involve seeking relief that would, for practical purposes, "*substantially overlap*" with the relief being sought in the High Court Proceedings; and

(b) continuing the High Court Proceedings at this juncture may be otiose, would result in the parties spending substantial and potentially unnecessary costs, and would potentially be a waste of the Court's valuable resources to the detriment of other court users.

63. Accordingly, the FCA seeks a stay of the High Court Proceedings for 12 months, rather than a general stay, in order for the criminal investigation to progress and for a charging decision to be made. Mr Evans KC submits that, in those circumstances, it is not in the interests of justice for the High Court Proceedings to continue unabated.

64. Mr Johnson disagrees with Mr Williams's evidence that charges are likely to be brought within 12 months by reference to the FCA's own metrics, but I prefer Mr Williams's assessment of the position as it applies in the peculiar circumstances of Mr Dance's case. In any event, Mr Burgess submits a 12 month stay would serve no purpose unless the Court was also to be convinced on this Application that if criminal charges are brought such a further general stay of the civil proceedings would be appropriate. I disagree. If the question of a general stay needs to be determined, in my judgment the appropriate time for that question to be determined is after the FCA has made a charging decision: if the FCA determines that Mr Dance is to be prosecuted, pursuing the High Court Proceedings may be pointless and a general stay may well be unnecessary. But that is not a decision which I need to or should take at this juncture.

65. As I mentioned, there is a high degree of overlap between the two proceedings. This overlap includes the nature of the claimant/prosecutor, the underlying dishonest conduct alleged, the representative nature of the High Court Proceedings and, importantly, the intent to compensate the victims of the alleged contraventions/crimes. The relief sought by the FCA in the PoC under ss.380(2) and 382(2) of the 2000 Act of making good as best as can be done the losses suffered as a result of the alleged regulatory contraventions is also likely to be the very object of any compensation order sought after a successful prosecution of Mr Dance, although, as Mr Williams says in his Second Witness Statement, a compensation order will be of greater ambit in terms of the likely period to be covered stretching back to 2014, rather than 2020. If the High Court Proceedings were continued in those circumstances, the scope of the relief sought may well be significantly narrowed to the declaratory and injunctive relief presently sought in the PoC.

66. Lastly, Mr Evans KC submits that requiring the parties to progress the High Court Proceedings over the next 12 months will be extremely expensive, in circumstances where the FCA has finite resources, and would add to the pressure already put upon the Court's limited resources. I am not persuaded by this submission. The FCA has been given statutory functions by Parliament. It is a matter for Parliament and others to ensure the FCA is properly funded to carry out those functions. Nor do I consider that pressure on the Court's limited resources would be alleviated should a 12 month stay be granted: if such a stay were granted and the High Court Proceedings continued thereafter, all that would do is to delay the proceedings for 12 months. Any pressure on the Court's resources would be transient. Mr Burgess submits that, even in the event of a successful prosecution against Mr Dance, the FCA would presumably wish to still seek the additional injunctive and other relief sought against Mr Dance by way of the High Court Proceedings and any other relief it failed to obtain in criminal proceedings against Mr Dance. Mr Evans submits a successful prosecution would involve the FCA seeking confiscation and/or compensation that would "*substantially overlap*" with the relief sought in the High Court Proceedings. Although Mr Evans's position appears to hold the door open to the FCA pursuing additional relief in the High Court Proceedings even in the event of a successful prosecution of Mr Dance in the Crown Court, as I have already observed the scope of the relief sought by the FCA in the PoC may well be limited to declaratory and injunctive relief. Post-conviction, and taking into account the confiscation proceedings likely to follow, that may well be of limited purpose to the FCA in pursuing its statutory functions.

Prejudice

67. Mr Evans KC submits that Mr Dance would not be materially prejudiced by a stay. The only contention raised in correspondence on Mr Dance's behalf is that it should not be open to the FCA to raise serious allegations against him, to refuse to give specific disclosure, and then to seek a stay, effectively "*warehousing*" its claim. In seeking a stay, however, Mr Evans submits the FCA is not abandoning its claim against Mr Dance. Rather, given the scale and gravity of the suspected misconduct, Mr Evans says the FCA has reasonably and properly determined that the allegations should be pursued criminally: it is not seeking to "*park*" its allegations, but rather to advance them in criminal proceedings.

68. As to the specific disclosure complaint, Mr Evans says this is a non-point: the FCA has served on Mr Dance all the evidence relied upon in support of its interim injunctive relief and provided in its detailed PoC. Mr Evans further says a stay of the civil proceedings will not deprive Mr Dance of the opportunity to clear his name. If he decides to reveal his hand (which he has not done in his responsive witness evidence), he will have that opportunity, either in criminal proceedings or, if he is not charged, in the High Court Proceedings once any stay granted is lifted.

69. Mr Burgess submits a delay to the determination of the High Court Proceeding would be detrimental to the fair trial of those proceedings and offend Mr Dance's rights to a fair trial under Article 6 of the European Convention on Human Rights. I do not see anything in this point. Mr Dance's right to a fair trial remains, even if a 12 month stay is granted. A delay of 12 months would have no bearing on his Article 6 rights. This point is best illustrated by Mr Burgess's reliance on the limitation period. The conduct relied upon by the FCA to advance its claims took place beginning in 2020. In that case, the limitation period would not expire until 2026, at most another two years away. And there is no limitation period for criminal offences such as those alleged by the FCA.

70. As to Mr Burgess's complaint that serious allegations such as those made by the FCA should be determined promptly, there is no reason why a 12 month stay of the High Court Proceedings would not lead to this. If criminal proceedings are brought against Mr Dance within the next 12 months, there is no reason why those proceedings cannot proceed with the usual expedition. In any event, I consider the suggestion that Mr Dance has been scuppered by the FCA from giving a substantive response to the allegations made in the High Court Proceedings through the FCA's failure to provide the specific disclosure request is without foundation; Mr Dance has, rather, for his own reasons chosen not to contradict the factual allegations set out in correspondence between the FCA and his solicitors, in interview or in the media. Whether he had done so because he has no answer to them or, if he does, for tactical reasons, I do not know. The position in the High Court Proceedings, however, can be fairly summarised as follows:

    (a) the FCA's allegations in the High Court Proceedings involve factual allegations as to what Mr Dance did, to which he should be able to respond at this stage without recourse to additional documents through specific disclosure;

    (b) the FCA has already provided Mr Dance with the evidential basis for those allegations, including not just the affidavit and witness evidence relied upon in both proceedings, but also hundreds of pages of documents exhibited to such evidence; and

(c) if Mr Dance had a substantive defence to the factual allegations, he could set that out as best he can, as most litigants would do, subject to further disclosure, and provide further details to the extent necessary after disclosure.

So, through example by reference to the FCA's allegations against Mr Dance set out in the PoC:

(d) Mr Dance was declared bankrupt in July 2018 but, despite being asked about it, it seems that he failed to disclose his bankruptcy to the FCA. As Mr Williams sets out in his Third Witness Statement, that is clear from the documents already in Mr Dance's possession. If Mr Dance has an explanation to the allegations in paragraph 31, I cannot see how he requires further disclosure to respond to it;

(e) paragraph 37 alleges WealthTek's business involved the holding of financial instruments and client money and custody assets, despite Mr Dance agreeing during the authorisation application process to withdraw the request for permission to include holding client money. As WealthTek's compliance officer and primary point of contact on the accounts, I cannot see how Mr Dance would need any documents to respond to this allegation;

(f) Mr Dance was the author of the regulatory returns submitted to the FCA. As Mr Williams sets out in his Third Witness Statement, Mr Dance has been provided with the relevant returns and the associated filing data as well as the Skilled Persons Report and the summary of his communications with the Skilled Person. Those documents speak for themselves. No explanation is given as to what further disclosure is needed to respond to this allegation;

(g) paragraph 41 alleges Mr Dance sent an email with a forged version of the FCA's "Scope of Permissions" to a bank. I am told the FCA has provided Mr Dance's solicitors with the relevant emails, metadata, and details, but Mr Dance has not provided any explanation about it. I do not see how specific disclosure of WealthTek's email servers or bank statements would assist Mr Dance in providing an initial answer this allegation;

(h) similarly, I see no good reason why Mr Dance cannot respond now to the allegation in paragraph 42 that he misled the FCA that WealthTek's clients had accounts at Novia, given he wrote the relevant emails and has been provided with copies; and

(i) I also see no good reason why Mr Dance cannot respond to allegations as to what he said to Barclays Bank as to transactions made in respect of the Barclays client account alleged in paragraph 43. He has what Barclays has recorded as the questions and answers as to the use of that account, and as the person who appears to have had principal control of that account, should be able to respond to the substance of the accuracy or falsity of the facts and matters averred by the FCA.

71. Moreover, Mr Dance had ample opportunity to file and serve evidence in response to this Application, setting out his position as best he could pending further disclosure. The suggestion in Mr Johnson's Second Witness Statement that Mr Dance is unable to respond on the basis of "*memory alone*" is not to the point; there has, as I have said, been served the affidavit and witness evidence relied upon by the FCA in both proceedings, with hundreds of pages of documents exhibited thereto. Mr Dance ought to be able to

provide a straightforward answer to the allegation of forgery in paragraph 41 of the PoC, but he has chosen to remain silent on even such a basic allegation.

72. To sum up the position, I am satisfied that a stay of the High Court Proceedings will not deprive Mr Dance of the opportunity to clear his name. If he decides to set out his position he will have that opportunity, either in criminal proceedings or, if he is not charged, in the High Court Proceedings once any stay is lifted. I do not see any real risk of serious prejudice to Mr Dance which may lead to injustice should the High Court Proceedings be stayed as the FCA now seeks. A balance of the competing interests of the parties leads me to conclude that a 12 month stay is required by the interests of justice in the case.

73. Having reached that conclusion, I am not persuaded by Mr Burgess's alternative approach to adjourn the Application pending a charging decision by the FCA. There is, as I have said, a substantial overlap between the High Court Proceedings and the criminal investigation and proceedings that would inevitably follow if the FCA determines Mr Dance should face charges. There is nothing to prevent Mr Dance from publicly setting out his response to the allegations made against him in the High Court Proceedings, subject to any further disclosure which may follow.

Conclusion

74. For all those reasons, I consider that the 12 month stay of the High Court Proceedings sought by the FCA is required by the interests of justice in the case, in that the criminal investigation being pursued by the FCA should take priority over the High Court Proceedings with a view to the FCA making a charging decision within the 12 month stay. In exercising the Court's discretion to stay, I do so with a view to securing there is no diminution in the value of Mr Dance's "realisable property" pursuant to the legislative steer set out in s.69(2) of the 2002 Act, having had regard to the factors set out at [51] above. I do not consider a 12 month stay would cause Mr Dance a real risk of serious prejudice which may lead to injustice.

Disposal

75. I order accordingly.

76. I will hear the parties as to what consequential orders are sought in light of this judgment, including whether the IPO against Mr Dance should be varied or discharged, and, if so, on what terms.