Neutral Citation Number: [2024] EWHC 505 (Ch)

Case No: BL-2021-000365

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

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

Date: 5th March 2024

Before :

SIR ANTHONY MANN

- -

Between:

Nebahat Evyap Işbilen	**Claimant**
- and -	
Selman Turk and others	**Defendants**

- -
- -

Mr Dan McCourt Fritz KC and **Mr Andrew Gurr** (instructed by **Peters & Peters LLP**) for the Claimant
Mr James Counsell KC and Ms Helen Pugh (instructed by Janes Solicitors) for the First Defendant

Hearing dates: 15th, 16th, 17th, 20th, 21st, 22nd, 23rd November, and 6th, 12th & 19th December 2023

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SIR ANTHONY MANN

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Sir Anthony Mann :

Introduction and procedural background

1. This is an application to commit the defendant, Mr Turk, to prison for contempt, the contempt being said to be his serious failure to comply with his disclosure obligations in a freezing order made against him. The freezing order was both personal and proprietary; the disclosure obligations from which this application is derived related to the proprietary side.

2. I can refer to the underlying claim briefly so as to provide some necessary background. The claim has not yet been determined, despite the fact that it was started in 2021, and it is to some degree unfortunate that this action has not really got very far down the road to trial, but that of itself is no bar to this application.

3. The underlying claim arises out of dealings between Mr Turk and the claimant, Mrs Işbilen. She is a Turkish lady in her 70s whose husband has fallen foul of the authorities in Turkey and who has been imprisoned there. She wished to get herself and her considerable assets (tens of millions of pounds worth) out of Turkey and asked Mr Turk, a former Goldman Sachs banker, for his assistance in both those respects. So far as her assets are concerned her claim is that he was asked to make sure they were safe, and no more. He duly assisted her in both those endeavours, and she now resides in this country.

4. The claim itself arises out of what happened to her assets. Mrs Işbilen claims that in breach of his limited instructions he applied $30-$40m of her assets in ways that went beyond his instructions, a large part of them in the direction of various entities in which he is said to have an interest. This claim is a claim to retrieve those assets, their traceable proceeds and/or compensation (putting the matter broadly). There are also other substantial claims for breach of fiduciary and other obligations in relation to other moneys. Mr Turk claims that the instructions were not as limited as Mrs Işbilen says they were and all that he did was proper, within his instructions, and with the fully informed consent of Mrs Işbilen who herself authorised the documents which effected the disposal of her assets. The other defendants to the action are the claimed recipients of funds and one individual (Mr Lewis) who is a director of some of the companies and who is sued as a recipient of some of the moneys. Some further details of Mr Turk's relationship with those defendants appears under the various heads of the committal application set out below. Further details of the claim itself can be found, if necessary, in a recent judgment of mine on default judgment and summary judgment applications brought by Mrs Işbilen, the neutral citation of which is [2021] EWHC 2865 (Ch); but the above is sufficient for present purposes. The applications failed for the reasons set out in the judgment.

5. Having (as she claims) found out that Mr Turk was indulging in wrongful dispositions of her money, Mrs Işbilen bought these proceedings. She made a without notice application for a freezing order, which was granted by Miles J on 4th March 2021 - the "Miles order". It was served on the evening of 11th March. The order was in due course continued by consent by an order of Ms Pat Treacy (sitting as a deputy High Court Judge) on the return date on 18th March, and on 25th March she made an order (with the consent of Mr Turk) for his cross-examination on his disclosure, which in due course took place. On both those hearings Mr Turk was represented by counsel (as he was at the later cross-examination hearing), a point which is relied on by the claimant in this application in relation to the knowledge and appreciation of Mr Turk of the effect of the order. On the return date Mrs Işbilen's counsel (Mr McCourt Fritz KC, who also appeared in front of me on this application) made extensive reference to what was said to be Mr Turk's culpable failure to comply with the disclosure obligations.

6. Having conducted further investigations Mrs Işbilen's advisers considered that Mr Turk's disclosure was so inadequate that on 18th March 2022 they obtained a search and seizure order from Mr David Halpern QC, again sitting as a deputy judge of the High Court. This is said to have revealed significant documentation. Being still unsatisfied about the disclosure, Mrs Işbilen launched this present application on 7th November 2022. It was unmanageably wide in its original scope, and on 26th April 2023 I made a directions order, which included a provision cutting down the scope of the application to make it proportionate and manageable, and a provision for Mr Turk to have legal aid. As a result of that order Mr Turk has had the benefit of the services of leading and junior counsel since then and on this application.

7. As will appear, the money flows relied on by Mrs Işbilen are not disputed. The main defence to this application arises out of an averment by Mr Turk that at no material time did he understand the nature and extent of the disclosure obligations which lie at the heart of this application. Although he instructed solicitors as soon as he was served with the order (not the solicitors currently acting for him) they never explained to him what he was supposed to disclose, and that explains any inadequacies in his disclosure. This is said to go to liability and, if he is technically in breach and in contempt, to the nature of the breach/contempt, to the extent to which the breaches were contumacious, and thus to penalty.

8. Mr McCourt Fritz KC led for Mrs Işbilen on this application; Mr Counsell KC led for Mr Turk.

An intermediary and Mr Turk's ADHD

9. Mr Turk obtained a psychiatrist's report which disclosed that he suffered, and has all his life suffered, from Attention Deficit Hyperactivity Disorder (ADHD), for which he is on medication, and has been for some years. For present purposes the principal effect is said to be that Mr Turk is apt to lose focus on any given intellectual task at hand. Since these proceedings were served on him he has suffered from anxiety and low mood. The result of all that it was said that he was entitled to the services of an Intermediary in order to assist him in making relevant adjustments so that he could more fairly cope with the proceedings in court and in order to assist the court and the advocates in dealing with him. Having considered the material, and so far as it fell to me to do so (which I was told it did, especially in terms of funding) I allowed him to have an intermediary, and Miss Catherine Stewart attended as that intermediary on most days, with colleagues attending on two occasions when she could not.

10. In accordance with established procedures, a Ground Rules Hearing took place at the start of the proceedings before me. The point had been taken so late that it was not possible to have such a hearing before then. It was established that Mr Turk would have necessary breaks in his giving of evidence which would be slightly more frequent, and slightly longer, than would otherwise have been the case, and that a close eye would be kept on whether he was getting into difficulties. Miss Stewart attended the hearing in order to assist the court and the advocates, and occasionally (but not often) sought to drawn relevant matters to the attention of the court, which she did (by arrangement) through Mr Counsell. She spoke to Mr McCourt Fritz before he started cross-examining and he was thus able to understand how the nature of his questioning would have to be tailored in order to make proper adjustments for Mr Turk. From time to time I checked with Miss Stewart and her colleagues that she had no concerns, and they indicated that they did not.

11. I am quite satisfied that those measures resulted in a hearing that was fair to Mr Turk's condition and that he was not disadvantaged. I saw no signs that the nature of his condition meant that he was disadvantaged, and having studied him closely when he was giving his evidence it was apparent to me that he seldom lost focus on what he was being asked, or in the giving of his evidence, apart from one short lapse when he struggled for a word and said he had lost focus, and a very few occasions when it was apparent that he was looking at the wrong document in the witness box without appreciating it and without saying so. In that latter respect he was no more lost or unfocused than many other witnesses who get similarly temporarily lost and who do not claim to suffer from ADHD. I am as satisfied as I can be that he understood all the questions (except where he indicated that he did not) and understood what he was being asked about at all times.

The order

12. Miles J's order was first directed at Mr Turk as being the person who is said to have orchestrated the dispositions of Mrs Işbilen's money, who knew where the money went and who knew the identity of other individuals who could provide information that he could not, then and at various of the defendants who were identified as being corporate recipients of the money, together with Mr Lewis, who was a director of some of those companies. Their status and attributes appear later on in this judgment. The relevant provisions of Miles J's order, so far as a verbatim exposition is required are set out in Annexe 1 to this judgment. The order contained what can be described as standard freezing order provisions in relation to Mr Turk's personal assets, with associated disclosure provisions. They are not relevant to this application and are not set out in the Annexe. The order also contained what it describes as proprietary injunctions, and this application is concerned with the disclosure provisions allied to those injunctions. These required disclosure of the fate of the "Traceable Proceeds" of Mrs Işbilen's money, defined in paragraph 15. In relation to some of the classes of assets concerned the respondents were to state various things (paragraphs 16 and 17), for which I adopt labels applied by Mr McCourt Fritz in this application:

> (i) "the current value, nature and location of the Traceable Proceeds" and the "name or names in which the Traceable Proceeds are held" - labelled in this application "current status information".
>
> (ii) if that was not in the respondent's immediate knowledge they were to disclose "the identities, addresses and any other contact details known to them of any person who is or might reasonably be expected" to know those matters - "further parties information".
>
> (iii) if the traceable proceeds had been transferred elsewhere by any respondent they were ordered to disclose "(a) the date of the transfer, (b) the purpose of the transfer, and (c) the identity of the transferee" - in this application labelled "transferee information".

13. In relation to assets of Mrs Işbilen Mr Turk was obliged to disclose their form and whereabouts (paragraph 18).

14. It will be noted that the order did not require a fully disclosed tracing exercise. The current status information was information as to the last known destination of the moneys. Mr Turk was not obliged to set out how it got there or set out a full tracing exercise, and Miles J made it clear in his judgment that it was not his intention to order a tracing exercise on a without notice application, though for my part I have to say that it is not plain to me how Mr Turk could specify a last known destination without having carried out some form of tracing exercise in order to arrive at that conclusion himself even if he did not have to set it out in his disclosure.

15. Various construction points were said to arise in relation to this order; I deal with them in a separate section below.

A corporate dramatis personae

16. It is necessary to identify the status of the corporate respondents to the order (the second to sixth defendants), and one or two other relevant corporate entities, in order to show Mr Turk's connection with them or the connection with the events surrounding this application.

SG Financial Group Ltd- the second defendant - SGFG". This is a UK company of which the directors at the relevant time were Mr Turk and Mr Gary Lewis, another of the defendants to this action but who is not an object of the freezing order. Mr Turk describes this as as a company offering "boutique financial and advisory services" and it is said to have advised Sentinel Global Asset Management (below).

Barton Group Holdings Ltd - the third defendant - "Barton". This is a BVI company of which Mr Turk is and was the sole director and the sole shareholder. He claims not to have been clear as to whether he was a director at the date of the order, and contemporaneous privileged documents reflect that uncertainty, but says that his solicitors at the time investigated and found that he was. This seems to have been accepted by them in a letter of 27th May 2021, but it was not apparent at this hearing that the point was really taken at the time as somehow qualifying or limiting what was required of Mr Turk. It was plainly his creature at all times. There was another director, but it is apparent that she played no active part in corporate decision making, including the disposition of its moneys. On this application Mr Counsell did not suggest that any uncertainty in his position as director should be treated as qualifying his disclosure obligations or mitigating any failure to disclose.

Sentinel Global Asset Management Ltd - the fourth defendant - "SGAM". This is a Cayman Island registered company of which Mr Turk and Mr Lewis are and were directors, together with a local director required by local law. It was the general partner of **Sentinel Global Fund**, a Cayman limited partnership which was the first destination/recipient of the $30m placed by Mrs Işbilen with Mr Turk at the start of their relationship. Mrs Işbilen was the only person beneficially interested in the partnership.

Sentinel Global Partners Ltd - the fifth defendant - "SGP". This was incorporated as a Seychelles company but was reincorporated in the Cayman Islands. Mr Turk was the sole shareholder and was a director along with a local director. Its function is said to have been to provide financial advice to non-UK clients.

AET Global DMCC - the sixth defendant - "AET". This is a Dubai company which Mr Turk says is an arms length company in which he has no interest. Its principal mover is a Mr Aytac Erdem, whose name will figure largely in two of the heads of contempt which are pursued. It received significant moneys which have Mrs Işbilen's money as their source.

17. One further explanation is required. From time to time there was, and will in this judgment be, reference to "**Swiss Global**" accounts in a manner which suggested that it was a bank or deposit taker which operated accounts. In fact it was not. It was an entity known as Swiss Global Asset Management AG, which was essentially controlled by Mr Turk and which had and operated custodian accounts at Raiffeisen bank. Mrs Işbilen had an "account" with Swiss Global, as did other entities involved in this story, including Mr Turk and Barton, and some of Mrs Işbilen's moneys were treated as being "held" there.

Procedural matters, the contempts alleged and the defence in outline

18. The contempts alleged against Mr Turk are all failures to disclose under the disclosure obligations in the Miles order. In the application notice they were set out in fairly general terms, and on the prior directions hearing I directed that clear particulars be given of the 9 Grounds that were to be pursued after others were stayed when I insisted on the application being reduced in scope. All 9 were opened to me, but during the course of the hearing of this application Mr McCourt Fritz cut those back further, and the survivors are set out in Annexe 2 to this judgment.

19. The allegations involve following Mrs Işbilen's money through various hands and demonstrating a last known whereabouts as far as Mrs Işbilen knows them. The flow of money on which she relies is generally not disputed by Mr Turk on this application. It is said by Mrs Işbilen that he did not disclose where the money ended up as far as he knew - the "current status information" in the jargon of this case - and that he did not disclose details of the persons who might be able to provide details of where the money went thereafter - "transferee information". Mr Turk's principal defence on the facts is that he did not know that he had to do more than he did. Although he instructed solicitors to advise him almost as soon as he was served with the order, at no stage did those solicitors (Bivonas & Co) advise him properly as to what was necessary to comply. He did not have a full independent understanding of those

matters, and in the circumstances any non-disclosure (which is often admitted as a matter of fact, but subject to legal points as to the construction and effect of the order) is attributable to his ignorance. That is said to go to both liability and contumaciousness. By the time of final submissions this application had become largely about the understanding issue.

20. In his written final submissions Mr Counsell accepted that Mr Turk had "much of" the information to which Mrs Işbilen said she was entitled, and a combination of those written submissions and his oral submissions contained an acceptance that, subject to points of construction on the order, he was therefore in breach of the order. Absent points of construction which stood in the way of a breach allegation, he seemed to be accepting that there were breaches. He also accepted the money tracing exercises which were the basis of the various Grounds. However, despite that very significant concession, it is necessary to identify the breaches properly, both as a matter of principle in a case such as this, and because they are capable of reflecting on the quality of the breach in terms of sentencing. I shall therefore do that. As will appear, Mr Counsell wins on one significant point of construction and loses on others.

21. No points of a procedural nature were taken by Mr Turk save for one point about penal notices and directors. It was accepted by him that all matters of form and procedure necessary to mount a committal application (such as service and the form of the application) were complied with. Accordingly it is unnecessary for me to set out and consider the detailed provisions of CPR 8 in that respect, save in relation to the penal notice point, which I deal with at an appropriate later point in this judgment.

The law relating to contempt so far as relevant to this application

22. The parties were in a large measure of agreement as to the legal principles governing contempt applications, which means that this section can be shorter than it would otherwise have been, and I can usually (but not always) set out the principles without extensive citation from the authorities. The agreement was on the following principles.

(i) The onus of proving the contempt lies on the applicant.

(ii) The standard of proof is the criminal standard - that is to say, beyond reasonable doubt. If, after considering the evidence, an innocent explanation of an apparent contempt is a possibility, the application will fail - *Daltel Europe Ltd v Makki* [2005] EWHC 749 (Ch) at 30.

(iii) The court is entitled to look beyond considering each individual head of contempt in isolation in terms of evidence. The court is entitled to look at the "broad canvas" of evidence, though at the end of the day each contempt must be proved to the required standard - *Gulf Azov Shipping Co Ltd v Idis* [2001] EWCA

Civ 21 at para 18.

(iv) The court may draw inferences from primary facts, but if the fact is an essential element of the case the inference must be compelling in order to be justified - *Kwan Ping Bong v R* [1979] AC 609.

(v) It is important, if not vital, for the court to have effective powers which it is prepared to exercise in order to procure compliance with its orders lest its orders otherwise lose their effectiveness - *JSC BTA Bank v Ablyazov* [2012] ERCA 1411 at para 188 per Rix LJ.

(vi) Circumstantial evidence is admissible. It works cumulatively, in geometrical progression, eliminating other possibilities (per Lord Simon in *DPP v Kilbourne* [1973] AC 729 at 758), but where the evidence relied on is entirely circumstantial the court should be particularly careful to ensure that any conclusion that a respondent is guilty is based upon cogent and reliable evidence from which a single inference of guilt, and only that inference, can be drawn.

(vii) Mr Turk's key obligation for the purposes of this application is to make disclosures "to the best of [his] knowledge and ability". The nature of such an obligation was elaborated in the judgment of Nugee LJ in *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch) in the following terms (although Nugee LJ had a "best endeavours" obligation in his case, that is an equivalent for present purposes):

> "43. Ms Jones also submitted that there were two ways in which a person could breach an obligation to use best endeavours. One is if the person has not been genuine in his efforts to achieve the required objective; the other is if the person, even if acting in good faith, has failed to do everything that he reasonably could. I accept this submission. A failure even to try to comply honestly and bona fide with the obligation must be a breach of it; but given the accepted equation of a best endeavours obligation with an obligation to take all reasonable steps, I agree that a person who bona fide tries to comply, but does not in fact take all the steps which it would be reasonable for him to do, is also in breach. That is not to say of course that whether or not there had been a genuine but insufficient attempt to comply might not be very relevant to the way in which the Court ought to dispose of the application to commit, but it would not in my view prevent there being a breach."

23. In final submissions there emerged a further, potentially fundamental, matter which was said to go to the question of liability. In their respective openings both counsel took the law on contempt from *Masri v Consolidated Contractors International Co SAL* [2011] EWHC 1024 at para 150 (per Christopher Clarke J):

> "In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach"

24. That is an oft-cited formulation, and was cited, for example, by Nugee LJ in his comprehensive judgment in *Kea.* However, in his final submissions Mr Counsell referred to a different statement of the requirements appearing in *FW Farnsworth Ltd v Lacy* [2013] EWHC 3487 (Ch) at paragraph 20:

> "A person is guilty of contempt by breach of an order only if all the following factors are proved to the relevant standard: (a) having received notice of the order the contemnor did an act prohibited by the order or failed to do an act required by the order within the time set by the order; (b) he intended to do the act or failed to do the act as the case may be; (c) he had knowledge of all the facts which would make the carrying out of the prohibited act or the omission to do the required act a breach of the order. The act constituting the breach must be deliberate rather than merely inadvertent, but an intention to commit a breach is not necessary, although intention or lack of intention to flout the court's order is relevant to penalty " (Proudman J)

25. This different formulation was said to provide a defence to the whole application, as a matter of law, if Mr Turk genuinely did not understand what disclosure was required of him. Mr Counsell pointed out that the disclosure obligations were qualified by a reference to the best of Mr Turk's knowledge and ability. Lack of understanding was said to go to the best of his knowledge and ability because, as I understand the submission, his lack of understanding went to his ability to disclose. Accordingly, if he genuinely did not understand the requirements of the order by the time for compliance, when that time passed he was not in breach. Furthermore, intention was necessary for breach, and his lack of understanding meant that he lacked the intention which was necessary for a breach of these orders. That state of affairs continued up to the time for compliance so there was no breach at that point, and since there is no doctrine of continuing breach in relation to the following period (see *Kea* at paragraphs 70ff) it follows that there never has been a breach.

26. Mr Counsell sought to achieve this by reliance on Proudman J's reference to "contempt" and not breach, her reference to intentionality and to the fact that the order required compliance "to the best of [Mr Turk's] knowledge and ability". Not all breaches were a contempt. If Mr Turk did not understand what was required of him under the order, then he nonetheless acted to the best of his knowledge and ability (given his lack of understanding). His breach was therefore not intentional. Relying

on Proudman J's formulation, that meant that while he may have been in breach, he was not in contempt.

27. I reject this analysis and this submission. First, I do not consider that Proudman J was intending any formulation which was different from that in *Masri*. She was not intending to introduce a distinction between breach and contempt. Her first sentence was merely describing one type of contempt – breach of a court order. There are of course others – for example, interfering with the due administration of justice. She was separating out the type of contempt before her. Courts have not drawn the distinction between the two words which Mr Counsell relies on – see, for example, *Kea*:

> "25. The essential requirement is that the respondent should known what he is alleged to have done or not done which constitutes a contempt. That to my mind focuses on the acts of omissions which are said to constitute a breach of the order (the *actus reus* in the traditional language of the criminal law), rather than the mental element required (the *mens rea*)."

28. Second, the submission misinterprets the concept of intentionality. The contemnor is liable if he/she intends to do the act (or to omit the omission) which the order proscribes. A further intention to be in breach of the order is not what is required. See, for example, *Kea* again at paragraph 26. Accordingly, lack of understanding does not prevent a person from being in breach/contempt, though it may go to the extent to which the breach is treated as being contumacious (or contemptuous, connoting the same thing) and therefore sentencing. To introduce Mr Counsell's contempt of intentionality as a requirement for breach/contempt would be unwarranted by authority and contrary to principle. There is no reason in principle why a subjective failure to understand should prevent their being any breach (contempt) at all. The order is taken to be addressed to the reasonable person in the objective position of the person who is subject to it. The reference to ability is, on normal canons of construction, a reference to an objective standard, not a subjective standard governed by whatever happens to be the actual subjective understanding of the target.

29. Finally, further points about clarity are relevant. The order should be clear and unambiguous. It must be clear to the respondent what he/she has to do (or refrain from doing) - *Harris v Harris* [2001] 2 FLR 922. Those are considerations when it comes to drafting and granting the order, and it does not mean that if there is ambiguity the order cannot be enforced. The court will resolve the ambiguity and enforce the order accordingly - *ADM International SARL v Grain House International SA* [2024] EWCA Civ 33. Any ambiguity should be resolved in favour of the respondent - *Simon v Brecher (a firm)* [2015] EWHC 4057 (Ch), and of course a genuine misunderstanding arising out of genuine ambiguity might be taken into account in sentencing.

Relevant dates for compliance

30. The order of Miles J was served on 11th March 2021. That triggered an obligation to disclose some of the disclosable material "forthwith", which means "as soon as reasonably practicable". 48 hours was applicable to paragraph 18. An affidavit "setting out and verifying" the disclosable information was to follow within 5 working days - Monday 18th March - which was also the return date. By consent that latter date was extended to 22nd March 2021 by an order of Ms Pat Treacy made on the return date. That order repeated the penal notice on the original order. I agree with Mr McCourt Fritz that that is the most important date by reference to which one has to assess whether there was a breach or not, though one must not lose sight of the fact that there was a prior obligation to make less formal disclosure under Miles J's order in relation to the obligation to disclose material "forthwith", which means "as soon as reasonably practicable" (*Varma v Atkinson* [2020] EWCA (Civ) 1602 at para 57; *In re Seagull Manufacturing Co Ltd (In Liquidation*) [1993] Ch 345 at p 359G.

31. Since contumaciousness, or any other quality of a breach is not actually part of the breach itself which has to specified in the application notice, it is in my view neither necessary nor appropriate to judge such qualities purely at the date of the breach itself. It is appropriate to judge it as at later dates, if appropriate, when it will be one of the factors which goes to sentencing.

Points of construction on the order

32. One or two points of construction of the order arose. The principles which apply to the interpretation of an order of the court have been conveniently summarised in *Pan Petroleum v Yanka Folawiyo* [2017] EWCA Civ 1525 at paragraph 41 (per Flaux LJ):

> "(1) The sole question for the Court is what the Order means, so that issues as to whether it should have been granted and if so in what terms are not relevant to construction ….
>
> (2) In considering the meaning of an Order granting an injunction, the terms in which it was made are to be restrictively construed. Such are the penal consequences of breach that the Order must be clear and unequivocal and strictly construed before a party will be found to have broken the terms of the Order and thus to be in contempt of Court (see [19] of the judgment, approving inter alia the statements of principle to that effect in the Court of Appeal by Mummery and Nourse LJJ

> in *Federal Bank of the Middle East v Hadkinson* [2000] 1 WLR 1695).
>
> (3) The words of the Order are to be given their natural and ordinary meaning and are to be construed in their context, including their historical context and with regard to the object of the Order (see [21]-[26] of the judgment, again citing with approval what Mummery LJ said in *Hadkinson*)".

33. Further light is be shed on the manner of construction by reference to the principles in *The Starsin* [2004] 1 AC 715 at paragraph 73 (per Lord Hoffmann):

> "The interpretation of a legal document involves ascertaining what meaning it would convey to a reasonable person having all the background knowledge which is reasonably available to the person or class of persons to whom the document is addressed. A written contract is addressed to the parties; a public document like a statute is addressed to the public at large; a patent specification is addressed to persons skilled in the relevant art, and so on."

34. Mr Counsell pointed out that *The Starsin* was a case involving a commercial document, but the principles set out by Lord Hoffmann apply to all documents, and I do not see why court orders should be exempt. In the present case the addressees were the respondents named in the order, and in particular Mr Turk. He would have knowledge of the matters said to underlie it, and has his own underlying experience as a former banker and current businessman and that may be a significant matter in construing this order. The basis on which the order was sought, set out in the supporting affidavit of Mr Tickner (Mrs Işbilen's solicitor), is also capable of being relevant.

35. When it came to construing the order, Mr Counsell first took a point in relation to the use of the expression "traceable proceeds" and the concepts of traceability. He points out that while paragraph 15 contains a definition of the expression (with capitals) "Traceable Proceeds", that would seem to apply only to paragraph 16, where the expression (with capitals) appears, and that the expression (without capitals) appears in paragraph 18 without a definition. Paragraph 17 does not deploy the concept in terms but, he submits, seems to employ an analogous approach. This is said to raise an ambiguity. He further submits that the definitional description in paragraph 15, in the words "any asset constituted by or derived from the whole or part of", raises a further ambiguity - in what circumstances will an asset be "constituted by or derived from" the whole or part of the transfers? He complains that Mr Turk cannot know what payments etc fall within "traceable proceeds". Is it a factual exercise, or one

which depends on the law of traceability, including such concepts as defeat by a bona fide purchaser for value without notice?

36. I find that these points fail. There is no inherent problem in the meaning of "Traceable Proceeds", with or without capitals. The former is a defined term and the latter has a clear enough meaning in its context. If, in any particular situation, there is a difficulty in seeing how they apply then that is not the sort of inherent problem in construction which means that they cannot be enforced; it means that there is a difficulty in applying them to a particular situation and a question of construction arises, and if, in that context, there is a limited ambiguity then doubtless it will be resolved in favour of the alleged contemnor – see the section on construction above. Mr Counsell's objections seem to me to me to be somewhat contrived. He suggests some difficulties on the facts of this case in ascertaining what the Traceable Proceeds should be treated as being where money was used to acquire shares (or so it is said). He asks the rhetorical question: Whose belief of the facts should prevail? The answer is that the test does not depend on this question. It is a matter of construction what the expression means in that particular example (a point which actually arises in this case, as appears below), and the court will decide that question. Thereafter it is a factual assessment where the money can be said to have ended up, and that is the whole purpose of the disclosure obligations. Mr Turk has to do the best he can on the basis of his knowledge. If the money went in two directions, then he has to identify the end route of each. As Mr McCourt Fritz pointed out, subject to construction points, what is involved is a factual inquiry, not a legal inquiry as to legal tracing. That, in my view, is plain enough on the wording.

37. I also note that very similar wording in an order was the basis of a committal application in *Andrew Walker & Co v Palfreyman* [2006[] EWHC 3534 (Ch) without it apparently being suggested, much less found, to pose any difficulties of construction. That, of course, is not determinative, but it is significant. I also note that the order in *Kea*, framed by cross-referring to a schedule to a witness statement, contains wording which is not dissimilar in some respects to the wording in this case, and which uses the expression "traceable proceeds", and although counsel for the respondent in that case took a large number of points he did not complain about any uncertainty in the terms of that order.

38. Next Mr Counsell complains (in essence) that there might be some overlap between the disclosures required under paragraphs 16(1) and 16(3) of the order. He may be right about that, but insofar as he is it does not generate a degree of uncertainty which would impeach the order itself. If, for example, the answer to paragraph 16(1) is in terms that money was currently (or last seen) with a third party X, then that answer can be given to paragraph 16(1) and "See above" can be given as the answer to paragraph 16(3). If there is an element of overlap it is attributable to care in the drafting to make sure that all bases are covered in circumstances where the claimant is applying on the footing that she does not know enough about what has happened to her money and is trying to find out. That answers another rhetorical question posed

by Mr Counsell - why is there a need for two-sub-paragraphs? Redundancy, if there is any, is not a basis for saying the order is too uncertain to be enforceable.

39. Next Mr Counsell asks rhetorically what paragraph 16(4) means. I am afraid I do not see what the problem is. It means what it says, and what it says is clear. There is no inadmissible cross-reference to some external document, as he seemed to suggest; there is a cross-reference to the prior paragraph which, clearly enough, sets out what is meant by "Traceable Proceeds".

40. Next was a complaint about paragraph 18(1), which turned out to be another complaint about duplication or redundancy. The answer to this complaint is the same as that already given. Redundancy is not impermissible nor, when properly approached by a conscientious respondent, does the paragraph impose unduly onerous obligations.

41. Next is a complaint about which Schedule D transactions are within Mr Turk's disclosure obligations. Mr Counsell started by pointing out that Schedule D sets out transfers under headings relating to each respondent. Paragraph 16 then imposes disclosure obligations on the respondents "and each of them" in respect of the Traceable Proceeds. Those are defined as assets etc "as having been received by the relevant Respondent". He then questions why, or whether, the disclosure obligations against Mr Turk are limited just to those shown in Schedule D as having been received by him, and if not he questions why there is no wording which makes it clear that the disclosure obligations extend to assets which go beyond those frozen by the freezing parts of paragraph 15.

42. I am afraid these difficulties are imaginary and, again, contrived. The Traceable Proceeds are described as being the assets caught by the freezing provisions in paragraph 15. There is no difficulty about taking that description of the assets and using it to define the disclosure obligations, imposed on all the respondents, for the purposes of paragraph 16. That is plainly what the order does. There is no doubt that this is what the drafting achieves, and it is plainly justifiable as a matter of logic. Mr Counsell's written closing submissions seem to suggest that under paragraph 15 Mr Turk is restrained only from dealing with the assets received by him, and thereby seeks to make a contrast with paragraph 16 if that paragraph applies to all assets. His interpretation of paragraph 15 is wrong as well. The reference to receipt by the respondents are not words of limitation as to the effect of the freezing provision. They merely describe how Schedule D works. All the respondents are barred from dealing with all the assets, whether received by them individually or not. The difference relied on by Mr Counsell therefore does not exist.

43. Mr Counsell's last challenge based on interpretation relates to the scope of paragraphs 16(1) and 16(4), and their equivalent in paragraphs 17(1) and 17(4). He rightly points out that the claimant's case is that the obligation was to provide the last known whereabouts of the Traceable Proceeds, and that Miles J did not require the disclosure of the whole tracing exercise (even though, as I have observed, if the claimant is right then Mr Turk would have to carry out that exercise anyway, to some extent, if the proceeds went through one or more changes in nature or account). Mr Counsell submits that that cannot be the correct interpretation of those provisions because it would impose an absurdly onerous burden on Mr Turk and the only way of escaping that is to interpret the order so as to impose an obligation to disclose the first transfer away only. If that is right then Mr Turk is not in breach because he has, admittedly over time, disclosed the first transfer away already.

44. It is hard to square Mr Counsell's interpretation with the wording of those paragraphs of the order. There are simply no words in the order which could conceivably bear the more limited construction that Mr Counsell seeks to impose. Both sub-paragraphs (1) refer to the "current value, nature and location" of the assets. That cannot mean the first transfer away. They refer to the then known resting place (the obligations are limited by reference to the best of Mr Turk's knowledge). The same applies to the sub-paragraphs (4). Nor does Mr Counsell's interpretation make logical sense. The obvious purpose of the order was to help Mrs Işbilen find where her assets had got to, not just the first stage of the journey. Whether or not the exercise would be onerous would depend on the complexity of the route that the moneys took as a result of the dispositions after the first disposition. The degree of any such complexity would not be known to the claimant at the date of the grant of the order, so it cannot be a ground for limiting the scope of the disclosure, even if the words were capable of bearing Mr Counsell's more limited meaning (which they simply are not).

45. This dispute on interpretation, therefore, fails in the hands of Mr Counsell. The obligation on Mr Turk, as a matter of interpretation, was to disclose what he knew about the then current whereabouts of the assets or their traceable proceeds, or what he could determine exercising reasonable diligence. One of the complaints on this application is that he did not do so. There is no fatal ambiguity in the order in this or any other respect. Having said that, there are difficulties in applying this on the facts of at least one of the grounds (Ground 1) as will appear, and Mr Counsell has a point of construction about that which succeeds.

46. I deal below, in the section on penal notices, with an additional point about the scope of Mr Turk's obligations.

The evidence generally

47. The evidence in support of the application was an affidavit made by Mr Tickner, solicitor to the claimant. He incorporated a limited amount of material from a previous affidavit and some other limited material from elsewhere. After a limited evidential skirmish it was all allowed in.

48. The response was a witness statement from Mr Turk, served on 8th August 2023 under a reservation of his right to remain silent. The effect of that was that the witness statement was "in limbo" unless and until he chose to adopt it, in accordance with established procedures. He did not make an election to adopt it at all until the service of his counsel's skeleton argument shortly before the application commenced.

49. In that skeleton he indicated that he wished to rely on his witness statement, and his counsel claimed the right to rely on that witness statement without being subject to cross-examination on it. This was a right said to be justified by reference to *Discovery Land Co LLC v Jirehouse* [2019] EWHC 1633 (Ch). However, at the close of the claimant's case Mr Counsell indicated that his client would go into the witness box and swear to the truth of its contents and be cross-examined, and that is what duly happened.

50. As a result I did not have to consider whether Mr Turk was entitled to adopt the course of putting the witness statement before the court without swearing as to its accuracy or submitting himself to cross-examination. The proposal that he should do so gains some support from a note in the White Book, and further support in a footnote in the supplement to Grant and Mumford on Civil Fraud. I confess to not understanding the juridical basis on which that would be allowed in committal proceedings and would wish to say something about it because the note in the White Book might otherwise be said to be a little misleading.

51. The note in the White Book at para 18.7.5 states:

> "In *Discovery Land Co LLC v Jirehouse [2019] EWHC 1633 (Ch)* at [23]–[30], it was held that notwithstanding the terms of the pre-2020 CPR r.81.28, an alleged contemnor could not be compelled to submit to cross-examination even if they had tendered an affidavit into evidence in the contempt proceedings, nor would they be put to an election as to whether to submit or forgo reliance on the affidavit."

52. A note in the supplement to Civil Fraud says:

"35-063 … In *Discovery Land Company LLC v Jirehouse [2019] EWHC 1633 (Ch)* a

defendant served an affidavit in response to a committal application. The claimant's application to cross-examine him on the affidavit under CPR r.32.7 was refused. The result is that a defendant may tender (and rely upon) written evidence to the court but decline to be cross-examined on it. Of course the weight to be given to such an affidavit in such circumstances is likely to be (very) limited. It follows that a defendant cannot be compelled to make an election as to (i) deploying at the hearing any affidavit he has served and becoming liable to be cross-examined on it; and (ii) not deploying the affidavit at the hearing. The defendant may deploy the affidavit and yet refuse to be cross-examined on it."

53. It is not wholly clear that that is what Henry Carr J was saying in *Jirehouse*. The affidavits on which he did not compel cross-examination were filed in the context of the committal application, but at least one of them was an attempt at compliance (see para 13) and it is not wholly clear that the affidavits were clearly intended to be served as a defence to the committal proceedings as opposed to being further attempts to comply with the original order. If they were the latter then one can see why they should not necessarily be treated as full evidence in opposition to the committal proceedings on which cross-examination becomes available, but I do not see why that goes so far as justifying the broad proposition in the text book or the White Book.

54. Henry Carr J relied on the decision of Whipple J in *VIS Trading v Nazarov* [2015] EWHC 3327 (QB) in support of his reasoning, and principally in support of the proposition (not contested by Mr Counsell) that the court could draw adverse inferences from silence. It does not appear to me that Whipple J's judgment provides the wider right referred to in the text book extracts and which was originally to be relied on by Mr Turk in this case. She does seem to have been considering the effect of evidence filed in purported compliance, which contained statements that there had been full compliance, rather than the wider right. Obviously such material cannot be ignored, because an applicant complaining about non-compliance must demonstrate such purported compliance as there has been, and the court will have to form a view as to whether or not there has been adequate compliance. In that context it may have to consider (as did Whipple J) whether explanations given are plausible. Again in that context, it would seem that the contemnor is not to be subjected to cross-examination merely because he has put in such material. However, that is not the same thing as saying that the alleged contemnor has the right to serve a witness statement (or affidavit) in the committal proceedings by way of defence and put it before the court without subjecting himself/herself to cross-examination on it.

55. Mr Counsell (who, with his junior Miss Pugh, carried out a certain amount of research into the point at my request, for which I am grateful) did not find any other clear authority which supported his stance. It seems to me that it is contrary to principle and has no real foundation. If it ever had a foundation as being a parallel to the old right in a criminal trial to do something similar, then that right in criminal cases was abolished by section 72 of the Criminal Justice Act 1982, and bearing in mind the partial adoption of criminal principles in contempt cases it would be anomalous if it now existed in the latter cases. This view would seem to be consistent with those of

Elisabeth Laing LJ in *Wilding v Forest of Dean District Council* [2021] EWCA Civ 1610 at paras 75-80.

56. Had it mattered, therefore, I would be likely to have ruled that Mr Turk could not rely on his witness statement without submitting to being cross-examined on it, but since he chose to go into the witness box and swear as to its contents the point did not arise for actual decision. However, it did not seem right to me to allow the proposal to go unchallenged when the starting point is a potentially inaccurate statement of principle in the White Book.

The evidence - solicitors' files

57. The hearing of this application was significantly disrupted by events concerning the files of Mr Turk's former solicitors. When Mr Turk's witness statement was deployed it became apparent that a large part of his case was that if he was obliged to go further than he went in terms of disclosure under the order, then he did not know that at the time and was not advised about that. That is despite the fact that as soon as the order was made against him he consulted Bivonas, solicitors, and they acted for him thereafter in relation to the freezing order, and then in the settling and service of the Defence. They instructed counsel in those matters. However, in July 2021 the retainer was terminated, and it is apparent that they are claiming that Mr Turk owes them a substantial sum in relation to costs.

58. Since Mr Turk was relying on what Bivonas did and did not advise him about, their files obviously became relevant. Messrs Janes, on behalf of Mr Turk, started the process of getting hold of their files in June, and although they received some limited documentation which did not really include privileged material the remainder was withheld in reliance on the solicitors' lien. There was an hiatus in the pursuit of documents between August and mid-November 2023 (when the hearing of the application had started), after which the pursuit was resumed. It is unnecessary to track the history in detail, but eventually what were said to be all the files were produced once a witness summons was issued. It was accepted that privilege had been waived by the election to deploy Mr Turk's witness statement (I ruled that that was on the election to deploy it, not earlier on the service under reservation in September), and Peters and Peters, for Mrs Işbilen, joined in the process of trying to get the privileged documents. Mr Turk, through his counsel, indicated that he too was anxious to have them and to disclose relevant documents. Although no formal application for disclosure was ever made by Mrs Işbilen, Mr Counsell told me that his client was proceeding as though an application had been made and granted and Mr Turk was complying with it, and his solicitors co-operated in steps to get documents from the former solicitors and to review them for disclosure on that assumed basis. Unfortunately that was not a clean and easy process, and documents emerged in stages which were less than satisfactory in terms of the running of this application.

59. As a result of all this the files were placed (in instalments) in the hands of Mr Turk's current solicitors who carried out a disclosure process, during the course of the hearing of the present application. What was produced was a lot of paper documents, and a recording of a Zoom consultation, but another such recording was not produced. There was also no production of certain documents in which joint privilege existed between Mr Turk and Mr Lewis, though Mr Lewis's solicitors have said in correspondence that that material does not bear on the issues that I have to decide. Any misgivings that one might have about that statement have to be suppressed. Unfortunately all this took time, and by the time it was got under way Mr Turk had started his cross-examination. The result was a small number of adjournments, which was an unfortunate state of affairs but inevitable if the documents were to be made available, and Mr Turk seemed to be keen to get the documents himself. (The adjournments explain the number of hearing days recorded in the heading to this judgment; various of those days were days when little or no progress was made because disclosure and inspection issues had to be sorted out.) I made a determination (unopposed by Mr McCourt Fritz) that instructions could be taken from Mr Turk on new material even though he was in the middle of his evidence. In the event I am satisfied that this extended procedure caused no prejudice to Mr Turk notwithstanding the disruption to his evidence.

60. The result of that was that the parties had a large volume of documents to consider in a very short period of time. Mr Turk was cross-examined on some of them and I saw them in that context. I did not have an opportunity to read through them for myself until after final submissions, but was then assisted by an apparently appropriately filleted core bundle and a chronology prepared by Miss Pugh and Mr Counsell but untested by Mr McCourt Fritz. This was not a particularly satisfactory state of affairs, but I am satisfied that at the end it has not worked unfairly to Mr Turk.

Mr Turk as a witness

61. Mr Turk was cross-examined thoroughly over the course of two and a half days (albeit that he had more extensive breaks than normal within that time, which extended the period). As I have already observed, he did not demonstrate a key feature of his ADHD, which is a tendency to lose focus, to any significant extent. He manifested a clear understanding of the questions put to him and any elements of uncertainty or confusion were no more than afflict other witnesses who do not have his condition. Where he did not understand a question he was capable of asking for clarification, and the sort of occasions on which he might have understood, or did misunderstand, a question were no more than one sees of many witnesses without his condition. I am quite satisfied that his ADHD in no material way impaired his giving of evidence. I am also satisfied that he demonstrated a good grasp of the facts and what he saw (and could remember) of the details of complex transactions.

62. So far as Mr Turk's demeanour is concerned I bear in mind that his first language is not English, though I would judge him to be a fairly fluent speaker who understands well, as one would expect of a person who held down a job with eminent investment bankers. He did not tend to demonstrate a lot of hesitancy or blustering which might indicate lying, but that does not necessarily mean he was not lying. There were occasions when the manner of his evidence, when faced with incontrovertible uncomfortable fact, was not convincing. However, where possible I prefer to base my conclusions as to his credibility, around which much of this application turns, on the quality of his answers measured against certainties in the case, together with the probabilities (bearing in mind that my decision on relevant points has to be to the criminal, not the civil, standard).

63. Mr Turk's credibility generally is affected by his apparent willingness to contemplate generating false documentation without apparently thinking that there was anything wrong with it. This emerged during the course of his evidence and I deal with the circumstances below. He did this not only (on his explanation) to provide a disguise for payments made for the benefit of his client, but also on occasions merely because it was more convenient than providing accurate documentation. These, and particularly the latter, are not the mark of an honest man, and that is assuming that his explanations were particularly plausible in themselves, which was not always the case (at least in the case of the "convenient" designations in banking documents). I also considered his explanation of the late revealing of his case on some payments ("Hawale" payments, explained below) to be very unconvincing. These matters colour his evidence and require that other aspects of his evidence have to be viewed with caution, though they do not, of course, mean that he was untruthful about everything. I mention elsewhere other points which emerged as reflecting adversely on Mr Turk's credibility.

A point on the penal notice

64. Mr Counsell takes a point about the form of the penal notice in relation to obligations imposed on corporate defendants. He submits that in relation to those transfers Mrs Işbilen seeks to hold Mr Turk responsible as a director, but has failed so to specify in a penal notice directed to him as such. It is said that such a directed penal notice is required by principle and authority. So far as valid, this point would apply to paragraphs 16, 17, 20 and 21 of the order, which require responses from corporate defendants (although paragraphs 16 and 21 also require a response from Mr Turk personally, as does paragraph 18).

65. The penal notices in the Miles order were in familiar form:

> "IF YOU SELMAN TURK DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND

> MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.
>
> IF YOU SG FINANCIAL GROUP, BARTON GROUP HOLDINGS LIMITED, SENTINEL GLOBAL ASSET MANAGEMENT, INC AND/OR SENTINEL GLOBAL PARTNERS LIMITED DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND BE FINED OR HAVE YOUR ASSETS SEIZED
>
> ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENTS (OR ANY OF THEM) TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED"

66. CPR 81.4(2)(e) provides that any contempt application must include a statement to this effect:

> "(e) confirmation that any order allegedly breached or disobeyed included a penal notice"

67. The present application complied, and the order plainly contained a form of penal notice, but what is in issue is the form of the notice in this case. CPR 81.2 defines a penal notice as follows:

> ""penal notice" means a prominent notice on the front of an order warning that if the person against whom the order is made (and, in the case of a corporate body, a director or officer of that body) disobeys the court's order, the person (or director or officer) may be held in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law."

68. Mr Counsell's point is that in the present case the penal notice does not identify the director who is sought to be held liable for failures of the company (viz Mr Turk). He relies on a note in the White Book at 81.4.5 setting out suggested wording to the following effect:

> "And in the case of a judgment (or order) requiring a body corporate to do or to abstain from doing an act, but it is sought to take enforcement proceedings against a director or other officer of that body:
>
> "If AB Ld neglect to obey this judgment (or order) by the time stated or in the case of an order to abstain from doing an act, 'If A.B., Ltd disobey this judgment (or order)'), you, X.Y. (a director or officer of the said A.B., Ltd) may be held to be in contempt of court and imprisoned or fined, or your assets may be seized.'"

Mr Counsell pointed out that nothing like that appears in the Miles order.

69. However, the White Book note is not prescriptive. It is a note, not a rule. Furthermore, the opening words of that section of the text indicates that the form of penal notice is not a rigid one and may be altered to meet the facts of any particular case. So the failure to use similar words in the present case is not necessary fatal.

70. Mr Counsell invoked two authorities. First, *Iberian Trust Ltd v Founders Trust and Investment Company Limited* [1932] 2 KB 87 at 98, where Luxmoore J held:

> ""*In my judgment, the order so served should, as a preliminary to its enforcement against the directors, be indorsed with a notice to the effect of the memorandum prescribed by Order XLI., r. 5,* ***including in it the name of the particular director served****. So far as my experience goes this has been the practice in the Chancery Division" (emphasis added by Mr Counsell).*

71. Mr Counsell's point was that the order in the present case did not refer to the Mr Turk as director in that way.

72. That was a case where there were all sorts of reasons why a claimant was not allowed to obtain committal of directors of the defendant company for breach of an order (not least that the nature of the order was not such that it was enforceable by committal anyway). Luxmoore J's remarks were made in a context in which the relevant director was not a party to the action already (see his remarks preceding the citation) and in a context in which he was holding that a non-party director had to be served

personally. He was not dealing with the case where the director was already a party, was identified in a penal notice (albeit not in terms of his being a director) and where he had been personally served. I do not consider that his remarks operate in all situations. However, what what I do regard as significant for these purposes is his indication of the purpose of a penal notice:

> "The object of the indorsement is plain - namely, to call to the attention of the person ordered to do the act that the result of disobedience will be to subject him to penal consequences."

This supports the view that substance is more important than form.

73. I do not consider that *Iberian* has much to do with the present case. If one looks at what the present order does, in both substance and form, it has the following elements:

(i) There is a penal notice directed at Mr Turk personally, in addition to the notice directed to the various companies.

(ii) Mr Turk was a principal defendant in the action and described as the main wrongdoer in the supporting affidavit.

(iii) Mr Turk was an actual subject of paragraphs 15 and 16 of the order. He was bound by the restraint in paragraph 15 whether he might be acting as director or not, and was bound by the disclosure obligations in whatever capacity he might have held knowledge.

(iv) He was actually a director of two of the companies who were the subject of paragraph 16 (SGP and Barton) and the only company which was the subject of paragraph 17 (Barton).

74. Properly read, it is plain that the disclosure obligations in paragraph 16 were directed at Mr Turk in whatever capacity he might have held the knowledge. The idea that he could hold knowledge, or gain knowledge, as director of one of the companies but could somehow say that he was not obliged to disclose it because there is no particular reference to him as a director of that company is rather absurd. One way or another, the order in that paragraph is directed at him, and there is a penal notice directed at him which makes plain the effect of non-compliance. That makes sense in the context of an action which is based on the fact that he was a person entrusted with the claimant's money (which is an agreed matter even though the scope of the obligation is disputed) and which is based on the premise that she does not know what has happened to it Mr Turk does or should.

75. That renders debates about liability as a director somewhat academic save insofar as it goes to the question of whether he should get information which he does not personally hold or have access to. So far as SGP is concerned there can be no doubt that Mr Turk was under the an obligation to effect disclosure. The order says so, and the failure to identify him as a director is irrelevant. The idea that he could sit back holding relevant knowledge or access to knowledge about SGP on the footing the held it as director and was not told to do anything as director is a very odd one.

76. So far as paragraph 17 and Barton is concerned, it is true that he is not named as being under the same obligation as Barton in that paragraph but nonetheless he had a penal notice directed against him, knew he had been a director at the time of the relevant transactions, knew there was no other director in the same position as him, and came to understand that he was a director at the time of the order. In those circumstances the order clearly conveys that he had to do what he could to comply with the Barton paragraph even though the order did not say he was required to make disclosure as a director. In the terms of Luxmoore J, the order plainly called his attention to obligations of disclosure and need to comply with them. No sensible recipient could shrug his shoulders and say that he did not consider the order to be directed at him in this relevant capacity.

77. Accordingly, since there is no single prescribed formula, and since the order is clear enough in setting out the consequences of non-compliance in all relevant capacities, there is no fault in the penal notices and Mr Counsell's point fails. I would add two things. First, Mr Turk never expressed any doubt or challenge about his liability to disclose in respect of Barton and SGP matters based on non-identification as a director in the order. There was no actual confusion about this in his mind, or the minds of his solicitors manifested either in correspondence or at any of the hearings (return dates and cross-examination hearing). I have noted one query raised by counsel in a marked up schedule of non-compliance (referred to below) prepared in the course of preparation of Mr Turk's responsive affidavit, but it was not pursued. The point, so far as I know, only emerged in Mr Counsell's skeleton argument in this application. Second, and connected with the first, is that if I had found some technical defect in the requirements relating to penal notices, and insofar as the matter could be cured by waiver, I would have exercised my jurisdiction to waive it (the existence of the waiver jurisdiction was not challenged) on the footing that any shortcoming was technical, it has not caused prejudice and Mr Turk never considered that his compliance was somehow affected by uncertainties as to whether he was a director of either company.

78. I also record that when Bivonas acknowledged that Mr Turk was indeed a director (apparently on the basis of material which Peters & Peters provided), it did not produce any particular fresh activity in terms of disclosure. His failings after that date can be relied on as much as his failings before that date, insofar as may be necessary.

79. Mr Counsell also pointed to *Masri v Consolidated Contractors International Co SAL* [2010] EWHC 2458 (Comm) (Blair J). I do not consider that anything in that case affects the conclusions on this matter which I have just reached.

The disclosure in the disclosure affidavit

80. It will be useful to approach a further consideration of this case with the extent of Mr Turk's disclosure in his disclosure affidavit, supplemented by a contemporaneous witness statements, in mind to see how far he went at the time. This is against the background of an order which required the fate of specified payments to be provided, along with the fate of investments generally.

81. In his disclosure affidavit sworn on 22nd March 2021 Mr Turk disclosed the following under the actual headings which he himself chose. It is sufficient to summarise rather than set it out verbatim.

82. "Information requested in para 16 of the Order". Under this head he identified the first two payments in Schedule D (receipts by him) as being the proceeds of a loan made to him by Mrs Işbilen. Of those proceeds he invested approximately £3m in his company Forten Holdings and the balance was used for his "personal needs". He did not have his bank statements at the time so as to be able to identify how that money was spent.

83. "SG Financial Group Ltd". Under this head he explained what the company did and his resignation as director on 12th July 2019. He was provided with a disclosure letter provided by Mr Lewis. He then goes on to explain that all the payments identified in the SGFG table in Schedule D were, so far as he recalled, made to make payments for Mrs Işbilen's expenses in the UK, together with a small charge for making those payments. He explained that payments were made in this way because Mrs Işbilen was a politically exposed person whose husband was jailed in Turkey and she wanted to avoid the risk of payments being traced back to her. He did not have the details of transferees and could not identify them; Santander bank would have details of payees. As far as he was aware no assets were acquired by this company using funds received from Mrs Işbilen.

84. "Sentinel Global". This is the heading used to describe SGAM. He says that payments were made on Mrs Işbilen's request to recipients, and in amounts, specified by her. He would pass on the information to "SAML" and an invoice would be raised for the amount and any expenses to be reimbursed. He disclosed invoices that he had and referred to others disclosed by Mr Lewis. He did not have details of transferees for the payments made by SGAM and could not identify them, but the bank would have details.

85. "Sentinel Global" (second heading). This is his heading used to deal with payments to SGP and the Fund. He describes the Fund in general terms, and its receipt of $30m from Mrs Işbilen, received for investment for 5 years. Redemption requests are referred to, as is the "dissolving" of the fund with the remittance of balances to Mrs Işbilen. At paragraph 28 he says he was asked to explain the three SGP payments set out in Schedule D of the Miles order, and he explains them as being a retainer fee, a success fee and a closing fee respectively, all of which are said to have been invoiced and agreed. He says nothing about any onward movement of those moneys.

86. "Information requested in para 18 of the Order made on 4 March 2021". The first matter under this head is "Barton Group Holding ("Barton"). This would seem to be misplaced, because paragraph 18 deals with investments, not Barton. Under the

Barton heading Mr Turk explained that he was the 100% owner of Barton and did not know whether it had made any disclosure. He then explains the source of Barton's money – fees paid by Mrs Işbilen for assisting in the release of assets in Turkey.

87. There are then two headings – "Moonglade Trust" and "Bethlehem Investments ('Bethlehem')". These relate to investments and are more appropriately under the "Investments" heading which I have just described. Moonglade was a trust structure in which Mr Turk was not involved. Bethlehem is described as a dairy business in which Mr Turk "believed" Mrs Işbilen had invested "at least some of the funds redeemed by the Fund".

88. The next relevant heading is "Information requested in Schedule C to the Order". Schedule C does not require information; the content of what follows indicates that this is a mistaken reference to Schedule E, because it refers to there being no relevant loans other than those already described (loans are dealt with in Schedule E), and states that he did not have any information or documents relating to investments by the Fund and in any event the Fund had been returned to her. He adds:

> "43. I did not make any investments and/or entered into any transactions using funds redeemed or redirected from SGFA. However," [sic]

89. In fairness to Mr Turk, it is probably right to point out that in a witness statement 2 days later (24th March 2021) he made some further limited disclosure. In relation to Barton he explained that it was engaged primarily to assist Mrs Işbilen with the cashing of promissory notes which were part of her Turkish assets, but was also used to pay money to various third parties at Mrs Işbilen's request. When such payments were made Barton would issue an invoice for this sum or an aggregate of sums to be paid by by Mrs Işbilen to Barton. He explained that he could not get Barton bank account statements within the time limited by the order but would continue to make efforts to obtain them and provide them to Mrs Işbilen's solicitors.

90. It will be necessary to return to the significance of this later on in considering specific elements of Mr Turk's conduct, but for the moment the following factors emerge from this disclosure.

(i) It is by and large very general and does not seek to drill down into the details of the schedules.

(ii) However, it is apparent that Mr Turk understood he had to say something about the fate of the payments because he refers to some matters generally while explaining, in some cases, that the absence of bank statements at the time prevented him from giving details. That excuse would only be relevant in the context of an understanding that final destinations of money had to be identified.

(iii) He refers to the technique of paying persons whom Mrs Işbilen would wish to pay without disclosing her as the overt source, by using SGAM to make the payments. This early disclosure is related to issues which arise later when considering a couple of the Grounds.

(iv) I add at this point that his statement of unawareness as to whether Barton had given any disclosure was disingenuous. While there was another director she was not

an active one. Barton was Mr Turk's company, and if anything had happened about disclosure within Barton she would inevitably have let Mr Turk know. Indeed, the impression given by Mr Turk's evidence is that that other director would have been incapable of conducting any real form of disclosure exercise.

The individual allegations of contempt

91. I am now able to turn to the separate individual heads of contempt. Each of them starts from a flow of money in respect of which it is said Mr Turk has made inadequate disclosure. Some of the flows are complex; some are simpler. The job of exposition has been made easier by the concession made by Mr Counsell that the actual money flows, as they can now be demonstrated to be, are not disputed by Mr Turk. That means they can be set out more simply and without too much detail.

92. In considering the question of breach in relation to each Ground I leave on one side for the moment the question of Mr Turk's understanding of what he was required to disclose. I will deal with that in a separate section once I have considered the breaches. In most instances his understanding goes to contumaciousness, not breach.

93. It will be apparent from what follows that some of the "disclosure" with which I deal occurred some time after the deadlines disclosed by the order and did not take place as purported disclosure under the order. Nonetheless, and entirely sensibly, Mr McCourt Fritz seemed content to treat them as a form of disclosure, albeit late, and not to rule them out as not being in time or not being specifically linked to the disclosure obligation. I shall, by and large, and save where the contrary appears, do the same. This application is not really about late disclosure; if it is about anything, it is about non-disclosure.

94. The exercises and analyses below are necessary despite Mr Counsell's concession of breaches, for the reasons give above.

Ground 1 - Bethlehem moneys

95. The money flows are set out in outline in the narrative of this Ground. I find that that flow of money took place. The significant features were as follows. It would be right to say that the commerciality of the whole dealings relating to this first Ground are not always readily intelligible or ostensibly commercially justifiable, but save insofar as they might go to credibility those points do not matter. What matters is the money flows, what Mr Turk knew of them, what he disclosed about them and to what extent those money flows, or their end result, fell to be disclosed under the Miles order.

96. Mrs Işbilen placed $30m with an an investment fund called Sentinel, which was run by Mr Turk and Mr Lewis and which held only her moneys. Of that money, $6.4m was paid to a Delaware company called Bethlehem Investments LLC in two tranches, July 2018 and February 2019, both paid into a Bethlehem account at M&T Bank. At the time Bethlehem was owned 50/50 by Mr Turk and Mr Lewis. Bethlehem owned 87.5% of the shares in LTH Natural Foods LLC, which in turn owned 100% of the shares in Penn Dairy LLC.

97. The first tranche was $4m, paid from the Sentinel fund to Bethlehem (in an account with M&T Bank) on 26th July 2019. The next day it was transferred to an account of Penn Dairy LLC (at the same bank) , from where on the same day it was paid out to Pocono Property Abstract Inc as the price of a yoghurt producing factory. Pocono was either the seller or some sort of intervening entity in the sale, but that does not matter. There was a degree of confusion in the evidence as to whether what was bought was the actual property or a corporate entity but that does not matter either. What matters is that the money was used to buy a yoghurt-producing factory.

98. The second tranche of moneys from the Sentinel Fund ($2.4m) was paid to Bethlehem on 4th February 2019. Out of that money $950.000 was paid out to Mr Turk and over $1m to Mr Lewis, into their respective personal accounts.

99. Mr Turk has produced an agreement dated 31st December 2018. It purports to provide that Mrs Işbilen would inject $4.4m into Bethlehem by way of a subscription for shares and would purchase shares in Bethlehem from Mr Turk and Mr Lewis for $2m, all so as to give her a 41.7% stake in Bethlehem. It has been said by Mr Turk that in fact she acquired a 66% interest in the business.

100. It is plain from his evidence overall that Mr Turk remembered all the essentials of those transactions. I find that he carried the general details of this purchase in his mind and did not need reminding of them at the date for compliance with the Miles order.

101. In 2019 Penn Dairy was sold to a Mr Hokka or a company of his known as Antioch. Cheques totalling over $1.1m were paid by Antioch to an M&T account of LTH Nature Foods, of which $150,000 was paid from LTH to Bethlehem on 6th September and $250,000 was paid by LTH to Bethlehem on 26th September. Out of those funds the following payments were made:

    (a) American Reliable Tasks (apparently a building company) received

$210,000. This was for building works, but Mr Turk was ucertain as to whether this was for building works to a property he owned or works done to the factory.

(b) $124,200 was paid to Alphabet Capital Ltd, an English company. This was said by Mr Turk in his affirmed witness statement in this application to be part of the usual course of business between Alphabet and Bethlehem; Alphabet provided business investment opportunities "and we made investments accordingly". In cross-examination Mr Turk admitted that this payment was pursuant to the only piece of business between those two companies (advice as to yoghurt production in the United States), and was not part of a course of business at all. Nor were any investments made pursuant to any advisory services provided by Alphabet. I was invited to find that his first reason was a lie, when put in the context of the material on Ground 2. I have difficulty in accepting this evidence, but I do not need to make a finding about it.

(c) $2,000 was paid to a Rezarta Begaj, the reason for which was said by Mr Turk to be commission for help on a funding application for the yoghurt business.

102. Mrs Işbilen relies on non-disclosure of these details. The above details were ascertained only pursuant to Mrs Işbilen's solicitors' own inquiries and applications well after the Miles order, and not from Mr Turk's disclosure, with some further details provided by Mr Turk in his cross-examination in this application. . Pursuant to his disclosure obligations, and his cross-examination in March 2021, Mr Turk disclosed the following:

(a) A redemption request, apparently signed by Mrs Işbilen, requesting redemption for the second tranche for the Bethlehem injection (the $2.4m) to be sent to Bethlehem "for a personal investment". It refers to the first instalment. It does not refer to the further destination of the funds.

(b) The purported investment agreement referred to above. This was disclosed by letter from Bivonas dated 16th April 2021.

(c) A Turkish language investment pitch for Naturlich yoghurt.

(d) A meeting agenda for 8th March 2019 which refers to the two redemptions relating to Bethlehem against the name "Bethlehem" (amongst other redemptions).

(e) In the Defence the two Bethlehem payments by Mrs Işbilen were identified as being authorised payments from her funds; no further details about the moneys are given.

(f) In his compliance affidavit sworn on 22nd March 2021 Mr Turk referred to Bethlehem as being a dairy business in the US and that he "believed" that Mrs Işbilen had invested at least some of her funds into Bethlehem (see above). He believed she had transferred $6.4 to Bethlehem, and his belief was based on his discussions with Mrs Işbilen and the redemption request. He did not have a copy of the investment agreement.

(It was subsequently provided - see above.) He said he did not know the current value of Mrs Işbilen's investment in Bethlehem

(g) In his cross-examination on his disclosure before Ms Treacy he was asked various questions about Bethlehem. He did not disclose what happened to the moneys fully, and did not disclose the subsequent sale of the yoghurt factory and the receipt and disposition of the proceeds, but he did plainly say that he did not receive any part of Mrs Işbilen's money paid to Bethlehem and said that while he was entitled to money it all stayed in Bethlehem. That would seem to be plainly wrong on the basis of the now admitted cashflows which showed that he received almost $1m. In this evidence he estimated Mrs Işbilen's investment in Bethlehem as being worth $3m but that was dependent on there being a buyer. He presented the assets as being intellectual property rights but in that context did not refer to the sale of the yoghurt factory or the disposition of part of the proceeds as identified above.

103. There is no doubt about the discrepancy between the details as ascertained by the claimant and the material disclosed by Mr Turk pursuant to the Miles order. However, for the purposes of the present application is it necessary to consider which of those materials required disclosure under the order. This requires revisiting the construction of the order, as foreshadowed above in the section on construction.

104. Paragraph 16(1) required Mr Turk to disclose the current value, nature and location of the "Traceable Proceeds" and the names in which they are held. The "Traceable Proceeds" for these purposes are any asset constituted by or derived from the Schedule E transactions (paragraph 15(2)). The relevant part of Schedule E for these purposes is: "Any and all investments made by Sentinel Global Fund A LP that were made using monies transferred from Mrs Işbilen or assets derived from such monies, and the traceable proceeds of such investments."

105. So the route which is relevant for the purposes of this Ground starts with Mrs Işbilen's moneys placed in the Sentinel Fund. Then there was the redemption which is said to have been applied in the acquisition of her interest in Bethlehem - shares, apparently. That then became her investment. That form of investment is challenged in the present proceedings, but I cannot go into that point because it was not part of the matter before me and will be the subject of the action at trial. It seems to me that I have to approach this matter on the footing that Mrs Işbilen acquired some form of interest in Bethlehem. Mr McCourt Fritz told me in his submissions that Mrs Işbilen did not have enough information at the moment to decide whether to elect to affirm or rescind transactions, and in the light of that and in the light of the fact that I was not invited to proceed with this part of the application on the footing that the Bethlehem investment agreement was of no effect, the correct course is to proceed on the footing that there was some sort of enforceable and genuine agreement under which she acquired an interest.

106. If that is right then that investment was an investment made with her moneys for the purposes of Schedule E paragraph 2. That first stage was disclosed, after a fashion, in the documents and material that was disclosed by Mr Turk after the order. Insofar as there were shortcomings in disclosure of that particular part of the transaction they are not really the gravamen of this Ground. The real criticism under this head involves what is said to be the forward fate of the money - payments to Mr Turk and Mr Lewis, and the fate of the sale proceeds of the factory. Whether or not that criticism is justified depends on whether the moneys in question are the "traceable proceeds" of the investment within Schedule E and/or paragraph 15.

107. Mr McCourt Fritz's case is in a sense straightforward. His case is that the those moneys are traceable proceeds because one can follow the money flows to their last known destination, and that makes them traceable for the purposes of the order. The moneys do not have to be traceable in the full equitable sense applicable if one were actually making a proprietary tracing claim (a proposition with which I agree).

108. Mr Counsell's submissions on the requirement to disclose have various elements. He submitted:

> (a) The investment into Bethlehem was disclosed sufficiently in the various documents and matters that were disclosed, including some bank statements that were disclosed pursuant to a direction given by Stuart Isaacs QC (sitting as a judge of the High Court) which required that disclosure (via the provision of mandates). The chain stopped there and nothing beyond that requires disclosure on the true construction of the agreement.
>
> (b) The other movements were intermediate movements in a chain (assuming against himself there was a relevant chain) and not disclosable even on Mrs Işbilen's case (which required final destinations only).
>
> (c) Mrs Işbilen knew of the purchase of the yoghurt factory.
>
> (d) Paragraph 18 does not apply because it covers payments from Mrs Işbilen's bank accounts directly and not otherwise covered by paragraph 16.
>
> (e) Mr Turk did not understand that disclosure beyond the acquisition of the interest in Bethlehem was required.

109. I deal with Mr Turk's general understanding of what disclosure was required below, and in any event even if he did not understand how far his disclosure obligations went that does not affect or limit the disclosure actually required. Nor is Mrs Işbilen's knowledge of the purchase of a yoghurt factory relevant. The disclosure required was irrespective of what Mrs Işbilen knew or was said to have known. The order said

nothing to limit the disclosure by reference to such a matter, and it would be contrary to good sense so to limit it in a case where the claim is based at least in part on a lack of knowledge as to what had happened.

110. Mr Counsell's point about paragraph 18 (which he did not develop) is not a good one either. I do not understand where the limitation to moneys paid from Mrs Işbilen's own bank accounts comes from. Paragraph 18(1) is general in its reference to assets and traceable proceeds. Paragraph 18(2) is reference to accounts in Mr Turk's name, not Mrs Işbilen's.

111. The acquisition of information about money flows which the claimant has herself gleaned from bank statements which were obtained by mandates ordered by the court on an application which was Mr Turk (which is what happened) does not in any sense fall to be treated as disclosure by Mr Turk, contrary to a suggestion in the Grounds which proposes it might be a form of compliance. All it does is to provide material from which bank flows can be studied.

112. His point about the chain stopping with Bethlehem is more compelling. The acquisition of the interest in Bethlehem is an acquisition of an investment (its quality as an investment is not in issue on this application). That is the investment for the purposes of Schedule E paragraph 2. The result of the onward steps is only disclosable if the moneys in the hands of the recipients amount to the "traceable proceeds" of the investment within that paragraph. I do not consider that they do. The point hinges on what is meant by "proceeds". The Oxford English dictionary describes proceeds as follows:

> "That which proceeds, is derived, or results from something else; that which is obtained or gained by any transaction or process; an outcome; esp. the money obtained from an event, activity, or enterprise."

113. Jowitt's Dictionary of English Law (6th Edition) defines proceeds similarly

> "The sum, amount, or value of land, investments, or goods, etc., sold, or converted into money."

114. There is nothing surprising in those two definitions. When applied to the "investments" and the word "traceable" is added, the effect is to mean that there was an obligation to disclose the fruits of a sale or other disposal <u>of the investments</u>, but not to follow the money into the hands of the company which received it in exchange for shares. The latter money is not proceeds <u>of the investment</u>. That is indeed what

one would expect of a disclosure obligation, made at the initial stages of an action, which is trying to find out what the current state of the claimant's assets is - are they shares (or some other assets), or have the shares (or other assets) been turned into something else? They are not turned into something else for these purposes when the company, which has now acquired the money, is applied in the company's business. (This assumes that the acquisition of the investment agreement was not a sham.)

115. In the present instance the investment remains the interest in Bethlehem. The value of the investment is, of course, reflected by those events, but that is different. The same applies to the apparent acquisition of shares from Mr Turk and Mr Lewis. Accordingly, following the money into and through the hands of the company and/or through the hands of Mr Turk and Mr Lewis to find a last known resting place is not within this part of the disclosure obligations. This is not the same point as the point taken by Mr Counsell which I have rejected in the section above on construction. That point of his was a general one about the first step. This point is a particular one arising out the nature of the investment and whether assets within the company amount to traceable proceeds.

116. I have considered whether disclosure of the "nature" of Traceable Proceeds (which, following through into Schedule E includes the investment) would require disclosure of the principal underlying asset of the company which was the investment vehicle and its fate (eg "investment into the shares of a company which acquired a yoghurt factory which has now been sold", perhaps with a bit more explanation as to what happened to the proceeds), but while I can see an argument that way I do not consider that it is correct, particularly bearing in mind the narrow construction which needs to be given to committal orders.

117. This means that it is necessary to consider compliance only in respect of the investment in Bethlehem. I have set out above what Mr Turk disclosed in relation to that. It can hardly be described as fulsome, and the disclosure in his affidavit which relies on a cautious belief understates his actual knowledge. He was able to speak more confidently about it in his cross-examination, and I consider that he could have done the same in his affidavit. However, looking at his disclosure process in the round, which included the investment agreement, he did disclose the Bethlehem investment to an appropriate extent to comply with the order. So far as its value is concerned, he hazarded some figures and reasoning in his cross-examination which did not appear in his disclosure affidavit or any other part of the disclosure process, but his oral evidence was couched in sufficiently guarded terms as to justify (just) his statement in his affidavit that he did not know the current value of the Bethlehem investment.

118. There is, of course, a distinction between what Mr Turk would be obliged to explain to Mrs Işbilen as her investment manager, or someone who conducted transactions for her, and what he is obliged to disclose under the stringent terms of the order. Most if

not all of the cashflow identified above would be the sort of thing he should (and could) have explained to Mrs Işbilen in the former capacity, but I am concerned only with the terms of the order which was not framed in such a way as to require disclosure of cashflows once the money had been invested in Bethlehem shares (as I should assume it was). That is no criticism of the draftsman; it is the result of the complexity of the dealings with the money which could not be anticipated by the draftsman.

119. So far as the second payment for shares is concerned, the Bethlehem agreement to which I have referred contains an apparent agreement to buy shares from Mr Lewis and Mr Turk for $2m and the schedule describes them as receiving $1m each. Again, that disclosure, with the redemption request, is a form of disclosure of the receipt of each of them of $1m, which is essentially what happened. It is true that that is not spelled out in terms by Mr Turk, but it is a form of disclosure of an investment. One would expect them to receive the proceeds of this particular payment if there was a share purchase, and that is what happened. There was no disclosure of the number of shares acquired, and to that extent there was a failure to describe the investment and technically a breach. However, in the present context I do not regard this as particularly significant.

120. I therefore find there was no significant breach under this Ground. However, I return to one credibility point. I have already made observations as to the terms in which Mr Turk disclosed the Bethlehem investment in his disclosure affidavit. His affidavit was misleadingly cautious in this respect. His "belief" about the investment must have come from his own knowledge because he was closely involved in the overall arrangements, and probably instigated them. He will have been involved in the redemption. He will have known about the investment at all times and not from Mrs Işbilen. That statement casts a shadow over Mr Turk's credibility in disclosure matters.

Ground 2 - Alphabet Transfers

121. Alphabet Capital Ltd is an English company which is apparently the creature of a Mr Gleave. This head relies on the transfer of moneys to Alphabet from various sources and a failure to disclose those payments properly and, in particular, a failure to disclose where those moneys were transferred on to by Alphabet. Some of the moneys relied on under this head passed via Barton. So far as those moneys are the subject of this Ground this application is made against Mr Turk as director of Barton.

122. Alphabet received moneys said to be covered by the Miles order in the following flows, which again are not challenged as such by Mr Turk:

(i) £99,888 paid from the sale of the Bethlehem/Penn Dairy factory proceeds. This is the sterling equivalent of the $124,200 paid out of the proceeds of the Penn Dairy factory sale, referred to above. These moneys are relied on as Traceable Proceeds from that sale. For the reasons given above under Ground 1 they do not amount to that, and I need say no more about them under this Ground.

(ii) Two payments from Barton of £18,993 and £212,676.56 made on 11th and 25th October 2019 respectively. These payments can be seen to be derived from large sums of money transferred from one of Mrs Işbilen's accounts to Barton which are identified in Schedule F to the Miles order (the 9th October 2019 and the 15th October 2019 transactions appearing there - $3.3m and $2.8m respectively). The moneys in the Barton account into which they were transferred are "Barton Assets" as defined in paragraph 17(1) of the Miles order and Barton was thereby under the duties imposed by paragraph 17. For the reasons given above Mr Turk was obliged to comply with paragraph 17 as a director of Barton. He accepted that he knew about these payments at the time (subject to a point that he made about being mistaken about where the larger sum had come from) and at the time of the Miles order. He also accepted that when his solicitors asked for the Barton bank statements he gave them, so he had access to them. It was not wholly clear when he got them, but it seems to have been at an early stage (in his cross-examination he said "immediately" on request – transcript page 469).

(iii) Payments from Mrs Işbilen's Swiss Global Account of £120,583.90 and £768,743 on 10th December 2019 and 31st January 2020 respectively. These are relied on as moneys within paragraph 18(1) of the order in respect of which the information appearing there should be given.

123. For the sake of completeness I should add that in Mr McCourt Fritz's written opening he referred to a further payment of £34,595,30 paid from one of Mr Turk's accounts, but Mr McCourt Fritz indicated in that written opening that in the interests of proportionality it was not pursued on this application. Despite that, it re-appeared in his written closing submissions, but it was not developed there. I record that in the light of the abandonment in the written opening I do not consider it further in this judgment.

124. The disclosure actually given by Mr Turk in relation to this matter was as follows:

(a) On 22nd March 2021, within a bundle of documents, Mr Turk produced a payment order form for one of the transfers from Mrs Işbilen's account which recorded Alphabet's bank details and referred to an invoice.

(b) In June 2021 Mr Turk produced invoices (Mr McCourt Fritz would say purported invoices) which sought to justify three of the payments to

Alphabet, describing them as for "consultancy" or "advisory" work with no further explanation or particularisation. No invoice was produced in relation Mrs Işbilen's second (larger) sum under (iii) above - the £768,000 odd transaction on 31st January 2020.

(c) Two of the payments (one of them in round terms) were also referred to in a table produced by Bivonas headed "Payments received/made by Barton with Traceable Proceeds". This table was produced on or about 27th May 2021.

125. The breaches are said to be as follows:

(a) In relation to the transfers from Mrs Işbilen's Swiss Global account, Mr Turk should have disclosed the information required by paragraph 18(1) - the location, form, status, and current or last known whereabouts of Mrs Işbilen's assets or their traceable proceeds. He ought to have disclosed the payments made and the fact that the funds were paid to the Duke and Duchess of York, which is said to be the case, and which Mr Turk knew about. He ought also to have disclosed the existence of the larger of the two payments by Mrs Işbilen, which he did not in any form.

(b) In relation to the Barton assets Mr Turk should have informed Mrs Işbilen of the date of the transfer (the £768,000 odd sum), the purpose of the transfer and the identity of the transferee in accordance with paragraph 17(3) of the Miles order.

126. The facts underpinning this Ground were as follows. Alphabet is the company of a Mr Adrian Gleave, who is said by Mr Turk to be a "broker", and his company a "power brokerage". As part of his case at various points Mr Turk claimed to have engaged his services for himself, his companies or Mrs Işbilen.

127. As indicated above, as part of his limited disclosure under this ground Mr Turk produced 3 invoices apparently submitted by Alphabet. They were not produced as part of the initial disclosure obligations. They seem to have been produced more in connection with the Defence. The first (invoice numbered 00027) was rendered to Barton and was for £40,000 for "TK consultancy fee". The TK is almost certainly a reference to Mr Kaituni, some sort of associate of Mr Gleave and who Mr Turk said in cross-examination rendered some consultancy services. Like the other invoices, the invoice bears Alphabet's company registration number and its banking details. The second (no 00028) is dated 24th October 2019, again rendered to Barton, and is for $275,000 for "Pegasus Solar Energy consultancy fee". The third (no. 00029) is dated 9th December 2019, is for $160,000 and merely says "Advisory". No further explanation was given at the time as to what these invoices were about. No information was given about what happened to the money after it was paid to Alphabet. In his witness statement providing his evidence in chief in this application

Mr Turk expressly said that the invoices were "authentic". It turns out that, on his own evidence, that is not true of at least one of them.

128. One of the major points under this Ground is whether and to what extent Mr Turk knew of the onward destination of the payments to Alphabet and ought to have disclosed them. The evidence on this comes from a variety of strands.

(a) The £18,993 payment is recorded in Barton's records as being part payment of invoice no. 00027. The payment of the rest of the invoice, if it happened, is not recorded in any document before me.

(b) As is accepted by Mr Turk, all the moneys in the Barton account essentially have Mrs Işbilen as their source. In the period relevant to this application over $6m came from her. (More came later, but that is not relevant to this application.)

(c) The largest payment from Mrs Işbilen (£768,743 on 31st January 2020, from her Swiss Global account) is recorded in the Alphabet bank statements (obtained on a *Norwich Pharmacal* order many months after the Miles order) as being in respect of "Payment of Invoice". No invoice has been produced.

(d) The Alphabet bank statements do show that as a matter of fact the £120,000 payment (invoice 29) was used to fund payments by Alphabet to the Duke of York on 10th, 11th and 12th December, in the sums of £50,000, £50,000 and £30,000 respectively. A further payment of £50,000 on 17th December, however, can be seen on the statements to have been funded from a sum paid in from what is understood to be another of Mr Gleave's businesses. Each of the payments out to the Duke of York have the reference "TK Wed". It was suggested that the reference was to Mr Kaitune, an associate of Mr Gleave known to Mr Turk, and Mr Turk accepted that that might be case, and that "Wed" might be a reference to "Wedding".

(e) The £18,993 payment does not seem to have been used to fund any payments to the Duke or Duchess of York. It would seem to have been withdrawn by Mr Gleave.

(f) The very large transfer from Mrs Işbilen (£786,000 odd) cannot be seen to have funded any such York payments either.

(g) Although I have found that the incoming payment from Bethlehem cannot be brought under this head, it is the fact that this payment on 30th September 2019 was used to fund a payment of £50,000 to the Duke of York (with the same payment reference) on the same day.

129. As part of his background to Mr McCourt Fritz's averment that Mr Turk knew of the onward destination of these funds, he also relied on the fact, not disputed by Mr Turk, that Mrs Işbilen paid another sum of £750,000 to the Duke of York on 15th November 2019. Mr Turk accepts that this payment was made, and that he told the bank that its purpose was, namely a gift to the Duke of York on his daughter's wedding. His Defence pleads that he arranged it. However, he denied that be procured it and said that he merely passed on to the bank what Mrs Işbilen told him the purpose was. It was Mrs Işbilen's wish that such a gift be made. This gift was made shortly before an event associated with the Duke called Pitch@ThePalace in which Mr Turk competed for an award. This is relied on as supporting some sort of relationship between Mr Turk and the Duke and Duchess of York.

130. There is no doubt that there was some sort of relationship. In his cross-examination Mr Turk claimed to have visited them 20 or 30 times (reduced slighlty in a later answer). On 13th October 2019 the Duchess wrote to him (copied to Mr Kaituni), saying:

> "Dear Salman, I am Sarah, the friend of Tarek. You have been incredibly kind and supportive and I wish to honour your support and care. Would you be so kind to help and I would be delighted to invite you and Mrs Turc to dinner at Royal Lodge."

131. Mr Turk was sure that he had met the Duchess many times before this email but was unable to explain why, if that was the case, the Duchess felt the need to introduce herself in that manner. The nature of the "support" was not investigated before me. None of the payments to the Duke or Duchess that are relied on in this application had been made by then.

132. There is no doubt that Mr Turk knew of some onward payment, or intention to make an onward payment, from Alphabet to the Duchess. It relates to the invoice for $275,000 (re Pegasus Solar Energy) . This is the USD equivalent of the £212,676.56 received by Alphabet on 25th October. The Duchess was known to be brand ambassador for Pegasus. Mr Turk explained that under some arrangement Pegasus was liable to pay her $300,000 in $25,000 instalments. There was some lack of clarity as to whether the sum was $300,000 or $275,000, but whichever it was Mr Turk agreed to pay her that sum up front and take repayments from the instalments due from Pegasus - a form of informal factoring arrangement (not an expression he himself used or was asked to agree with). In his cross-examination on this application Mr Turk accepted that the invoice referring to Pegasus must have related to this arrangement, though he explained that he had thought that he had paid the $275,000 from his own moneys direct and not through Alphabet. It was only at a late stage that he appreciated he was wrong about that and that the Pegasus invoice represented the moneys passing under that arrangement. His explanation was that when he found the

invoice and sent it to his solicitors, along with the other Alphabet invoices, for disclosure, he did not look at them so at that time (after the service of the Miles order) he did not realise that he was producing an invoice representing the Duchess of York arrangement. He went on to explain that while he was expecting payment from Pegasus he only ever received one payment of $25,000 and the rest is still owing. Apart from asking for payment he has taken no steps to pursue this debt. He did not explain why the invoice, which obviously contained a description of its subject matter which is nothing like an accurate description of the arrangement, was raised at all and he did not explain why the money which he said was paid took the path that it did. His witness statement on this application, while it referred to the Pegasus invoice, contained no element of this explanation, merely explaining that he had done business with Pegasus for the Duchess of York which was completely unrelated to Alphabet (and Mr Gleave). The table of payments which his solicitors sent in June 2021 referred to the payment to Alphabet as being "made at the Claimant's request". That must have been a statement made in instructions, and is obviously wrong. Mr Turk must have known it was wrong at the time.

133. As well as being one of the alleged breaches of the order, the facts surrounding that payment have a wider significance as potentially supporting Mrs Işbilen's case that there were connections between Mr Turk and the Yorks which means Mr Turk would have known where all the payments from Mrs Işbilen and Barton ended up. Another potentially significant piece of supporting evidence, and perhaps one which initiates the idea, is an agreed statement of facts signed by or on behalf of the Duke and Duchess, Mr Gleave and Alphabet. Mrs Işbilen made a claim against the Duke and Duchess in respect of her moneys which found their way into their hands which was compromised in a confidential agreement which was not shown in its totality to the court but which was shown to Mr Counsell so that he could be satisfied that there was indeed an agreement (which apparently he was). One limited part of the agreement was an Agreed Statement of Facts, and it was relied on by Mrs Işbilen before me. The statement referred to the payments that had been made from Alphabet to the Duke and Duchess and stated the parties' agreement to the following matters:

> 4(d) . The relevant payments to the Recipients [viz the Duke and Duchess] were connected to Mr Turk in the following ways:
>
> > i. Mr Turk gave the explanation to Mr Gleave that payments totalling £153,000 made by Mr Turk and Swiss Global Asset Management AG on behalf of Barton Group Holdings Ltd to Alphabet Capital Ltd were by way of consultancy fees relating to the business of Swiss Global Asset Management AG.
> >
> > ii. Mr Turk gave the explanation to Mr Gleave and the Duchess of York that payments totalling [numbers supplied] made by Swiss Global Asset Management AG on behalf of Barton Group Holdings Ltd to Alphabet Capital Ltd related to liabilities of Pegasus Group Holdings LLC to Sarah, Duchess of York which Mr Turk had agreed to take over. To the best of the Recipients' knowledge, Mr Turk knew that Alphabet Capital Ltd would pay to the Duchess of York sums

paid to it by Barton Group Holdings Ltd in relation to which Mr Turk had given this explanation.

iii. Mr Turk gave the explanation to Mr Gleave that payments totalling £889,326.90 made by Swiss Global Asset Management AG on behalf of Barton Group Holdings Ltd and Mrs İşbilen related to a property investment that was never completed.

iv. To the best of the Recipients' knowledge, Mr Turk knew that Alphabet Capital Ltd was a company that had previously made, and might in the future make, substantial payments to HRH Prince Andrew the Duke of York, and that payments to Alphabet Capital Ltd would enable it to make substantial further payments to HRH Prince Andrew the Duke of York.

5. Alphabet Capital Ltd and Mr Gleave deny that Mr Turk had any involvement in the operation of the bank account for Alphabet Capital Ltd, nor that any co-ordination took place in relation to transactions made on the Alphabet Capital Ltd account."

134. Mr McCourt Fritz relied on this document as being evidence which demonstrated that Mr Turk knew and intended that sums passed to Alphabet would be passed on to the Duke and Duchess. It was produced as an exhibit to an affidavit of Mr Tickner, but no formal steps were taken to introduce it as hearsay evidence under the rules and statute. In an earlier judgment I ruled that it was nonetheless admissible and could be relied on, but its weight would have to be assessed bearing in mind that no supporting material from the participants (the Duke and Duchess and Mr Gleave) was available or tendered and that the formal steps which are generally required of hearsay evidence were not taken.

135. The document is entitled to some weight but it is far from conclusive or weighty enough to amount, by itself, to a sound basis for establishing Mr Turk's participation to the extent referred to beyond reasonable doubt. One does not know why the parties, and particularly Mr Gleave, were keen to acknowledge Mr Turk's participation in the transactions. It may be that Mr Gleave in particular had reasons for implicating Mr Turk which would have led him to say things with which Mr Turk would disagree. Apart from paragraph (ii), which relates to the Pegasus invoice which I have identified above, Mr Turk disputed the accuracy of the record of what he had said to Mr Gleave. He did accept that paragraph (ii), which referred to the Pegasus invoice which I have identified, was accurate in what it said.

136. I consider that the document is some evidence of, or corroboration of, a case that Mr Turk was using Alphabet as a vehicle for getting money to the Duke and Duchess, and is entitled to weight accordingly. But it must be treated with caution on this application where its genesis has not been fully probed.

137. Against that evidential background, and with consideration of further pieces of evidence, I now turn to the elements of this Ground. I shall take each of the transfers separately, starting with $275,000/£212,000 ostensibly related to the Pegasus invoice no. 27.

138. The obligation in respect of this payment was that arising out of paragraph 17(3) of the Miles order. The money was derived from Barton Assets as defined. Mr Turk was therefore obliged as director to disclose the date of the transfer, the purpose of the transfer and the identity of the transferee. Mr Turk did none of those properly or in some respects at all. The payment was not disclosed as such. What was disclosed was the invoice, but I suppose that that could be taken to be an implied representation that the sums ostensibly due under the invoice were paid. What was certainly not disclosed was the purpose of the transfer. Indeed, the invoice actually disguised the purpose. The purpose was to get $275,000 into the hands of the Duchess of York as a loan. The invoice was a false one which was meaningless in that context and misdescribed the payment as a consultancy fee. So the purpose was not only not disclosed, the implied explanation was completely inaccurate. That is a serious shortcoming. That means that there was also a mis-statement as to the transferee. The real transferee was, or was intended to be, the Duchess of York. One cannot see all the moneys flowing out of Alphabet to her but Mr Turk (on his case) intended that that should be the case and claimed to believe that it had happened.

139. Mr Turk claimed in evidence that he at first believed that the money that he had intended for the Duchess had come from his own personal resources and not Barton, but he now accepted that this $275,000 was the money intended for her. His evidence was that when the invoice was disclosed (late) he just found it and sent it to his solicitors without looking at it. I do not accept that evidence. I consider that when he conducted the exercise of finding invoices he will have at least cast an eye over them to make sure they were relevant and to confirm that he wanted to put them forward as evidence under his disclosure obligations, or perhaps as something relevant to his Defence. In his witness statement evidence on this application Mr Turk described this invoice (with the others) as "authentic" and in paragraph 85 he confirmed that the payment was "correct" and that he had "done business with Pegasus for the Duchess of York" without, even then, explaining what that business was (it would fall within the "purpose" of the payment). That is at odds with the explanation that he came to give in cross-examination. His explanation in cross-examination is still an odd one because the Alphabet statements do not show anything other than £25,000 passing to the Duchess of York in the period after Alphabet received the £212,000 sterling equivalent, but Mr Turk stuck by his explanation.

140. I am quite satisfied that at the time of the order, and when he came to give such disclosure as he gave, he knew of the payment made and did not want to disclose its true purpose which made the invoice a false one. On 8th June 2021 Mr Litovchenko,

the solicitor at Bivonas who was then acting for Mr Turk, emailed him with a list of questions, one of which was a question as to what advisory services Alphabet provided under the Pegasus invoice. There is no evidence that any answer was given to that. I conclude that that is because Mr Turk knew then that there was no good answer and did not want to give one.

141. That conclusion is obviously capable of impacting on the case in relation to the other payments under this Ground.

142. Turning to the payment of £18,000 odd, I remind myself that this was recorded by Alphabet as being part payment of invoice no. 27. That record will have come from the instructions for the transfer which will have come from Ms Ilel, Barton's accountant. She was given instructions to pay it as an urgent payment by Mr Turk by Whatsapp message. The invoice itself was in fact for the sum of £40,000, for "TK consultancy fee". In his cross-examination in this application (but not before) Mr Turk explained that the fee will have been in respect of some sort of hotel project in Marbella which did not proceed. Mr Turk did not have any documents relating to that (other than stamps in his passport), explaining that emails about this were in an SGFG email account to which he had lost access. He claimed to have asked Mr Gleave 3 times for some evidence but he did not respond. He gave no further details, but I acknowledge he was not pursued for any in his cross-examination. He does not seem to have given any details back in the summer of 2021 when he was asked for them.

143. I consider that Mr Turk as a director of Barton was in breach of the order in relation to this payment. It was a transfer of Barton assets and while he disclosed the identity of the transferee as Alphabet, and in eventually providing invoices he identified Alphabet as an English company, together with its number and address, he did not disclose the purpose properly. The invoice by itself did not reflect a payment because it was for a greater sum than the payment which purports to be made under it. I consider that the description in the invoice was insufficient to describe the purpose because it gave no indication of the consultancy services provided and is fairly meaningless in itself. In the context of a case such as this, which is based on the professed ignorance of the claimant as to what has happened to her assets (albeit challenged by the defendant), a description of the purpose of the disposition of moneys requires more than the bald description in the invoice.

144. That assumes that the description in the invoice is the beginning of a correct description. Mr McCourt Fritz's case was that it was not, and the invoice disguised another purpose which was nothing to do with consultancy. If that is right then the breach is more serious. He may be right about that. In the year in question Alphabet had filed dormant company accounts, subsequently amended to show a turnover of only £80,000. That makes it less likely that this particular payment was a genuine payment, though it is less than that £80,000. The sort of services that would be worth

£40,000 in relation to a failed transaction are not easy to imagine, although this point was not pursued in Mr Turk's cross-examination. However, what that ulterior purpose might be is not apparent. In respect of this payment it does not appear to be associated with a payment to the Duke or Duchess because the Alphabet bank statements do not show a payment to them out of the balance constituted by this payment.

145. In those circumstances it is not possible to say that, beyond reasonable doubt, Mr Turk was masking some purpose not genuinely described in the invoice. I therefore find that his failure to disclose was limited in that he did not fully disclose the purpose behind the invoice taken at face value. That is obviously a less serious non-disclosure than one which hides some other purpose.

146. Mr McCourt Fritz submitted that there was a breach of the order in that Mr Turk did not disclose the Further Parties Information (information as to who would know of the whereabouts of the money). I agree. There is a breach of this obligation in that he could and should have proposed Mr Gleave as the person who would know the fate of this money if and insofar as it was not payment of a genuine invoice for genuine services rendered (which it is not apparent that it is).

147. The third payment is the payment of £120,583.90 made from Mrs Işbilen's personal account on 10th December 2019. It was accepted that this was the sterling equivalent of $160,000 which was the amount of invoice 00029. This time the invoice (dated 9th December 2019) was addressed by Alphabet to Mrs Işbilen. There is email traffic indicating that Ms Ilel effected this payment from Mrs Işbilen's account with Swiss Global. The invoice says it is "For Consultancy" and the description merely says "Advisory".

148. No information was given about this payment other than what appears in the invoice. Nothing was said about it in the disclosure affidavit, and Mr Turk said nothing relevant about it in his witness statement in this application. However, when cross-examined he said it related to a property transaction or property bond transaction in Northern Ireland. Again, he produced no documents. Again, however, he was not pursued particularly vigorously about this rationale in cross-examination.

149. Instead, the thrust of the case against Mr Turk in respect of this item was that the invoice was a disguise to conceal the fact that the money was being used to fund payments to the Duke of York. Alphabet's bank statements show that before the money entered the account the balance was just £508.38. The subsequent entries show that payments of £50,000 and £30,000 were made to the Duke of York on 11th and 12th December respectively, funded largely (save as to £10,500 from one of Mr Gleave's interests) by Mrs Işbilen's money. The reference against those payments is "HRH The Duke of Yo[rk] TK Wed". As appears above it was suggested by Mr

McCourt Fritz that the reference to TK was to Mr Kaituni, and the reference to "Wed" was a reference to wedding, the wedding of the Duke's daughter.

150. Based on that material, and an earlier payment to the Duke of York by Mrs Işbilen, it was suggested that this payment was part of a scheme between Mr Kaituni and Mr Turk to get moneys to the Duke of York. Mr McCourt Fritz did not suggest what that scheme was, saying any suggestion from him would be speculation. Mr McCourt Fritz relied, as he was entitled to, on the statement of agreed facts as linking Mr Turk to a desire to get money to the Duke and Duchess.

151. The moneys in question in relation to this payment were Mrs Işbilen's moneys, not Barton Assets. The relevant paragraph of the order is therefore paragraph 18, which required Mr Turk to state the last known whereabouts of her assets or their traceable proceeds (see paragraph 18(1)). "Purpose" is not within this paragraph.

152. In order for Mr McCourt Fritz's high case to work I have to be satisfied beyond reasonable doubt that Mr Turk knew that the moneys (traceable proceeds) had been passed to the Duke of York. I therefore have to be satisfied that there was the sort of scheme proposed in cross-examination and that the invoice was a sham. While there is a reasonable case for saying that, I cannot be so satisfied to that standard. No reason was proposed as to why Alphabet was chosen as a middle-man for such a scheme; a later further payment to the Duke of York of £50,000, with the same reference, can be seen to have been funded by Mr Gleave's interest, not from Mrs Işbilen's or Barton, so on the face of it it would seem that Mr Gleave, or someone else, had an interest in payments being made to the Duke. The part payment of invoice no. 00027 was not used to pay moneys to the Duke or Duchess. If the absence of real advisory services had been established beyond putting that the invoice was a sham then the matter might have been different, but it was not. Something odd was going on here, and I have found it to be the case (as accepted by Mr Turk) that Alphabet was used as a vehicle for getting money to the Duchess, but it is not clear, beyond reasonable doubt, that there was an overall scheme of Mr Turk to use Mrs Işbilen's money to pay the Duke of York. That may well become more apparent at a trial, but it is not sufficiently apparent on this application with its more limited evidence and its high standard of proof.

153. A breach of the nature primarily relied on by Mr McCourt Fritz has therefore not been established. Having said that I consider that there was some sort of technical breach of the order in respect of this payment. His personal obligation was to disclose the last known whereabouts of Mrs Işbilen's assets or their traceable proceeds. Strictly speaking that is not discharged by producing an invoice which says nothing about actual payment. However, production of the invoice is some sort of implied representation that the payment was made, and indeed it was, so the breach, if there is one, is largely technical. Had there been an obligation to disclose the purpose of the

payment then there would certainly have been a breach arising out of the uninformative nature of the invoice, but as I have observed there is no such obligation in paragraph 18. Paragraph 17, which contains such an obligation, applies only to Barton Assets.

154. The last item under this count is the payment from Mrs Işbilen's account of £768,743 on 10th January 2020. This transfer appears from the Alphabet bank statements. It is an odd sum, but applying something like the dollar/sterling rates apparently applied from the previous invoices it probably represents $1m. The bank statement entry merely says "Payment of invoi" [sic]. No invoice has been disclosed, referred to or explained by Mr Turk. When asked about it in cross-examination he said merely that he could not recall the purpose of this payment. He did not say that he did not remember it until reminded in this application, or that he could not have found out about it from documents available to him. It was not disputed that this money came from Mrs Işbilen's account that was administered by Ms Ilel, so Mr Turk must have known about and indeed arranged it. The credit arising from this payment can be seen to have been dissipated in various directions; the only involvement of the Duke and Duchess in relation to the receipt of this money was a payment of £50,000 to the Duchess on 3rd February 2020. It was not suggested that this large sum of money was transferred so that it could, or most of it could, be paid on to the Duke and Duchess.

155. There is plainly a breach of the order by Mr Turk personally in respect of this payment. It was a disposition of Mrs Işbilen's assets effected by Mr Turk and which he has not disclosed in any form. In this instance that breach is not merely technical. It is substantive. I also consider it is serious because I find, beyond reasonable doubt, that Mr Turk knows and knew what that payment was for and has decided to pretend he has forgotten. Alphabet's business was providing services, and Mr Turk could not begin to suggest what services it might have provided that were worth $1m. I consider it unlikely in the extreme that Mr Turk can have forgotten about this payment, and I find that he knew about it, or could by taking due steps have reminded himself about it, in March 2021. He is an expert banker, who accepted responsibilities for managing Mrs Işbilen's assets (though he disputes the scope of his responsibilities). He would not forget about $1m. He seems to have made no attempt even to identify this as a payment made out of assets over which he had control.

156. I therefore find that in this respect the claimant has established a clear and serious breach of the order in relation to this disposition of the claimant's assets.

157. In summary, therefore, under Ground 2 I therefore conclude:

(i) Mr Turk was obliged, as a director of Barton, to comply with the obligations in paragraph 17 of the Miles order (see above).
(ii) He was personally obliged to comply with the obligations in paragraph 18 of

the Miles order.
(iii) Mr Turk was in serious breach of paragraph 17 of the Miles order in respect of the Pegasus-related payment.
(iv) Mr Turk was in less serious breach of his paragraph 17 in relation to the £18,993 in failing to identify the purpose of the payment.
(v) Mr Turk was in technical breach of the Miles order in relation to the sum of £120,583.90.
(v) Mr Turk was in serious breach of the Miles order in relation to the payment of £768,743.

Ground 3 - AET Global Transfers

158. The transfers relied on in this Ground are just some of a number of transfers made by Mr Turk or entities he controlled in favour of AET Global DMMC ("AET"), a UAE-incorporated company. AET is the creature of a Mr Ayac Erdem, whose initials it bears. Documents which have come into the hands of Mrs Işbilen indicated a signficant number of payments passing between Mr Turk-controlled entities and AET, but this Ground relates to just 5 of sets of payments. One further payment to AET is dealt with in the next Ground. The payments, or sets of payments, relevant to this Ground are as follows:

(i) A number of payments made out of Mrs Işbilen's account with Varengold Bank as set out in paragraph 70 of the Amended Particulars of Claim. They are:

(1) On or around 15 August 2017, a payment of $650,000;
(2) On or around 6 October 2017, a payment of $70,000;
(3) On or around 22 December 2017, a payment of €540,000
(4) On or around 29 March 2018, a payment of €1,100,000

The making of these payments is not disputed. Mrs Işbilen's case is that Mr Turk effected them without proper consent. He says they were made on her fully informed instructions but he does not deny involvement. Resolving that issue is no part of this application. This application is concerned with the disclosure that Mr Turk did or did not make about them.

(ii) A payment of $400,000 made on 16th March 2017 from SGAM. This payment was made out of what can be seen to be the outstanding balance from sums of $1.699m and almost $1m paid to SGAM from one of Mrs Işbilen's accounts on 6th and 13th March 2017 respectively. That "tracing" exercise is not disputed.

(iii) A sum of $445,000 made by SGAM on 12th June 2017. This can be seen to be derived from a balance constituted by the previous credits and a further payment of $982,000 odd to SGAM from one of Mrs Işbilen's accounts on 7th April 2017. That "tracing" exercise is not disputed.

(iv) A sum of $90,000 paid by by SGAM on 11th October 2017. This can be

seen to be derived from the same sums as the payment in (ii).

(v) A sum of $100,000 paid by Barton on 8th October 2019 , derived from a sum of $3.381m paid by Mrs Işbilen to Barton on the same day. That "tracing" exercise, so far as relevant, is not disputed.

(vi) A sum of $100,000 paid by Barton on 20th August 2020. This derives from a credit balance which in turn derives from moneys paid in by Mr Turk from one of his personal accounts. Those moneys paid in are the two sums referred to in Schedule D as having been received by Mr Turk (the first table in that Schedule), and cross-referred to in Schedule E, of the Miles order. Once again that tracing exercise, in that form, is not challenged by Mr Turk, who himself said in cross-examination that all the sums in the Barton account derived from Mrs Işbilen. .

159. The breaches alleged in respect of these payments are as follows:

(i) So far as the payments in (i) are concerned, they are payments out of the assets of Mrs Işbilen within paragraph 18 as to which the details referred to there should have been provided. It is said that not only were those details not provided, a positively misleading disclosure about them was given in the form of two sham invoices.

(ii) So far as the payments (ii), (iii) and (iv) are concerned, these are said to fall within paragraph 16 of the order as being moneys derived from payments identified in Schedule D and/or the traceable proceeds of Mrs Işbilen's investments within Schedule E. I find that the payments fall within those descriptions as a result of the payments in to SGAM and/or the fund, and the tracing exercise which is conceded. The breach is said to be a failure to disclose the payments properly (or at all) and in particular a failure to disclose the purpose of the transfer and information about the transferee.

(iii) So far as the payment in (v) is concerned, the breach is said to be a breach of the obligation to disclose the purpose of the transfer of funds (which are Barton Assets) and information about the transferee.

(iv) So far as the payment in (vi) is concerned, this would not seem to be a payment out of Barton Assets within the order, because it is not derived from the specific transfers identified in schedule F to the order. However, it is presumably said to be capable of falling within paragraph 16 as being traceable proceeds of the original payment. I say "presumably" because the point was not argued out. However, there seemed to be no challenge from Mr Turk as to whether this sum was covered by the order, and I find that it was.

160. The documents subsequently obtained by Mrs Işbilen demonstrate a large number of further payments passing to AET, but those payments are not an additional basis of this application, partly (it is said) in the interests of proportionality, though Mr McCourt Fritz did rely on them as demonstrating a close business relationship

between Mr Turk and Mr Erdem which was an important part of the background for considering this Ground.

161. The only disclosure given by Mr Turk in relation to payments to AET were two purported invoices, one disclosed on 16th April 2021 and the other with the Defence on or about 25th June 2021. No point is taken on lateness of itself. No other documents were disclosed; a third invoice, which might be said to be relevant to the application, was found on the execution of the search and seizure order; it is not easily relatable to any of the payments in issue. In addition, it is right to point out that in his disclosure affidavit Mr Turk did say that payments were made by SGAM to third parties at Mrs Işbilen's request, in general terms, though this was not relied on as an answer to this charge in his evidence or at the hearing.

162. The first purported invoice is from AET is dated 26th March 2018 and is addressed to Mrs Işbilen at her former address in a flat in Turkey. It is in the sum of €1.1m, for building and decoration works to an "Istanbul Villa". This invoice was produced to Peters & Peters by Bivonas under cover of a letter dated 16th April 2021 which observed, in paragraph 1, that Mrs Işbilen's case seemed to be that she was unable to recall the explanations of transactions. It goes on:

> "1.2 Further to the above, we now enclose a copy of an invoice in the sum of EUR 1.2 million issued by the Sixth Defendant in these proceedings to your client on 26 March 2018. The invoice clearly shows that payment referred to in paragraph 117(4) of your client's affidavit was for works carried out by the Sixth Defendant on your client's property in Turkey. However, your client's evidence is that she had no knowledge of AET Global's business …

163. Thus the invoice was produced as genuine. That must have been on the instructions of Mr Turk, who must have produced it to the solicitors. The following paragraph contains an indignant rebuttal of the suggestion that any produced documents were not genuine, which in the light of what has happened in relation to this Ground is an ironic juxtaposition.

164. The second invoice disclosed is for €542,249.90, similarly addressed, and is dated 22nd December 2017. It is for building materials, for which €86,424 is for "Glass of Window"; the remainder of the items look like other materials for fitting windows. Mr Turk's Defence, on which the statement of truth was signed by Mr Turk's solicitor Mr Litovchenko, justifies the last of the 4 payments in (i) above by reference to those invoices - the smaller invoice is said to be "Payment of AET's invoice number 1128-2017" and "for materials"; the larger sum is said to be "Payment of AET's invoice", and "The invoice appears to relate to building works done for the Claimant" - see Table C in that Defence. Paragraph 85 pleads:

> "The payments [that is to say all 4 of them] were made by the Claimant … for refurbishment works on the Claimant's property in Turkey."

And paragraph 87 pleads that:

> "The monies were expended by AET on the refurbishment works."

165. That explanation was not contradicted by Mr Turk at the summary judgment application last year. At that hearing submissions were made as to the implausibility of that explanation, bearing in mind that Mrs Işbilen was distancing herself and her assets from Turkey, and was hardly likely to be spending money on property there on some unspecified villa. There was no attempt at that hearing to meet that point, though it might be said that it was not a natural forum for Mr Turk to advance any riposte to that. The allegation that the invoices were false was clearly made in Mr Tickner's supporting affidavit in this application sworn on 7th November 2022 (a long time before the summary judgment hearing).

166. Then, for the first time, in his witness statement in this application signed on 7th August 2023 Mr Turk changed his story in relation to these payments. He said that these payments were "Hawale", which is a Turkish expression for a payment to be made to a third party in another country through an intermediary in a different country order to conceal the true source of the money from outsiders. The invoices were said to have been created in order to give the paying bank a reason for making the transfer. His witness statement said that all payments in issue in this Count were Hawale, together with others appearing in a table of payments, but at the beginning of his evidence he corrected that - only some were Hawale, and the others were repayment of "investment". Of those relevant to this action he said that the two payments from Barton were not Hawale but were repayment of an investment that Mr Erdem had made. This was despite the fact that the bank entry for one of the payments said "Advisory fee" and the other said "Payment of invoice". He accepted that neither of those descriptions was accurate but that he had told the accountant to put them in. It was more convenient than having to produce the correct documents, which would take time. In order to justify the entries there will have been sham invoices; he accepted that sham invoices would be created because that was easier.

167. This evidence is significant in terms of credibility because it shows that Mr Turk was prepared to be dishonest in these matters, and did not seem to think that there was anything wrong in this conduct because AET would know what it was being repaid for. It is also significant because I consider it to be a lie and I do not consider that I was being told the full truth about these particular payments. His evidence made no real sense in a commercial world, and no honest sense in a commercially honest world.

168. Mr Turk's account for the need for an invoice such as the building works invoices was not credible either. He sought to say that a paying bank would require an invoice because otherwise it would not make the transfer. He seemed to be saying that that would be required by Mrs Işbilen's bank (Varengold), and that if she had sought to explain that the money was being transferred so that it could be paid to persons in Turkey then it would not have implemented the transfer. Furthermore, he said a false document was necessary to conceal the real purpose from the Turkish authorities, who would try somehow to freeze or get hold of Mrs Işbilen's assets if they could find out its source. However, at the same time, he acknowledged that the Turkish authorities could not get information about the transfer from a bank in Germany, where is where Varengold was, so that latter danger is not real; and an email exchange revealed that Varengold was asking for a copy of the invoice, but only in connection with a transfer from one AET Global account to another with Varengold (AET Global had accounts there too), not in respect of the original transfer to AET by Mrs Işbilen. His evidence on this was very unconvincing.

169. So far as the remaining payments which were said to be Hawale were concerned, Mr Turk was challenged with the fact that he only mentioned this very late and he produced the two sham invoices that he did produce which represented the payments as genuine payments of invoices. He said in cross-examination that he had told his solicitors about Hawale payments at one of their first meetings, but it seems they did not act on what he told them. It would appear that he did say something about payments made from a disguised source. As appears above, his disclosure affidavit refers to payments made in a manner which disguised their source. The reference there seems to be for the payment of people in the UK, but at the hearing on 25th March Mr Quirk referred to similar payments made by "these companies" (not, be it noted, by intermediaries) to people in Turkey (transcript of that hearing at p24). So there is evidence that techniques for disguising the source of payments were referred to as between solicitor and client.

170. However, the explanations there were not the same as the Hawale payments that Mr Turk relied on under this Ground because they did not involve intermediaries. This does not amount to evidence that the solicitors somehow overlooked the Hawale nature of these payments to AET. In fact it makes it unlikely, because it is less likely to be overlooked when disguised-source payments are already in play. Furthermore, Mr Turk confirmed that he read his Defence before it was signed by Mr Litovchenko, and said he did not notice that there was no reference to the Hawale nature of any of the payments. His explanation of that is that he must have lost focus. I do not accept that. His claim to have lost focus would be in keeping with his ADHD diagnosis, but it is not an answer to all difficult questions. As I have observed, he is an intelligent man, with apparently a lot of business interests, including an outstanding application for approval of a banking operation. If there really were allegations of unauthorised payments to which the answer was that they were authorised by a Hawale arrangement, and that was not set out in the Defence, which said something else about them, I consider that he would have noticed and had the matter corrected. He was able to provide some email traffic relating to the payments he said were Hawale, and one of the emails is referred to in the Defence (Table C). It is unlikely that all this can

have happened without his managing to communicate to, or remind, his solicitor that these payments were Hawale and authorised for that reason.

171. I therefore consider his Hawale version of the facts in relation to these payments to be a recent fabrication.

172. Mr Turk had what would seem clearly to be a close relationship with Mr Erdem and AET. Apart from the number of invoices, that was apparent from other matters. Emails demonstrate that for some reason he was party to transfers from one AET account to another; he spoke of commercial relationships which were planned between them; and he assisted in the opening of a bank account for AET. Mr Turk did not deny any of this, or the existence of a good business relationship, but it does speak to the ability of Mr Turk to contact Mr Erdem when necessary and to get information from him if he needed it (and had a legitimate interest in acquiring it).

173. With those points having been determined I turn to the question of breaches of the order.

174. So far as the payments at (i) are concerned one has to pay particularly close attention to the form of the obligation said to affect the payments in that paragraph. The relevant paragraph in the order is paragraph 18. Some of Mr McCourt Fritz's cross-examination was on the basis that under this paragraph Mr Turk was obliged to give information as to who would know where the moneys had gone. That is not an obligation under this paragraph - contrast paragraphs 16 and 17 (to which I will come). This paragraph required him to give information about the form and whereabouts of Mrs Işbilen's assets, or their traceable proceeds.

175. The money paid out of Mrs Işbilen's accounts were undoubtedly once her assets, but once paid out they no longer clearly were. Liability under this head must depend on his failure to disclose the last known whereabouts of the moneys or their traceable proceeds. I find that there was a breach of this obligation. At one level the last known whereabouts was AET, and in relation to two of the payments Mr Turk disclosed that fact, after a fashion, when he disclosed the invoices. Indeed, Mrs Işbilen already knew the moneys went to AET, from her own records. However, those payments had a purpose and that purpose will certainly have been known to Mr Turk. That purpose will have reflected on the last known whereabouts. If the purpose was Hawale, the last known whereabouts will have been the ultimate recipients. If those recipients were not known to Mr Turk or could not be remembered by him (the latter of which is plausible) then the last known whereabouts would have been an "unknown recipient", with an explanation. If the purpose was something else then it is inevitable that Mr Turk will have known something about the ultimate recipient. Thus disclosure of the last known whereabouts would have required some disclosure of purpose where the purpose was not to benefit AET beneficially. In those circumstances a response which identified AET as the last known whereabouts of the

moneys would have been glib and inadequate. I am satisfied that Mr Turk knew something more of where the money went or was likely to go.

176. Virtually none of that was disclosed by Mr Turk. All he disclosed was two invoices which actually mis-stated the purpose and therefore the last known form and whereabouts. On any footing AET was not the last known whereabouts.

177. I find that the breaches alleged under (ii), (iii) and (iv) have been established. In relation to these payments (which are made out of sums specified in the Miles order) Mr Turk should have disclosed where the payments had gone because they would have been Traceable Proceeds within paragraph 16(1), and should have disclosed the date of the transfer, its purpose and the identity of the transferee under paragraph 16(3). He made no attempt to do any of those things. He has now said that the payments were Hawale payments. If that is right then he ought to have disclosed the identity of Mr Erdem as being the person who would know to where the moneys had been transferred under paragraph 16(2); he did not do so.

178. These are serious and significant breaches. For the sake of completeness I record that Mr Tickner's affidavit in support of this application suggests that it was a breach of the order for Mr Turk not to disclose the transfers (in which he participated) from one AET account to another. That is not in fact a breach of the order because he was not obliged to disclose intermediate steps of which this was one. He says he was not aware that he was obliged to disclose those transfers, and he was right about that. However, that intermediate step is irrelevant in this context other than demonstrating how closely he was tied to Mr Erdem's affairs.

179. In relation to items (v) and (vi), I find that there was a breach of the order. He made no disclosure in relation to these matters. He was in breach of paragraph 17(3) in that the payments were made out of Barton Assets and the moneys were transferred to another person or entity (AET). The transfers ought to have been disclosed, along with their purpose and the identity of the transferee. No excuse for not doing so has been advanced other than his not knowing that he had to do this. If he required to see bank statements to remind himself of the payments, he said in cross-examination (Day 5 p469-470) that he had the bank statements and gave them to his solicitors, so he had a source of information about the payments shown on those statements. There is no reason why he could not have provided this information at the time, or, if he needed more time to sort out detail, asked for extra time to do so. He did not do so.

180. These are serious and significant breaches. In reaching this conclusion I have not lost sight of the fact that using SGAM as route for paying third parties at Mrs Işbilen's request was described in Mr Turk's disclosure affidavit. That disclosure was nothing like any attempt to disclose the matters on which this Ground is based. It is simply a

generalised description, though accompanied by such SGAM invoices as Mr Turk says that he had. It does not attempt to go through the specific payments, which was his obligation, and does not disclose any specific information about the above AET payments, which Mr Turk will have been able to have in mind. Furthermore, there is no suggestion of disguising sources in this affidavit disclosure. I note that this affidavit disclosure was not raised by Mr Counsell as being relevant disclosure for these purposes.

181. I have already dealt with Mr Turk's personal disclosure obligations in relation to transfers by SGAM and Barton. For the reasons given above he was under an obligation to give the disclosure to which I have referred under this Ground.

Ground 4 - SGP transfers

182. The moneys which are the subject of this Ground are moneys which were paid to SGP (of which Mr Turk was a director) and which were then paid out (obviously at the behest of Mr Turk) to Decherts, Mr Lewis and AET. The moneys were sums paid to SGP by Mrs Işbilen and were the first two sums described in the SGP section of Schedule D of the Miles order. The money flows were as follows. I will describe them in round terms though the sums appearing in bank statements were slightly different, no doubt because of transaction costs. Once again no dispute was raised as to these flow or tracing matters. The matters which I am about to describe have been ascertained from bank statements found by Mrs Işbilen's representatives on Mr Turk's computer on the execution of the search order, so they will have been available to him at the date of the order.

183. SGP's bankers in relation to this matter were ABC Banking Corporation of Mauritius. On 3rd February 2017 Mrs Işbilen paid $205,000 to SGP, where it was received in SGP's US dollar account (the credit appearing on 7th February). That is the first of the SGP Schedule D payments. There was a small and irrelevant amount already there. From there on 16th February 2017 $115,000 was paid to Dechert LLP. The balance in the account (some $121,000) was transferred to SGP's Euro account on 6th March 2017, where it joined a credit of the same date in the sum of just over €800,000 which had been transferred from SGP's sterling account. A significant part of that €800,000 was made up from the second SGP Schedule D payment ($312,750 paid to SGP on 23rd February 2017). The resulting balance was just over $912,000, which was paid out 2 days later (8th March 2017), as to €500,000 to Mr Lewis and €412,000 to AET.

184. Mr Turk made very limited disclosure about these payments. In his final submissions Mr Counsell submitted that transfers from "SGP Sch D to ABC Banking Corporation Account" were disclosed. This is presumably intended to refer to Mr Turk's disclosure affidavit where he merely describes the purpose of the payments in as

being a retainer fee, success fee and closing fee (see above). Mr Counsell also sought to say that there was disclosure when Mr Turk provided authorities (mandates) allowing the claimant's solicitors to get information from ABC Banking Corporation, but that does not amount to disclosure for these purposes. Those mandates were provided pursuant to the order of Stuart Isaacs QC requiring them, which was made on an opposed application made by Mrs Işbilen. The signing of mandates of itself did not reveal information, it was not an act of disclosure as required by the order, and in any event the bank refused to comply with the mandates (I was told that it felt it did not have to comply with an English court order, which rather surprisingly misses the point that it was asked to address the mandate, not the order, but in any event the matter was apparently not pursued further with the bank by Mrs Işbilen).

185. Even in his witness statement on this application Mr Turk did no more than seek to explain the purpose of Mrs Işbilen's payments. He explained that he did not produce ABC Banking Corporation bank statements because he thought they were in an email account of SGP which had been rendered inaccessible to him, and did not realise that they were in his personal Hotmail account, which is where they were found on the search order.

186. The breaches alleged in respect of these matters are a complete failure to provide the information required by paragraphs 16 and 18 of the Miles order, and the Grounds summary says that the breach allegation is levelled at Mr Turk in his capacity as director of SGP. Particular reliance is placed on the fact that, as the search order fruits revealed, Mr Turk had bank statements in his possession which would have allowed him to have provided the information if he had forgotten precisely what it was. He himself admitted that if he had seen the bank statements (which he says he did not) he would have been reminded of the necessary detail (which he did indeed admit when faced with the evidence).

187. It is quite clear to me that Mr Turk was in breach of the order in the respects alleged. The moneys as they arrived in the Euro account were traceable proceeds of the two payments by Mrs Işbilen identified in Schedule D and Mr Turk was under the obligations in paragraph 16 in respect of them. He was under an obligation as a director of SGP and under a personal obligation under paragraph 16 - see above. That obligation relates to payments out; Mr Turk's only disclosure related to payments in. He ought to have identified the outward transfers of the money (to Decherts, AET and Mr Lewis), their payees and their purpose under paragraph 16(3). That seems to me to be obvious when one looks at the money flows. The further details required by sub-paragraph (3) ought also to have been provided. It is not apparent that Mr Turk could have provided the further details referred to in sub-paragraph 4, but that is of little consequence in the present situation. He was also technically in breach of sub-paragraph (2), but that adds little or nothing to the substantial breaches of sub-paragraph (3).

188. There is also a breach of paragraph 18 in that the money flow amounts to the traceable proceeds of Mrs Işbilen's assets, though this adds nothing to the breaches of paragraph 16.

189. One point that has to be dealt with is Mr Turk's protestations that he did not have the bank statements available to him from which he could provide the necessary information. This is unlikely to be relevant to liability, not least because if he really did not have them there seems to be no reason why he could not get them, but it is capable of being relevant to sentence, if true. In any event I should deal with it.

190. The bank statements were available to Mr Turk in his personal Hotmail account. They were readily available to him there if he had looked hard enough, which he should have done If the question were capable of going to liability that is enough to make give rise to a breach of the order. The "best of his ability" required him, at the very least, to carry out a proper search of such email accounts as were available to him. He accepted that he did search the account but did not search by reference to the name of the bank. He said that he searched for documents using the word "Sentinel" instead. Relevant documents were forwarded to his solicitors. The bank statements did not respond to that search.

191. One of the documents which he did find was an email from ABC Banking Corporation to him dated 9th December 2016 which clearly showed the bank corresponding with him on his personal Hotmail account, not his SGP account, about a banking matter. Contrary to his denials, I consider that this demonstrates that the bank was indeed corresponding with him on that account, and not, or not just, on the allegedly inaccessible SGP account. It would have been apparent to him from that email that there would or might be bank documents within that email account. Having said that he searched against the word Sentinel on that account (just in case there were some Sentinel documents there) he then had to explain why the email to which I have just referred was thrown up, because the word "Sentinel" does not appear in it. His evidence was that it must have been thrown up because he searched for "Dechert" as well. I find that evidence very hard to accept. I consider that he made up that answer. His reasons for searching for Dechert were not comprehensible.

192. Other documents were shown to him which demonstrated the bank corresponding with him on his Hotmail account. One was an extended email chain from 28th September to 30th September 2017. The word Sentinel clearly appears in the subject line or in the body of those emails. On Mr Turk's own evidence these will have been thrown up by the "Sentinel" search he did, yet he claims not to have realised that he had ABC Banking Corporation documents in the Hotmail account. The most cursory glance, if he had actually looked at these emails when they were thrown up, would have revealed that the account contained such documents. Two or three other similar instances were produced.

193. Perhaps the most significant document is an email exchange of 23rd March 2017, which is shortly after the dispositions which are the subject of this Ground. In the chain an outside person writes to a bank official:

> "The client told me, that all of the money has already been moved. However, he has requested statements from your bank showing all of the account activities. The client needs this before closing the account. Could you please provide him such statements."

That seems to have been forwarded to Mr Turk in his Hotmail account by the bank official saying:

> "Kindly find attached the below requested bank statements"

194. The three attachments are listed (and shown in blue and in capitals on the email, which would make them stand out to the reader) as "Sentinel Global Partners Ltd EUR.pdf" and similarly for GBP and USD accounts. These, then, would seem to be the very statements demonstrating the onward transmissions on which the items in this Ground are based. If Mr Turk had truly searched against Sentinel and perused the resulting documents then not only would it have been apparent (again) that the bank was corresponding with Mr Turk on his Hotmail account; it would also have been apparent that it had sent him important statements on that account and they would still be there (which indeed they were - that is where they were found by the search party).

195. I am therefore unable to accept Mr Turk's evidence that he made a bona fide attempt to get information required about the SGP payments but failed innocently to appreciate that he had ABC Banking Corporation documents in this account. I do not accept he made any real attempt to look for those documents, and therefore did not search to the best of his ability; or alternatively he found them and decided to do nothing about them. I do not accept his evidence that, having found Sentinel documents as a result of a "Sentinel" search, he overlooked their significance.

196. In the circumstances Mr Turk did not, to the best of his ability, provide the information required by paragraphs 16 and 18 of the Miles order in relation to these payments. He was therefore in breach of the order. He is liable and as a director of SGP and personally.

197. His shortcomings in this respect are serious in their extent and nature.

Ground 8 - Sphera investments

198. The claim in respect of this Ground is that Mr Turk failed to disclose where funds went once they were applied in the purchase of shares in a Spanish company named Sphera Investment Spain SL ("Sphera"), or otherwise paid in relation to that company. Mr Turk was at all material times, and apparently still is, a director of that company. In order to establish the scope of any obligation in that respect it is necessary to understand the payments which are said to be the source of the obligation. Once again the money flows are essentially agreed; the scope of the consequences of that for the purposes of this application is not. Mrs Işbilen's case is while she had been belatedly been told of an investment in a Spanish healthcare company, she did not know of the transfers on which this Ground is based until she obtained bank statements in the course of these proceedings. The scope of her knowledge is one of the issues in the proceedings but not something which falls for decision in this application.

199. The money transfers in this Ground were summarised by Mr Tickner in his affidavit and can be seen from the following table:

Number			Payer account	Payment reference
1.	30 March 2017	€1,250,000.00	SGAM DMS	"Shareholder Loan"
2.	30 March 2017	€1,250,000.00	SGAM DMS	"Shareholder Loan"
3.	26 June 2017	€52,332.50	Fund DMS	"Sphera Share Purchase"
4.	26 June 2017	€291,332.00	Fund DMS	"Sphera Share Purchase"
5.	26 June 2017	€254,050.50	Fund DMS	"Sphera Share Purchase"
6.	26 June 2017	€258,462.00	Fund DMS	"Sphera Share Purchase"
7.	07 July 2017	€42,223.50	Fund DMS	"Sphera Share Purchase"
8.	07 July 2017	€47,255.80	Fund DMS	"Sphera Share Purchase"
9.	07 July 2017	€42,137.00	Fund DMS	"Sphera shareholder loan"
10.	07 July 2017	€47,255.69	Fund DMS	"Sphera shareholder loan"
11.	25 July 2017	$1,757,050.26	Fund DMS	"capital increase"
12.	24 November	€200,000.00	SGAM DMS	"Shareholder Loan"
13.	10 April 2018	€249,972.00	Fund DMS	"Sphera loan"
14.	01 April 2019	€321,305.00	Fund DMS	"Monetary contribution to Sphera
15.	16 April 2019	€140,431.00	Turk UBP	"ON BEHALF OF BARTON
	Total EUR:	**€4,46,759.99**		
	Total USD:	**$1,757,050.26**		
	Approx Total	**£5,074,406.40**		

200. Mr McCourt Fritz's written opening claimed that these amounts were derived from Schedule D or Schedule E payments described in the order. It contained a table which sought to set out the sourcing/tracing of the payments to trace the payments out back to a relevant source within the order. Unfortunately the two tables did not match and the non-matching was not made good at the hearing. The result of that is that items

11 to 14 in the above table were not developed in the opening (or in the rest of the application) and one sum of €89,392.69 referred to in Mr McCourt Fritz's table has no corresponding claim in Mr Tickner's table. Those items will have to be left out of the complaints made under this Ground.

201. It is also necessary to complete the allocation of payments to a relevant Schedule in the order. That exercise was not done completely by Mr McCourt Fritz but it is something that can be done on the basis of the material supplied.

202. The result of that is as follows. It does not seem to be disputed that the payments, save for the last one, were the application of Sentinel funds within Schedule E. That triggers the Schedule E and paragraph 16 obligations. Payments 1 and 2 were also Schedule D transfers, being derived from the payments to SGAM on 3rd and 10th March 2017 which are the first two payments in the SGAM section of Schedule D. No other Schedule E payments were traced back to Schedule D, so they remain just Schedule E payments.

203. Payment no. 15 is a little less straightforward. Although the table shows the money has coming to Sphera from Mr Turk, its source is a dividend or purported dividend paid by Barton to Mr Turk part of which was then used to make payment 15. The moneys out of which Barton paid that dividend are the first two payments in Schedule F. Those moneys are therefore the traceable proceeds of Schedule F payments and the disclosure obligations in paragraph 17 of the Miles order are triggered in respect of them.

204. There was virtually no disclosure given under the Miles order by Mr Turk in respect of any of these payments and related matters. In paragraph 42 of his disclosure affidavit under the heading "Information requested in Schedule C to the Order" (he must have meant Schedule E) he said:

> "42. I do not have any information or documents relating to investments made by SGFA [ie the fund]. In any event, the funds transferred by the Applicant to the Fund were returned to her less any fees charged by SGP and any loss attributable to the early redemption."

205. Mrs Işbilen had revealed in her affidavit in support of the application for the Miles order that she had been told of an investment in "a Spanish health business (Sphera)", which was said to be illiquid. Mr Counsell relied on certain paragraphs in Mr Turk's Defence as amounting to disclosure of the Sphera investment. Disclosure in the Defence is not disclosure for these purposes, and in any event those paragraphs did

little more than admit in general terms that the Fund had made an investment in Sphera which stood at 23.15% of its share capital, which Mrs Işbilen herself had pleaded in her Particulars of Claim. Mr Counsell also relied on the Defence as disclosing the name of a Spanish law firm (already revealed to Mrs Işbilen) who could provide further information about the transfer of shares in Sphera. Again, that does not amount to disclosure under the order. Nor does the provision of Sphera bank mandates pursuant to the order of Mr Isaacs, for the reasons given above.

206. Mr McCourt Fritz's case on non-disclosure goes beyond disclosure of making the investments simpliciter. It is said that Mr Turk ought to have disclosed what Sphera did with the money invested in it, and insofar as he did not know then he knew that three individuals involved the company, its founders Mr Campos, Mr Sarda and Mr Malet, would have known and their identities as persons having that information ought to have been disclosed. It is also said (in Mr Tickner's affidavit) that Messrs Sarda and Malet can be seen to be the recipient of the injected funds by way of loan.

207. It is therefore necessary to determine first what Mr Turk's obligations were in relation to the disclosure of Mrs Işbilen's money once it had gone into Sphera. I find them to be more limited than Mr McCourt Fritz needs for his highest case. So far as this Ground is based on Schedule E matters, the obligation is not to identify where the money went once it was in Sphera (so far as Mrs Işbilen's money was paid to Sphera as opposed to shareholders). This is because of the same reasoning which I have applied above in relation to Ground 1 (Bethlehem). Mr Turk's obligation was to disclose the investments made and the traceable proceeds of the investments, which does not include what happened to the money in the hands of Sphera. That is not what is meant by "proceeds". The use of the word "traceable" does not affect this conclusion.

208. That limits the scope of the obligations affecting Schedule E payments. Mr Turk was required to state the current value, nature and location of the shares (or other assets) acquired as an investment or their traceable proceeds. It is not apparent that he did much of that. He should have disclosed what he knew, or could reasonably be expected to find out, about the holding of shares in Sphera, and his view of their value. He remained a director of Sphera, but in any event he must have had some idea of the shares acquired by each payment and their value. He must also have known in whose name the shares were held. If he did not know those matters he should have disclosed the identities of the three founders, or the Spanish solicitors, as being persons who could supply that information. He did nothing material about any of that.

209. There is still a bit of difficulty in this because it is not clear how much detail Mr Turk could be expected to have remembered of those matters, because his cross-examination did not focus on them. The cross-examination was mainly focused on

what Mr Turk might have been able to say about the money once applied by Sphera, albeit that there was no real attempt link moneys paid in for shares and any particular application by the company. In the light of my determination about the scope of the order this cross-examination is irrelevant to Schedule E-related matters. What he should have disclosed is the information available to him from his own resources, or making reasonable inquiries, at the more limited level covered by Schedule E, namely what the investments were, not what Sphera did with the money once it received it in exchange for shares (or a right to shares).

210. Bearing in mind the criminal standard of proof, the most that I can find beyond reasonable doubt is that Mr Turk knew of the investment in Sphera, knew its scope, and must have known the shares' most recent location, and will have had a view as to their value. He made no real attempt to disclose any of these things. The extent to which he could have provided detail, however, was also not much investigated. His Hotmail account will have had in it a Sentinel Global Fund Trial Balance as at 31st December 2017, and that was available to Mr Turk and he said he searched against the word "Sentinel", so it ought to have been thrown up. This revealed the cost of an investment in Sphera (5,599,512, currency unspecified). That would have helped him, and the same document shows an "Unrealized gain" in Sphera in the sum of 1,181,308.74. He did not give an explanation for that in his disclosure

211. In all the circumstances my finding about the nature of the breach so far as concerns Schedule E and paragraph 16 is limited to disclosure about the recent location of the shares and their value. Mr Turk is personally liable for this, and also in part as a director of Barton.

212. So far as it might be said that Mr Turk should have disclosed who would have information if it was not to hand, then he ought to have disclosed the identity of the three founders and the Spanish solicitors. He did not do so, and that is a breach of the order. He knew full well that they would have information that he might not have had available to him.

213. On the evidence there is no breach of paragraph 16(3) in relation to these investments. There is no evidence that the investments (which for these purposes are the Traceable Proceeds) were transferred to anyone else.

214. The breaches so far are significant but nowhere near as significant as the real gravamen of Mr McCourt Fritz's case in relation to these shares.

215. Mrs Işbilen's case is not improved by reliance on Schedule E paragraph 3. That paragraph (with paragraph 16) required no further disclosure beyond that required by paragraph 2. It did not require consideration of onward disclosures by the corporate recipient of invested moneys.

216. Next I have to consider the breaches in relation to Schedule D. This applies to the first two SGAM payments in the schedule which, as I have found, are the only currently alleged Sphera-related sources which are particularised in that Schedule. Mr Tickner has said in his affidavit that these were payments made to Sphera or to its shareholders, and although he does not specify how he gets there that does not seem to have been challenged in this application. The original freezing order application did not link them in that manner. They are merely payments about whose ultimate fate disclosure was ordered. They are therefore payments whose traced destination Mr Turk should have specified. He was obliged to provide the full panoply of paragraph 16 information in relation to these payments. He did not do so.

217. A study of SGAM's bank statements has since the order revealed that they were designated as "Shareholder Loan". Mr Turk did not ascertain that himself, or provide any information at all as to these moneys. It does not seem that he attempted to do so. He has said that he did not have access to SGAM's banking portal, but even if that is true he could have obtained bank statements to find out what had happened to the two payments made by Mrs Işbilen - it would seem that Mr Lewis managed to do that and he was in touch with Mr Lewis at this time. He seems to have made no attempt to address these particular payments at the time, and indeed says nothing about them in his witness statement evidence in this application. He seems simply not to have bothered. In those circumstances he did not indicate who else would have been able to provide the information either. Those people could well have included the founders and Mr Lewis. He specified none of them.

218. Mr McCourt Fritz's principal case in relation to these two payments is part of his case in relation to all of the payments under this Ground, namely that Mr Turk did not disclose what the recipient of the moneys paid of SGAM did with them. That case of breach fails for the reasons given above – what the recipient did with the money (assuming shares were acquired) is not an inquiry into traceable proceeds for the reasons given above.

219. Mr McCourt Fritz's successful case is therefore confined to a failure to identify the destination, purpose and recipients of the two SGAM payments. That, however, is still a significant breach in that Mr Turk never even tried.

220. That leaves the last payment in the table, a payment by Mr Turk out of Barton assets. It was not disputed that it was made. It is the traceable proceeds of two of the

payments identified in Schedule F. That attracts the obligations in paragraph 17(3) - Mr Turk, as director, should have disclosed the date of the transfer, its purpose and the identity of the transferee. He did none of those things. His reason for not doing so, given in his witness statement (paragraph 175) was that he did not recall it, and he would have expected to have done so if it was a substantial transfer. It is not clear what he can have meant by that - whether he was challenging that it was made, or whether he was saying it was not a substantial transfer.

221. His evidence in cross-examination was that he remembered the transaction once he had seen his bank statements. It was not clear when that was, but it was some time after the compliance period under the order. The payment was said by him to have been intended to be a loan from Barton to Sphera in order to pay salaries, but it was ultimately sourced from his personal account. The sense of doing that in that odd way was not explained (and not pursued in cross-examination) but it is apparent that Mr Turk did not comply with his paragraph 17 obligations (principally paragraph 17(3), including a revelation of the purpose of the payment) and made no attempt to do so.

222. This breach is a significant one, but relates to a sum which is relatively small in relation to this matter and it would right to take into account that tracing the funds through and realising that disclosure had to be made would be less easy to grasp in relation to this single item. That goes to sentencing. On the other hand, it does take is place in a growing catalogue of non-disclosure.

223. In relation to this ground I therefore find:

i) Mr Turk is in breach of the order in failing to disclose the investments made by Sphera in relation to payments 3-14 identified in the table set out above and in failing to identify those who could information about the investment and its value.

ii) He is in breach of the order in failing to identify the last known whereabouts of the payments numbered 1 and 2 in the above table, the purpose of the payments and persons who could give information about those matters.

iii) He is in breach in relation to payment no. 15, as director of Barton, for failing to identify where the money went and its purpose.

Ground 9 - Softco

224. This ground concerns a single payment made from the Sentinel fund to Softco Consultants FSE ("Softco"), a Dubai (Ajman Free Zone) company. It is a payment of $1.275m made on 4th February 2019. The payment reference in the paying bank statement is "Payment for Nebahat Evyap Işbilen". In her evidence in support of the freezing order Mrs Işbilen said she knew nothing about this payment. I mention that not to make a finding about it, but as a point of background. As a redemption from the Sentinel Fund it fell within paragraph 3 of Schedule E to the Miles order, triggering the obligations of disclosure under paragraph 16 and in particular the obligations to provide information under sub-paragraph 3.

225. In relation to this transaction Mr Turk says he dealt with a Mr Sahin on behalf of Softco. It is not apparent that Mr Sahin had any particular position in Softco; he was its agent for the purposes of this transaction.

226. Mr Turk made no explicit reference to this transfer in his written responses to the disclosure obligations, but he produced some documentation, presumably by way of intended explanation.:

(i) On 22nd March 2021 he disclosed a property valuation services agreement between Softco and the Fund bearing the date 4th February 2019. It was produced in a bundle of apparently responsive documentation. It is signed by Softco but not by the Fund. The services to be provided by Softco were to assist the Fund in various activities associated with property acquisition or lending. It provided for a fee of $1.275m for unlimited appraisal requests in 2019. It is unnecessary to consider further detail because Mr Turk admitted in cross-examination that this agreement was a sham.

(ii) An Agenda for a meeting with Mrs Işbilen to be held on 8th March 2019 which contained a list of "Redemption payments made to [Mrs Işbilen]", one of which simply said "NEI Softco" with a date and the amount. This was produced by Mr Turk's solicitors on 16th April 2021 in advance of the cross-examination hearing.

(iii) An email from Ms Ilel to Mr Turk saying she had set up 3 payments, one of which was the Softco payment "on behalf of NEI" and attaching documents for signature for the three payments.

(iv) A copy of a manuscript note in Turkish, said to be in Mrs Işbilen's handwriting, with a translation which says "One million two hundred thousand dollars to be given to persons in Turkey I wish to". That is apparently said to relate to the Softco payment even though the amount is different.

227. Mr Turk's Defence explains the payment to Softco as "Payment under the terms of the agreement between Sentinel Global Fund A and Softco dated 4 February 2019". The Defence refers to the manuscript note referred to above, presumably suggesting

that it is associated with the agreement. It also refers to the agenda and confirms that the payment was discussed with the claimant.

228. In his evidence in this application Mr Turk said that this payment was a Hawale payment made for the benefit of people in Turkey, likely to have been friends or family or lawyers. He explained that he had provided documents to Bivonas and assumed his obligation to disclose had been satisfied.. He also claimed to have explained the Hawale nature to Mr Isaacs at the hearing before him on 15th December 2021. This was in his submissions, not in evidence. What he said was:

> "There is one payment I am not sure to which part it was but I think it was the SoftCo payment. If you go to page 1697 she is writing in Turkish her statement there and we have the translation in English on the next page what does that mean. So basically as you can imagine that would be very hard for her to, it was not that easy to transfer money to Turkey to, actually people were scared to receive money from her. So basically what we were doing is we were sending it through another company and although that company has nothing to do with me, I just have my records and I ask her to write it in Turkish and she wrote it in Turkish, and yes, that is how it is sent. That is her handwriting there."

229. In his cross-examination in this application Mr Turk said that this payment was indeed another Hawale payment for the benefit of recipients in Turkey whom he could not identify or remember. He admitted that the valuation services agreement was a sham which was intended to be provided to the paying bank so that it would make the payment to Softco's bank. He admitted that he understood at the time of the order that the Softco payment was something that he needed to particularise. He said he told his lawyers that there was an agreement to send funds to Turkey but did not tell them that the agreement was a sham. He did not know at the time that he should have provided Mr Sahin's details under the order. He accepted that he had read Mrs Işbilen's supporting affidavit (which referred to the Softco payment and her ignorance of it) two or three times but did not know how much he took in. When asked why the Defence did not refer to the Hawale nature of this payment but instead seemed to treat the invoice as genuine when that was not the case by saying he must have lost focus when he read the Defence.

230. In that context it is right to refer to a note in Mr Litovechenko's notebook which reads (so far as legible)

> "Evidence of
> Note of 1.2 mil.
> - She did not [name?] the ind for security reasons"
> -

When shown to him in re-examination Mr Turk indicated that that was a reference to

payments to people in Turkey. He did not know who the recipients were. He did not relate this note to the Softco (or any other) payment.

231. There is no doubt that, even on his own account of events, Mr Turk is in breach of the terms of the order. If his Hawale explanation is genuine he ought to have disclosed the following:

> (a) The transaction using the redeemed fund, that is to say a payment made to Softco so that it could be passed on to others in Turkey. That is the "transaction" within Schedule E paragraph (3).
> (b) The purpose of the transaction under paragraph 16(3) viz its Hawale nature.
> (c) The identity of the person to whom the funds were transferred. If he knew the names of ultimate recipients, their names ought to have been provided under paragraph 16(3). If he did not know them (and he said he no longer does, which is at least plausible if he did not keep the written list he said he was provided with) then he would, in my view, need to say that as well and describe them as persons unknown to him. His explanation would have had to involve his mentioning the payment to Softco and that that is far as he could go in specifically naming recipients.
> (d) If Mr Turk did not know where the moneys went after they were paid to Softco then he was under an obligation to say who might know under paragraph 16(2). That would be Mr Safin, on the basis of the evidence that Mr Turk gave at the hearing. To that one could also add Mr Kayiath of Softco, who apparently signed the agreement.

232. Because he did not disclose the Hawale nature of the arrangement, Mr Turk did not disclose most of that. He affirmed the payment to Softco by producing the agreement (though Mrs Işbilen knew about that as a payment already), and the name of Mr Kayiath (who may have been a director and a possible source of information) appeared on the agreement, but in producing that agreement he misrepresented its validity and significance and it would not be apparent that anyone else could provide information about the onward destination of funds. He failed to state the purpose of the agreement and said nothing about Mr Sahin (of Mr Kayiath) as a source of information.

233. These shortcomings are significant and serious. They were an impediment to Mrs Işbilen making any further inquiries and verifying the propriety of the arrangement. It is no answer (as Mr Counsell proposed) to say that she knew about the payment already. The disclosure obligations were brought into existence against a background in which her case was that she knew nothing relevant about the payment. It is no answer to a disclosure obligation to say that she knew all about it therefore there is no need to disclose anything to her at all. It would be plain that she was saying that she did not know about the payment, so the information was necessary. In fact what happened was worse than non-disclosure; it was a positively misleading disclosure.

234. If the agreement was Hawale then it inconceivable that Mr Turk would have forgotten about it, so he would have told his solicitors about it. He claims that he did; it is plain to me that he did not. If he had done so it would have found its way into the disclosures made on his behalf by his solicitors, and the Defence would not have been pleaded as it was. I note that in his original affidavit disclosure he refers to payments being made in a way which disguised Mrs Işbilen as the source, so he had the technique in mind. That makes it all the more likely that if he had told his solicitors that this was a specific Hawale payment that would have been reflected in his evidence and in the Defence. I do not accept Mr Turk's easy excuse that he must have lost focus when he read the Defence through. Having seen him in the witness box over an extended period I am quite satisfied that he is intelligent enough, and capable of bringing enough focus to bear and to maintain it, to have spotted the fundamental error in the Defence had there been one, and to have qualified the presentation of the Softco agreement by explaining that it was a sham. Mr Turk demonstrated no shame in the witness box in presenting this agreement, and the other sham documents referred to in the witness box, as shams, so there was no such reason for holding these things back from his solicitors.

235. Furthermore there is a note of his telling his solicitor (Mr Litovchenko) something about the Softco agreement. Mr Litovchenko's note (so far as legible) reads:

> "SoftCo - appraisal 04.02.19 - $1,275,000
>
> - property purchase tax on Tax [?]
>
> Cf against the handwritten note we have
>
> 1. Handwritten note
>
> 2. [Email?] with a copy from reps of SoftCo & [then?] payment"

236. Whatever that note might mean, it does not reveal any disclosure to Mr Litovchenko of the real purpose of the payment and of the false nature of the agreement, even when the manuscript note was referred to. Nor does the other note to which I have referred link to Softco. The only conclusion from that is that Mr Turk did not point out any Hawale nature in relation to this payment. And the only sensible conclusion from that is that it was not Hawale as Mr Turk sought to describe it.

237. If true that makes a serious non-disclosure even more serious. Mr McCourt Fritz invited me to find that the payment was connected to a venture which Mr Turk accepted he was considering as being conducted by Mr Sahin and himself - the "Mercury Merchants" business - but which did not come into being. I cannot

conclude that to the criminal standard on the basis of the very small amount of evidence that there was about this.

238. Mr McCourt Fritz also sought to rely on an explanation give in correspondence by Mr Sahin to Mrs Işbilen's solicitors. He was responding to queries raised about his involvement. He replied to the effect that the money was paid to Softco so that it could find its way back to different accounts set up by Mr Turk (not to third parties) who would then get the money into Turkey. Mr Sahin also said that the money was indeed paid back to accounts of Mr Turk minus some transaction expenses.

239. The evidential status of this letter was not clear, though in his final submissions Mr Counsell himself relied on it as demonstrating that Mr Sahin was only an intermediary and that the payment was Hawale in nature. One has to be careful about this letter since the language demonstrates that Mr Sahin's first language is not English. However, while the letter would tend to support the story that the money was said to be intended for persons in Turkey (or at least that what he was told), it also implicates Mr Turk in much more of the transaction than handing over the money and a list of names, which is what Mr Turk said happened. It strongly suggests that Mr Turk was involved in setting up the accounts to which the money was to go, and then confirms that the money was paid back to Mr Turk somehow – "Mr Turk confirmed receiving back all the funds that were initially transferred to Softco …". That is not the thrust of what Mr Turk said about this arrangement.

240. If what Mr Sahin says is true then that magnifies the seriousness of the non-disclosure yet further because Mr Turk would be guilty of a non-disclosure which disguises money being paid back to him. If the money was indeed paid back to him that would be an obviously necessary and significant disclosure under the order, and Mr Turk would himself be expected to know to whom he distributed the money in Turkey. However, the limited force of this letter as evidence, and the absence of an ability to test what Mr Sahin says in cross-examination, means that I cannot be satisfied to the criminal standard as to what Mr Sahin says about the transaction so I do not treat it as compelling evidence of what actually happened (and it was not actually put to Mr Turk). Nevertheless, it is material which clearly illustrates the need for Mr Turk to have complied with his obligations under the order properly.

241. I have considered what effect the statement made to Mr Isaacs should have on my conclusions thus far. That statement obviously has no effect as disclosure under the order. It seems to have been made incidentally to the other matters under debate at that time. It was not an attempt to correct the earlier non-disclosure, and Mr Turk did not attempt to follow it up with further more detailed disclosure, which might have mitigated the original breach. It was somewhat vague anyway. I therefore consider that it has no material effect on my conclusions as to breach and seriousness.

242. I am therefore left with the clear conclusion that Mr Turk was guilty of non-disclosure as described above, that that non-disclosure was serious and significant and, if he was

aware of the extent of his obligations under the order (as to which see below) in this case, it was deliberate. He is personally liable for this.

What Mr Turk understood about the scope of his disclosure obligations

243. It was a constant theme of Mr Turk's defence that he did all that he thought he was obliged to do by way of disclosure, and that any shortcomings were because he did not know that extent. That was particularly the case in relation to tracing exercises beyond the obvious early destination or destinations of the moneys in question. This was despite the fact that he instructed solicitors promptly once he was served with the order and they acted for him in the disclosure process and thereafter. His case involves his not being told of the extent of his disclosure obligations. That was vigorously challenged by Mr McCourt Fritz and led to the disclosure privileged material in the hands of those solicitors, as set out above.

244. Behind this position there is a general point and a particular point. The general point is the extent to which Mr Turk had an understanding of the general nature of the disclosure obligations in relation to the proprietary claim, in relation to which it is relevant to consider what, if any, advice and explanation was given about this. The particular point, or points, is/are whether, in the light of findings on the general point, he had an understanding of his obligations in relation to the particular matters complained of under the specific Grounds (so far as I have found breaches). In this section I deal with the general point. It requires a somewhat detailed consideration of the formerly privileged material which was disclosed during the course of the hearing in the manner referred to above.

245. The order and an accompanying explanatory letter from Peters & Peters were served personally on Mr Turk on 11th March 2021. The letter summarised the disclosure obligations in terms which I find to be a readily comprehensible and appropriately accurate account. The terms used are terms which I would expect Mr Turk, with his business expertise, to be able to understand. He accepted that he took the order seriously and said that he read the order three or four times (the number of readings that he referred to varied slightly, but that is one of his versions and I accept it). He also accepted that he read the penal notice. He more or less immediately instructed Bivonas and sent them the documents. Mr John Bechelet was the partner acting at the time.

246. On 12th March Mr Bechelet emailed Mr Turk saying:

> "We need to give disclosure as soon as possible and I attach the areas you need to cover."

His attachments were the letter from Peters & Peters and pages 6-8 of the order, which were the pages containing the disclosure obligations, (and paragraphs 15(1) and (2) together with the transaction schedules). Those pages did not contain the disclosure obligations in relation to Mr Turk's personal assets in relation to the personal freezing order, so the letter plainly emphasised the proprietary disclosure elements, and Mr Turk would have understood that. The enclosures also contained a draft letter from Bivonas giving the personal disclosure, a final form of which was sent on 15th March. 3 days later Mr Bechelet emailed Mr Turk again saying:

> "We urgently need to deal with disclosure of assets."

247. On 15th March Peters & Peters emailed, having received the disclosure of personal assets, pointing out the disclosure obligations in relation to the proprietary claim. On the same day they emailed Bivonas complaining about the lack of disclosure, including a reference to the proprietary tracing provisions. This email, with some attachments, was emailed by Mr Bechelet to Mr Turk on the same day saying:

> "We will need to address these issues this afternoon."

248. I infer that there was some sort of meeting that afternoon. It is likely that all the disclosure obligations were at least referred to. On the next day (16th March) Bivonas sent a short letter referring to some Schedule D matters in a limited way, saying their client was searching for Sentinel Global Fund documents and enclosing some bank statements. On that same day Peters & Peters wrote complaining about lack of disclosure in relation to their client's assets, referring back to previous correspondence and emphasising paragraph 18. This letter seems to have been forwarded to Mr Turk by Bivonas under cover of an email simply saying: "Further letter received."

249. The next day, 17th March, Bivonas instructed counsel, Mr Tom Shepherd, to appear on the forthcoming return date, pointing out in general terms the disclosure to date and that Peters & Peters were challenging its adequacy. In one of his emails Mr Bechelet recited how emotional Mr Turk had been and that he was crying in a video call. In another he referred to Mr Turk's previous employment in Goldman Sachs and how he understood finance and the need to disclose his personal assets. The email (timed at 20:03:22) recorded the following (I have reduced the single sentence paragraphs into one overall paragraph):

> ".. The documents were served in paper form not electronically. Selman is very emotional and was distressed that this lady who he regarded as a family friend was suing him he was crying when we had a video call. I received 5/6 boxes of documents on Friday evening … I took instructions from the client and he

> said all his assets disclosable were set out in my letter 15 March 2021. The client subsequently approved unsworn affidavit on 16 March 2021. [This affidavit disclosed personal assets.] In relation to the other disclosure we also sent some documents, loan agreement, bank accounts details and financial statements in his possession. I have since received some further documents which were to be included in his affidavit due tomorrow. P&P have bombarded us with allegations of contempt etc they don't believe the client."

250. There is no record of the contents of any meeting on that day between Mr Bechelet and Mr Turk but it is clear that Mr Bechelet was aware of the two sorts of disclosure that had to be provided and it is inconceivable that at some stage he did not go through the requirements of the proprietary disclosure with Mr Turk. Mr Turk was, I find, well capable of understanding generally what was required under each head and by now ought to have acquired that understanding, though its application to any particular type or source of asset would require some working out (as the exercises carried out for the purposes of this application demonstrate).

251. Mr Shepherd was instructed to appear on the return date which was the next day, and he pointed out that he would read as much as possible and they needed to decide on a position for the return date. He wrote further the same day saying:

> ". I do need detailed instructions as to how we say we have complied in full with the disclosure obligations of the order. This requires taking each paragraph of the disclosure provisions in turn, and setting out precisely what we provided and when, and saying how this complied. I will of course review as many of the papers as possible before tomorrow's hearing but I do need your assistance with this."

252. As part of his preparation Mr Shepherd prepared a schedule in the form of a table which summarised the compliance and disclosure required and the compliance which had taken place to date together with the complaints (or some of them) raised by Peters & Peters. He raised queries in different colours and the table was then used on further occasions when leading counsel became involved. Where questions were raised the answers, or some of them, were recorded on the face of later versions of the table.

253. Mr Bechelet responded at 20:50:

"Selman Turk used to work for Goldman Sachs he understands finance and the need to disclose his personal assets in excess of 10k.

I have sat with him read out the Miles order and gone through assets identified by the Claimant and anything else he needs to disclose, these were set out in my letter of 15 March approved by ST and subsequently the affidavit albeit unsworn.

I recited the Miles Order in the letter.

Selman do you own any real property?

Only the US property purchased for US$250,000 as set out in the letter.

What are your shares worth in Forten etc?

£80 million minimum.

Are you sure? yes.

Heyman AI was in the process of applying for a UK banking licence. ST tells me the Jersey holding company is where the money is.

P&P have responded to this with derision.

Do you have any bank accounts.

27k at Natwest but i'm locked out post freezing order

Do you own any valuable chattels worth more than 10k paintings, car etc.

I have a Porsche worth 50k and two Patek Phillipe watches worth 60k each.

He tells me this is there is.

Only 80 million odd.

I read out the Miles order re the other documents in his possession which I have forwarded, there are some more electronic document (a handful) to be forwarded but he has disclosed what he has got.

He does not have 4th /5th Defendant records in his possession but can request them."

254. It can be seen from this that the emphasis was apparently on disclosure of personal assets, though there are two references to the order being read out. Mr Turk's evidence in re-examination was that he did not recall sitting down with Mr Bechelet and going through the order, "not like we went through with Janes solicitors [his present solicitors] ." I note that this is not a complete denial of his going through the order, and I find that Mr Bechelet must have done what he said, and to have gone through the order and explained what was required. There is a difference between what Mr Bechelet was able to do and what Janes were able to do. By the time Janes became involved there was more of a target or context of understanding, namely all the contempt complaints. That doubtless enabled Janes to go through the order in a completely different way which was not available to Mr Bechelet when he approached the order, and it explains the contrast that Mr Turk sought to drawn, but nonetheless he will have gone through the order and the obligations in a more general way. He cannot have ignored them.

255. In his witness statement evidence in this application Mr Turk carefully did not say that he was not offered any explanation. His evidence was:

> "I do not recall Bivonas clearly explaining the effect of the order to me"

And while he understood the need to disclose assets under the personal freezing order:

> "However, so far as I recall, there was no explanation about the extent of the disclosure of transferable assets."

256. In his cross-examination he accepted that it was possible that Bivonas offered an explanation of his disclosure obligations but he did not take it in. There is nothing in all this which is inconsistent with a finding, which I make, that Bivonas gave an explanation in general terms (ie not focused on particular tracing paths, because they did not know what they were at the time) of the disclosure obligations. There is no good reason why they would not have done that, and good reasons why they would.

257. Mr Shepherd remained troubled by the disclosure that had been given (or not given), and late on 17th March (at 23:12) he wrote;

> "I hope you won't mind me pressing for instructions on ST's disclosure obligations. I have to confess I am struggling to see how it can be suggested that ST has complied with the Miles Order in full. This is potentially very serious for ST: C is contending that ST is in contempt (which prima facie he will be if he has not complied with the order) and is asking for orders for cross-examination and committal proceedings of the Court's own motion. Please ensure that ST is fully aware of the risks if he does not comply with the Order.

> I have tried my best to patch everything together from your emails below, the correspondence, Tickner 3 and C's skeleton argument for tomorrow. I have updated the attached table and the yellow highlighted red text shows the areas where proper instructions are needed. Please could you let me have instructions ASAP as I will need to try to feed this into my skeleton argument for tomorrow. As matters stand, there are too many gaps to say anything useful!"

258. This is a clear warning which one would have expected the solicitors to have taken seriously. The table (to which I have referred above) dealt with personal asset disclosure (not relevant here) and then had a cell labelled "Traceable Proceeds Obligation", which referred to: "Para 16: disclosure by D1, D2, D4 and D5 of current value, nature and location of Traceable Proceeds", setting out the definition in paragraph 15. The last of 5 columns sets out Peters & Peters' complaints which are not broken down by Schedule but which can be summarised as being a serious complaint about the level of non-disclosure. The next cell below and on the left refers to paragraph 17 of the order and the right hand cell refers to Peters & Peters' complaint as being "No disclosure yet made". The next cell below and on the left is headed "Claimant's Assets Obligation" and summarises paragraph 18 of the order. The right hand cell records Peters & Peters' complaint that there had been no compliance at all.

259. This schedule would have made it apparent that more work needed to be done to achieve compliance, but it did not descend into any detail of what had to be done. In the circumstances that was not wholly surprising because until one started delving into the considerable detail, only some of which has been revealed on this application, it would not have been apparent precisely what had to be done. That would have to be gone into with Mr Turk.

260. Early next morning Mr Bechelet wrote to Mr Turk (at 5:57):

> "The Claimant is pressing on with the complaint that you have not complied with the court order and is seeking an order that you are in contempt and attend court and should attend for cross examination.
>
> Can you please let me know the answers to the following questions?
>
> [Questions about the personal asset disclosure]
>
> What has become of the proceeds of the £4 million loan.

> Sentinel Global has not complied with disclosure obligations you say it is dormant from where can you obtain its records and by when?
>
> What is the explanation for the Varengold statements? What do they represent?
>
> We have said no Sentinel reconciliations are in your control can these be obtained?
>
> Do you have any other relevant material to disclose other than already provided to me? …"

261. In fairness to Mr Turk, it can be seen that this email does not really begin to scratch the surface of what was required to address the proprietary disclosure issues.

262. Mr Bechelet emailed Mr Shepherd at 6:04 to report that he had asked Mr Shepherd's questions of Mr Turk, which is presumably a reference to the email he had just sent to Mr Turk. It is not entirely accurate. He did not really raise any serious questions about the proprietary disclosure. There was apparently a further telephone conversation between them because at 8:49 Mr Shepherd emailed again attaching a slightly revised version of the table and saying:

> "Just to briefly record my advice expressed on the phone earlier (and yesterday evening) that it seems Mr Turk has not complied with certain aspects of the Order; this could have very serious consequences for him (NB the relief sought in C's skeleton argument and latest applications that have been made); he needs to be aware of those consequences if he is found to be in breach (e.g. the orders that can be made on a committal application); and it is no answer for him to say he is a "relaxed guy" or that it is not serious compared to the position facing C's husband in Turkey etc."

263. The remarks about Mr Turk are presumably based on what Mr Bechelet has recorded Mr Turk as saying and which Mr Bechelet has reported to Mr Shepherd. They do not betoken a particularly serious approach to the disclosure, though I record that Mr Turk was not asked about those remarks in cross-examination.

264. The 18th March was the return date for the freezing order and a hearing took place before Mrs Pat Treacy (sitting as a deputy High Court judge). It was a remote hearing. Mr Turk listened to that hearing but his evidence in cross-examination was that he did not listen to it all because it got too upsetting, an explanation which I find

it difficult to accept. At that hearing Mr McCourt Fritz voiced strong complaints about non-compliance and made clear what was required and indicated he wished to cross-examine Mr Turk and (somewhat curiously to my eyes) invited the court to consider committing Mr Turk of its own motion (an idea which ultimately found no favour with the judge). His remarks about non-compliance were in general terms and by reference to the order. Although they were general they were a clear explanation of what was required under paragraphs 16 to 18 of the order. In his submissions Mr Shepherd accepted there had been non-compliance and that Mr Turk had heard "loud and clear" about the shortcomings, but he could not address them in detail because he had not been able take instructions on them all.

265. It is plain that over the lunch adjournment Mr Shepherd had a conversation with Mr Turk, in which Bivonas did not participate. This is apparent from an email that Mr Shepherd sent to Mr Turk later in the day which said:

> "As you will know, it is my professional duty to act in your best interests as my lay client including a duty to consider whether your best interests are served by different legal representation and if so to advise you; I regret to have to advise you that I consider your best interests would be served by instructing a different firm of solicitors in place of Bivonas Law. I have not reached this conclusion lightly but in view of the very urgent timescales now involved I consider that I must advise you of this now. In short I have reluctantly reached this conclusion because the correspondence sent by Bivonas failed to comply with the disclosure requirements of the order of Miles J dated 04.03.21.
>
> As you will have heard in court today (both in submissions and the remarks of the Judge) [text omitted from the reproduced email] … I had real concerns from emails exchanged that Mr Bechelet had not taken instructions from you regarding the requirements of para 16 and 18. It was also clear from our discussions over the short adjournment that you were not aware of the full extent of the disclosure requirements under these provisions.
>
> It was clear from our discussion over the short adjournment that Bivonas had not advised you that the disclosure failed to comply with the order or of these serious consequences for non compliance (see also your WhatsApp message at 12:41 where you expressed surprise having heard C's repeated submissions that you had not complied ("John what we haven't complied?;)
>
> The affidavit submitted in purported compliance with para 10 of the order was deficient. Having reviewed your instructions given at lunch time and confirmed in the WhatsApp chat, it also

> appeared to contain a key error - that you did not have an interest in Sphera …
>
> Bivonas had not advised you to make an application for an extension of time to comply with the disclosure requirements
>
> I therefore advise that you urgently instruct a new firm of solicitors to represent you in this matter. I would be very happy to continue to represent you, but I would need to be instructed through solicitors in the usual way. As discussed earlier, you are facing very serious allegations, are in breach of certain elements of the order of 04.03.21 and you are under a very tight time scale to comply. You have until Monday 4 PM 22.03.21 to provide the required affidavit. If that does not remedy the defects C will apply for you to be cross examined and invite the court to make an order on its own motion … to proceed against you in contempt proceedings;
>
> I've asked my clerks for some recommendations and propose the following if a new firm is instructed [three names given] …"

266. Shortly thereafter Mr Shepherd emailed Bivonas to tell them that he had advised the client to be represented by different solicitors going forward. It is not apparent that he forwarded to them the email that he had sent Mr Turk, but Mr Turk must have shown it to them because a copy (in the form of a screenshot from his phone) is in their papers. The result of that was that that day or the next Mr Shepherd was sacked. Mr Turk had a discussion with Mr Bechelet (and another representative of the firm) and they assured him that Mr Shepherd was bad-mouthing the firm, that he was not up to the job and they were not happy with his performance that day and they would get him a better barrister. Having contacted one of the potential alternative firms the next day Mr Turk found that they would be too expensive and he opted to stay with Bivonas.

267. What emerges so far from this narrative, in terms of Mr Turk's understanding of the order or lack of it, is as follows. Despite the fact that one would have expected Bivonas to have explained the order to Mr Turk and made him understand it, it appears that his understanding was lacking. That is surprising, because I consider it to be the case that Bivonas would not just ignore the proprietary disclosure orders, and they must have discussed them with him. However, it is apparent that when Mr Shepherd discussed the matter with Mr Turk he got the clear impression that Mr Turk had not hitherto understood what he needed to do, or at least not fully. I consider that at this time he had not fully grasped his obligations. However, having seen how Mr Turk conducts himself in the witness box I consider him to be an intelligent man who was capable of understanding the sort of thing that he had to do, and that his apparent

failure to grasp matters was likely to be combination of the magnitude of the task as it must have appeared, casualness (he was a "relaxed guy") an element of wilful blindness. This is not the same as the sort of lack of focus which he claimed to have. It was an unwillingness to face up to what he had to do.

268. I also consider it the case that, at least to a significant degree, Mr Shepherd must have explained to him the sort of thing that he was obliged to do under the order. I do not see how he can sensibly have appreciated the extent of his client's lack of understanding without explaining to some extent what he needed to understand and what the order required. Since the email records him having been advised of shortcomings in the disclosure I think it inevitable that he would have explained at least some of them, and therefore the effect of paragraphs 16 to 18 of the order. So if Mr Turk did not understand before then the sort of thing he had to do he will have been informed at that stage, albeit at a level of generality. It is not easy to see how the conversation can have gone otherwise.

269. The order made on the return date (Thursday 18th March) was an order continuing the injunctive and other relief until trial or further order and extending the time limit under paragraph 21 (the disclosure affidavit) to 4pm on 22nd March (a Monday). It ordered a further hearing on 25th March to consider whether the court should initiate committal proceedings of its own motion and questions of cross-examination on disclosure.

270. There is one further important inference to draw from what had happened hitherto. It would seem from their reaction to Mr Shepherd's communications that Bivonas did not accept that they had not advanced proper explanations before, but in any event it seems to me to be inevitable that they would approach their tasks going forward with the history in mind and would be well aware of the need to make sure that Mr Turk understood and (so far as they could achieve it) would comply with his obligations. It would be very odd if, having had an apparent failure of communication pointed out to them, they would not have made sure it did not happen again. That consideration informs the conclusions as to what happened thereafter.

271. On 19th March Mr Iain Quirk QC was instructed to act. On 20th March Mr Bechelet emailed Mr Quirk pointing out that an "affidavit disclosing assets" was required by 4pm on the Monday, and there was to be a further hearing the following Thursday. He and Mr Litovchenko would start drafting a proof, a draft disclosure affidavit and a list of questions for the client. There was an exchange of emails involving Mr Quirk, Mr Bechelet and Mr Litovchenko in which Mr Quirk observed:

> "… one of the main points for the Claimant [made on the application for the injunction] was that when Mr Turk had, when asked in 2020 and subsequently, failed to have an

> account of the Claimant's monies … Once the asset disclosure is done, this is an important point to get instructions on - is it correct that we refused to tell the Claimant and why".

272. Later that day (20th March) Mr Litovchenko emailed Mr Quirk with a draft list of questions and requests for documents. As to the list of questions he observed:

> "Question 2 is driven by the fact that client has mentioned a number of times his difficulties with comprehending documents. We may be able to utilise this at some point to balance off the Claimant's vulnerability.
>
> My proposal is that we polish off the attached tomorrow morning and have a Zoom call with the client in the afternoon.
>
> Iain does the afternoon work for you?"

273. I have noted what is said about the client's difficulty in understanding documents. That is puzzling bearing in mind his career generally, which would involve him in understanding documents, and he did not noticeably demonstrate that feature when being cross-examined. However, a difficulty in understanding documents does not necessarily carry with it an inability to take in an explanation when advanced.

274. The list of questions referred to was updated on the morning of Sunday 21st March. Mr Quirk had asked that it should reflect the schedule of compliance. This list was subsequently used as the basis of questions for Mr Turk and there is a version with red type on it which Mr Turk confirmed contained his answers. This is a significant document because it demonstrated that the advisers appreciated the need to address paragraphs 16 to 18 of the order and a number of questions were directed to that end. The document does not record that Mr Turk provided answers to some of them. Some of the relevant questions were as follows.

275. The overall paragraph 3 of the list is headed "Traceable assets - see Schedules D and E to the order by Mile J [sic]". Under that head the following questions are listed; my italicised text reflects red on the original, reflecting answers given by Mr Turk:

> "3.1. Did you have access to bank accounts listed in Schedules D and E?
>
> 3.1.1. If yes, do you still have it?

3.1.2. If you had it but no longer have it, when did you lost access and why?

3.2. Sch D - What was the nature and purpose of transactions listed below made from Swiss Global account to you:

3 Feb 2020 - USD 3,385,612.61

6 Apr 2020 – GBP 1,600,000?

3.2.1. Is it the Loan referred to in question 4 below?

3.2.2. What is the current status of these funds and who has them?

3.3. Sch D – Funds sent to SG Financial Group in the time period from October 2018 to August 2019:

…

3.3.7. What was the nature and purpose of these transactions? *NEI has a number of requests and the company provided services in respect of these requests. We charged her these money but then used it to pay to lawyers in Turkey. These funds were also used these to pay her expenses. Some of these funds were used for advisory services provided by the company.*

3.3.8. Do you have documents to confirm these transfers?

3.3.9. Do you know where these funds are now? *I cannot say where these funds are now. Garry has provided a statement to the Court.*

…

3.3.8. Do you have documents to confirm these transfers?

3.3.9. Do you know where these funds are now?

3.3.10. Are they recoverable?

…

3.4. Sch D - Funds paid to Sentinel Asset Management *[is the same as Sentinel Asset Management*] in the time period from March 2017 to January 2019:

3.4.1. What is the business of Sentinel Asset Management?

…

3.4.9. What was the nature and purpose of the transactions listed in Schedule D?

3.4.10. Do you have documents to confirm this (e.g. invoices issued by third parties)?

3.4.11. Do you know where these funds are now? *Most of these payments went to Turkey and Greece. Payments from the earlier company were mainly for the UK. These payments were for her expenses. As far as I know Garry has provided these to the Court already.*

3.4.12. Are they recoverable? If not, why not. If they are, when can NEI expect them to be repaid in full or in part?

…

3.5. Sch D- Funds paid to Sentinel Global Partners in February 2017 and June 2019: *Set up fee, success fee, closure fee. We get info and any documents from Garry. None of the funds listed on the schedule are the funds provided to me to look after. I was entrusted with USD30m. That amount was decreased and then she requested to close the fund. We invested [XX]. The funds was a regulated fund. There were third party valuations. Garry has all the documents. The fund was registered in Cayman.*

USD 6m was invested in Sphera. We then transferred the ownership.

…

3.5.5. Do you have documents to confirm these transfers?

3.5.6. Do you know where these funds are now?

3.5.7. Are they recoverable? If not, why not. If they are, when can NEI expect them to be repaid in full or in part?

3.6. Sch E – Sentinel Global Fund A LP

…

3.6.5. What investments did it make?

3.6.6. Who selected these investments?

3.6.7. Do you have documents relating to these investments?

3.6.8. Who manages these investments?

…

3.6.10. What assets does it still hold, if any?

3.6.11. When are these investments due to mature?

3.7. Sch F - Barton Group Holding

3.7.1. What is Barton Group Holding? What was its business? *I am the 100% beneficial owner of this company. The company is dormant. I do not know whether Barton has made any disclosure. We made an agreement to get funds released to her. We managed to get these funds released for 25% cost. The promissory notes were transferred to her account in the UK. These funds are payments for services provided. Pre-payment, funds released and a success fee.*

6. Sphera Investment Spain SL – *it was a fund investment. Speak to Garry.*

6.1. What is this company's business?

6.2. You have stated that the value of this company is £0. What is the basis of this

valuation?

6.3. What interest do you hold in this company?

6.4. Are you the beneficial owner of these shares?

6.5. When did you acquire this interest?

6.6. Did you use any of NEI's funds to acquire this interest?

6.7. Did NEI invest any money into this company?

…

11. Who, other than yourself, may have information about the current value, nature and location of the funds listed in Schedules D and E?

12. Who, other than yourself, may have information about the current value, nature and location of the funds listed in Schedule F?

> 13. Do you have information requested in paragraph 18?
>
> …
>
> 15. Have you bought any assets (including but not limited to shares and property) using funds you received from NEI whether as a loan or as payment of any of the invoices issued by companies in which you have an interest?

276. Mr Quirk was sent a version of Mr Shepherd's schedule of compliance and on 21st March at 10.25 he suggested that the outstanding questions on that schedule be added to the list of questions. A Zoom discussion was proposed between 12.30 and 2.30. At 11.36 Mr Litovchenko sent Mr Turk the list of questions and proposed a zoom meeting at 13.15, with an electronic invitation. The Zoom call was also set up with Mr Quirk who indicated he would be happy to have it recorded.

277. The Zoom meeting involving Mr Litovchenko, Mr Turk and Mr Quirk then took place. I find that the list of questions will have been used as the basis of at least part of that meeting, as will the schedule of compliance. The marking up of the Schedule reveals that there was discussion about the various Schedules of the order though they do not reveal any form of detailed discussion as to what response ought to be given under them. The list of questions demonstrates that the lawyers had appreciated the significance of paragraphs 16 to 18 and the sort of questions that needed to be addressed.

278. There was then a further Zoom meeting which brought in Mr Lewis and which is said to be covered by joint interest privilege, so no material has been revealed from that meeting. There was no challenge to Mr Turk's proposition that he could not disclose jointly privileged material without Mr Lewis's consent. Mr McCourt Fritz suggested that there was evidence of a third Zoom meeting involving just Mr Litovechenko and Mr Quirk, which does not seem to be accepted by Mr Counsell, but in any event nothing is known about any third meeting if there was one.

279. The Zoom calls were probably recorded, but if they were then access to the recording of the first one has not been provided by Bivonas, who say it was not available to them either. No useful note has been provided, or at least no such note has been made apparent. There are a lot of notes taken by Mr Litovchenko, some of which may be related to the Zoom call, but they have not been deciphered or ordered so as to reveal useful information as to the content of that meeting. Nonetheless, I find it is an inevitable inference that the list of questions was gone through, as was the Schedule of compliance, in such a way as to demonstrate the sort of exercise that was needed in relation to compliance with paragraphs 16, 17 and 18 of the Miles order. The noted

up schedule of compliance does not always suggest that a traceability exercise was considered, but when combined with the list of questions and the capabilities of the lawyers I find that it must have been the subject of discussion. I find that insofar as Mr Turk was not properly aware of what he had to do before this meeting, he certainly was, in general terms, after the meeting. I do not accept that a "loss of focus" was responsible for his failing to answer questions at the meeting, as he suggested in cross-examination. Nor do I accept that it would be a cause of his failing to appreciate what had to be done under the order. He might not have known the detail of the exercises which would have to be conducted (the sort of detail that the claimant has ascertained) because one would not know that until one embarked on the exercise itself, but he would have known that some exercises had to be conducted and would have the benefit (which the claimant did not have) of his personal knowledge of transactions. He would have appreciated the questions that he had to answer and that he ought to set about providing answers. It is significant that he provided bank statements to his solicitors in order to show what happened with money, as he admitted in cross-examination. He appreciated that purpose.

280. In sum, therefore, I do not accept that by the end of this part of the process Mr Turk did not understand the sort of thing that the Miles order required of him. He was an intelligent man capable of setting up and operating commercial financial structures and was proposing to open a bank. He had an understanding of money and its deployment. He had, or investigated having, a finger in various business pies. He was capable, by himself, of understanding the order and what it required. If he had not fully grasped that when the order was served on him, or for a little while thereafter, it will have become apparent to him as a result of what happened at the return date and the subsequent attempts to produce a compliance affidavit. If his lawyers had not adequately explained matters to him in the initial phases (which I do not consider to be the case) the requirements clearly emerged later - see in particular the list of questions. His ADHD condition might have had some limited part to play in the initial stages, and I have noted a later remark by Mr Litovchenko in an email to Mr Quirk dated 14th April 2021 to the effect that Mr Turk "loses his attention frequently and sidetracks" (not something which was observable in his prolonged cross-examination), so it was a condition which was operating. However, it is a condition which is and was under control with his medication and a loss of focus is not in my view a good explanation for his failure to put in place proper tracing exercises generally. I consider that he did not comply with the order not because he did not understand what was required, but because he did not wish to comply or to face up to what he understood he had to do.

281. What resulted from the meeting with Mr Quirk was an affidavit served the next day. I have identified relevant matters above. It was not suggested at the hearing before me that this affidavit was adequate compliance with any of the particular obligations with which this application is concerned, but I do note that the affidavit does make some attempt to address the question of what happened to some of the money and who might have some further information. See, for example, paragraphs 17 and 18 which refer to Mr Turk's ignorance of the transferees of payments made by SGFG and a reference to the bank which would have the details. These aspects actually

demonstrate an appreciation of the sort of thing the order required, not an ignorance of it.

282. What Peters & Peters considered to be the shortcomings in complying with the order, in general terms, was set out in a letter of 23rd March. Those shortcomings related to some of the sort of tracing questions which arise out of the order. Although as Mr Counsell observed that there was no direct evidence that Bivonas followed up on any of these matters with Mr Turk, I consider that they must have done so because the subsequent debate about cross-examining Mr Turk, which was eventually agreed, must have proceeded from Mr Turk's being made aware of the fact and nature of the complaints made against him. The complaints were reiterated by Mr McCourt Fritz at the subsequent hearing on 25th March, albeit that Mr Quirk attempted to refute them.

283. As time went on further material emerged via Bivonas. The matter proceeded to the cross-examination hearing, and then Bivonas set about preparing the Defence. Nothing in the material I have seen across this period would support the idea that Mr Turk did not understand the general scope of his obligations under the order. Indeed a letter from Bivonas to Peters & Peters dated 27th May 2021, responding to various queries raised by the latter firm, makes frequent reference to "Traceable Proceeds". It is not conceivable that this letter was written without proper instructions from Mr Turk, and taking those instructions will have involved his understanding the concept of Traceable Proceeds. This letter and this point was not put to Mr Turk, but I consider my inference as to Mr Turk's participation in its preparation is nonetheless inevitable.

284. Based on this material I therefore conclude, first, that the solicitors and counsel instructed by Mr Turk well understood the obligations he was under in relation to the disclosure provisions in the order. They were not difficult for a professional to understand. Second, I find that while there may be no record of a positive explanation given in terms of a note actually recording the giving of paragraph by paragraph by paragraph advice, I find that appropriate advice was given to Mr Turk about what he had to do. That will have been at various stages, as appears above. The absence of a clear record of what any of them actually said, and the absence of a written letter of detailed advice, is no doubt explained by the fast-moving nature of the exercise. Its absence is not a powerful indication that the advice was not given.

285. That means that the question boils down to whether Mr Turk understood, whether from advice or from his own reading, or both, what he had to do under the order. I find that by the time he was required to comply with his proprietary asset disclosure obligations by filing his affidavit, at the latest, Mr Turk had a general understanding of his disclosure obligations under the paragraphs of the Miles order which are relevant to this application, and that he could and should have deployed that understanding to work through the disclosure exercise required. So far as he did not fully appreciate it then, then it will have emerged over the ensuing period. He simply did not want to comply fully. I accept that the complexity of Mrs Işbilen's affairs and

the dispositions of her money (for most of which Mr Turk must have been responsible or in which he was involved) meant that that would be an onerous and time-consuming exercise, but he knew enough about what was required to enable him to embark on it and carry it through. If it be said now that it would not have been practical to carry it out within the limited timeframe provided by the order, or even its extension on the return date, that would be a reason for seeking a further extension, not for not carrying out the exercise. It is not a reason for doing as little as Mr Turk did. These difficulties were no real part of Mr Turk's defence in this application; as I have observed, Mr Counsell accepted the breaches alleged were breaches if (as happened) he lost on relevant construction points.

286. In reaching these conclusions I have borne in mind the counter-submissions of Mr Counsell, summarised in paragraph 33 of his written final submissions. In particular, I have taken into account the absence of any positive record of explanations given. In an ideally ordered piece of litigation there would be attendance notes of all meetings and all advice given. In this case there is little of that kind of document. There are Mr Litovechenko's notes, which are difficult to decipher, and which may qualify, but bearing in mind their purpose was probably to record more of what Mr Turk said than what he was told, the failure to identify a note which neatly sets out advice given is not so telling. I have also borne in mind Mr Counsell's submission that Mr Turk would have been taking a great risk in waiving privilege and seeking his former solicitors' papers if he had been advised of his obligations, because he ran the risk that that would be clearly disclosed. There is something in this point, but it is not determinative and I do not consider it raises reasonable doubt when placed alongside the analysis and probabilities I have set out above. Mr Counsell also relied on Mr Turk's willingness to submit to cross-examination in this application as being something which "crucially" demonstrated his honesty on this topic. This might have been a more weighty point had his willingness to be cross-examined been indicated earlier in the history of the application. As the history set out above demonstrates, he did <u>not</u> say he would be cross-examined when he served his witness statement. He reserved the right not to be cross-examined on it. That stance was maintained well into the actual hearing. I consider this point has no weight at all. Nor does his submission that Mr Turk's honesty is demonstrated by his willingness to be cross-examined in 2021 carry as much weight as Mr Counsell would attribute to it. It was, in my view, all part of a risky or cavalier approach adopted by Mr Turk.

Applying Mr Turk's state of understanding in relation to the breaches found above

287. Having made that finding about Mr Turk's understanding of the order I now turn back to the breaches I have found in order to consider Mr Turk's frequent protestations that he did not realise that his obligations required the disclosure in question. Although ignorance does not excuse the breach, it will go to contumaciousness and therefore penalty.

288. I have found no breach in relation to Bethlehem, so I do not need to consider this point in that context. Furthermore, insofar as Mr Turk did not realise he had to disclose what happened to the money once it was applied in Bethlehem, he was right.

289. So far as Ground 2 is concerned, I find that Mr Turk had a sufficient appreciation of the order to know that he had to disclose the matters of which I have found him guilty of non-disclosure. It is not difficult to understand the concept of the purpose of a payment when it is required to be disclosed, and he did not do that. This is particularly striking in the case of the largest payment. He was looking after his client's money. Explaining where her assets have gone is a basic requirement of someone in his position. The obligation to provide information under paragraph 18 of the order is not difficult to understand. I consider that he understood all these obligations (and particularly the paragraph 18 obligations) and simply failed to implement that understanding in respect of these breaches. In cross-examination Mr Turk accepted that the obligation to provide information as to where the money went is not a difficult obligation to understand, and I consider that the order is clear enough about what was required in that respect. His production of invoices must betoken some recognition of the need to say where money had gone.

290. So far as Ground 3 is concerned, part of Mr Turk's defence is that he did not know he had to identify Mr Erdem as someone who could provide information. I find that his appreciation of his obligations under the order were such that he should have ascertained the money flows from records, and would have understood that he had to disclose last known recipients and, where I have found he needed to disclose purpose, the purpose. Those are not difficult concepts and while the actual tracing exercise might not be immediately apparent it could be done by someone who would understand the accounts as Mr Turk would, and he would understand the need to give explanations. He made no attempt even to start on this exercise, other than by the production of one, then another, positively misleading invoice. I find that he either appreciated that he should have put forward Mr Erdem as being able to provide information that he could not provide (assuming that the payment was Hawale, as he said), or he was wilfully blind to the need to do so. If it was not Hawale then his breach is more egregious. On any footing he withheld information about the payments in a knowing or cavalier fashion.

291. Turning to Ground 4, it is not clear to what extent Mr Turk really claimed that he did not realise that he had to disclose the matters which he did not disclose. However, insofar as his frequent protestations of ignorance are intended to cover his unfulfilled obligations in relation to this matter the answer is the same. He would have acquired sufficient understanding of what he had to do during the course of the events described in the previous section of this judgment, and the reason that he did not comply is not ignorance but simply a failure to implement what he understood or wilful blindness as to what his obligations were. I did not accept his evidence about his belief that he did not have documents. He knew of his obligations, had the

material available to him and did not disclose the information. This makes his breach contumacious (or contumelious).

292. So far as Ground 8 (Sphera) is concerned, I have held that Mr Turk was not obliged to provide information as to what Sphera (or any other recipient of the moneys in exchange for shares) did with any moneys which were applied in the acquisition of those shares. If Mr Turk believed he did not have to disclose such matters then he was correct. However, once again I find that by the time he had got to his disclosure affidavit he knew enough about his obligations that he ought to have appreciated that he had to disclose the Sphera material which I have held he ought to have disclosed. He might not have realised immediately that there was Sphera material that he ought to have disclosed, but if he had embarked on the exercises required under the order he would have realised what he had to disclose. He did not even attempt to embark on the exercises. At best he did not bother to think about what he had to do; at worst, which I find to be the case, this part of a pattern in which he did deliberately did not set about disclosing what he ought to have disclosed.

293. In relation to Ground 9 (Softco), it is to be inferred that Mr Turk realised that he had to produce information because he produced the invoice. However, he must have known that that was a false trail, on his own evidence. Either the payment was Hawale, or it was something else. When he came to give that disclosure he was, on my findings, sufficiently aware of his obligations to realise that producing the invoice was not enough. This was therefore another knowing breach.

Conclusions

294. I therefore find the following items of contempt, all beyond reasonable doubt:

Ground 1 (Bethlehem). I find no contempt.

Ground 2 (Alphabet transfers). I find Mr Turk to be in contempt of court in failing properly to provide details as to the payment of £212,676.56/$275,000 to Alphabet as to its purpose and in presenting false invoice by way of explanation. This breach was contumacious. He was in breach of the order in failing to disclose properly and explain the purpose of the payment of £18,993 to Alphabet. This breach was contumacious in that it was deliberate or the result of a wilful blindness as to the need to comply with the order, but I do not find it was done to disguise a purpose which Mr Turk actively wished to suppress. I find there was a technical breach of the order in relation to the sum of £120,583.90 but in the context of the rest of the breaches which I have found that is not significant, save that it is consistent with a pattern of wrongful failure to comply. I find there was a serious breach of the order in relation to the failure to disclose appropriate details of the payment of £768,743. This breach was

contumacious in that Mr Turk either wished not to disclose it or he turned a blind eye to that requirement or the need to explain it appropriately.

Ground 3 (AET). I find that there was a wholesale breach of the order in failing to disclose the making of some of these payments, and the purpose of all of them. This was deliberate, as appears from the deliberate presentation of false invoices.

Ground 4 (SGP transfers). I find that Mr Turk was in breach of the order in failing to disclose these payments, and his actions were at least over-casual in relation to his obligations under the Miles order.

Ground 8 (Sphera). I find a breach established to the extent of non-disclosure of the application of moneys in the acquisition of shares of Sphera and the value of the shares. I find no breach established in relation to the application of funds by Sphera or by others who received money for shares. I find a breach in relation to the failure to disclose the purpose of two of the payments. Again, these breaches were contumacious (or contumelious) in that Mr Turk did not make a serious attempt to comply even though he had an adequate understanding of the order.

295. Ground 9 (Softco). I find Mr Turk to be in breach of the order in failing to disclose properly the purpose of this payment and the identity of those who could give further information as to its purpose and ultimate destination. This breach was deliberate.

296. I add one final item of explanation. As I have pointed out, my findings about Mr Turk's shortcomings are not findings that he should have appreciated and achieved the full level of disclosure required of him in the time limits provided by the Miles order and its extension by Ms Treacy. If Mr Turk had properly set about providing the level of information which he ought to have set out then it would have taken him some time to assemble and analyse the information available to him - more than the handful of days that he had. That was, of course, not apparent to the claimant at the time. It is apparent now that more is known of the complexity of Mr Turk's dealings with moneys. My findings are based on his not really embarking on the exercises he should have embarked on at all. He simply (for the most part) did not conduct them. That is where his contumaciousness lies.

297. On the delivery of this judgment I will hear submissions on penalty and any associated procedural matters.

Annexe 1 – The relevant provisions of the Miles order

PENAL NOTICE

IF YOU SELMAN TURK DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

IF YOU SG FINANCIAL GROUP, BARTON GROUP HOLDINGS LIMITED, SENTINEL GLOBAL ASSET MANAGEMENT, INC AND/OR SENTINEL GLOBAL PARTNERS LIMITED DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND BE FINED OR HAVE YOUR ASSETS SEIZED ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENTS (OR ANY OF THEM) TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED

THIS ORDER

1. This Order was made on 4 March 2021 by Mr Justice Miles upon the application of Mrs Nebahat Evyap İşbilen ("**the Applicant**") and upon hearing counsel for the Applicant (Dan McCourt Fritz) on 3 March 2021. The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order. This Order contains:

- a worldwide freezing order against Mr Selman Turk (the "**First Respondent**");
- orders for disclosure and the delivery up of documents made against the First Respondent and SG Financial Group Limited (the "**Second Respondent**"), Barton Group Holdings Limited (the "**Third Respondent**"), Sentinel Global Asset Management, Inc (the "**Fourth Respondent**") and Sentinel Global Partners Limited (the "**Fifth Respondent**", collectively the "**Respondents**");
- an order prohibiting the First Respondent from leaving England and Wales and requiring the First Respondent to deliver up all of his passports and any document, ticket or travel warrant that might help him to leave England and Wales (the "**Travel Documents**");
- proprietary injunctions made against the First, Second, Fourth and Fifth Respondents;
- permission to serve out of the jurisdiction in respect of the Third to Fifth Respondents and AET Global DMCC (the "**Sixth Defendant**").

PROPRIETARY INJUNCTION

15. Until further order of the Court, the First, Second, Fourth and Fifth Respondents must not move or in any way dispose of or deal with or diminish the value of:

(1) any asset constituted by or derived from the whole or part of the transfers and bank payments identified in Schedule D to this Order as having been received by the relevant Respondent; and

(2) any asset constituted by or derived from the transactions listed in Schedule E to this Order (Such assets shall be referred to in this order as the "**Traceable Proceeds**").

FURTHER DISCLOSURE AND DELIVERY UP

16. On service of this Order, the First, Second, Fourth and Fifth Respondents (and each of them) must to the best of their knowledge and ability forthwith:

(1) inform the Applicant's solicitors in writing of the current value, nature and location of the Traceable Proceeds and the name or names in which the Traceable Proceeds are held;

(2) to the extent that the information referred to in subparagraph (1) immediately above is not within the relevant Respondent's knowledge they must inform the Applicant's solicitors in writing of the identities, addresses and any other contact details known to them of any person who is or might reasonably be expected to be in possession of the information referred to in subparagraph (1) above;

(3) insofar as the Respondent has transferred the Traceable Proceeds to any other person or entity, the Respondent must inform the Applicant's solicitors in writing of (a) the date of the transfer, (b) the purpose of the transfer, and (c) the identity of the transferee, stating, in the case of a company, where it was incorporated and where its registered office is, and in the case of an individual, stating where that individual currently resides or works or can otherwise be found;

(4) the assets (if any) that were acquired in whole or in part by the Traceable Proceeds.

17. On service of this Order the Third Respondent must to the best of its knowledge and ability forthwith:

(1) inform the Applicant's solicitors in writing of the current value, nature and location of any asset constituted by or derived from the whole or part of the transfers and bank payments identified in Schedule F to this Order (the "**Barton Assets**") and the name or names in which the Barton Assets are held;

(2) to the extent that the information referred to in subparagraph (1) immediately above is not within the relevant Respondent's knowledge they must inform the Applicant's solicitors in writing of the identities, addresses and any other contact details known to them of any person who is or might reasonably be expected to be in possession of the information referred to in subparagraph (1) above;

(3) insofar as the Respondent has transferred the Barton Assets to any other person or entity, the Respondent must inform the Applicant's solicitors in writing of (a) the date of the transfer, (b) the purpose of the transfer, and (c) the identity of the transferee, stating, in the case of a company, where it was incorporated and where its registered office is, and in the case of an individual, stating where that individual currently resides or works or can otherwise be found;

(4) the assets (if any) that were acquired in whole or in part by the Barton Assets.

18. Within 48 hours after being served with this Order the First Respondent must:

(1) to the best of his knowledge and ability inform the Applicant's solicitors in writing of the location, form, status current or last known whereabouts of any assets which are owned in whole or in part by the Applicant (legally, beneficially or otherwise), or the traceable proceeds thereof;

(2) inform the Applicant's solicitors in writing of the details of any bank accounts (including the number, name, reference and/or any other unique identifier of each account) in his name and/or to which he is a signatory and/or that he controls; and

(3) provide to the Applicant's solicitors any reconciliation in relation to Sentinel Global Fund A L.P. that is within his control.

19. The assets referred to in paragraph 18(1) above include, but are not limited to, assets which are or were:

(1) acquired or purportedly acquired by or for the Applicant, whether or not held in the Applicant's name;

(2) payable to or to the order of the Applicant;

(3) held on account for the Applicant;

(4) acquired wholly or partly using assets that were legally or beneficially owned by the Applicant, or the traceable proceeds thereof.

…

21. Within 5 working days after service of this order the First Respondent and duly authorised officers of the Second to Fifth Respondent must swear and serve on the Applicant's solicitors affidavits setting out and verifying the information required of the relevant Respondent at paragraphs 16 to 19 of this Order.

…

SCHEDULE D – TRACEABLE PROCEEDS (TRANSFERS RECEIVED)

All subtotals have been provided with an approximate conversion rate value in GBP, based on the following conversion rates from the website www.xe.com on 24 February 2021 between 17:00 and 17:09:

1 USD = 0.709 GBP
1 EUR = 0.861 GBP

First Respondent - Mr Selman Turk

Date	**Transferor**	**Recipient**	**Amount**
03-Feb-20	Swiss Global USD	Selman Turk	$3,385,612.61
06-Apr-20	Swiss Global GBP	Selman Turk	£1,600,000.00
		USD Subtotal	**$3,385,612.61**
		GBP (approx.)	*£2,400,168.01*
		GBP Subtotal	**£1,600,000.00**
		GBP Total (approx.)	*£4,000,168.01*

Second Respondent - SG Financial Group Limited

Date	Transferor	Recipient	Amount
09-Oct-18	Varengold GBP	Sentinel Global Partners UK Ltd	£173,000.00
25-Jan-19	Hampden GBP	Sentinel Global Partners UK Ltd	£150,000.00*
31-May-19	Hampden GBP	SG Financial Group Ltd	£305,000.00
20-Jun-19	Hampden GBP	SG Financial Group Ltd	£305,000.00
18-Jul-19	Hampden GBP	SG Financial Group Ltd	£310,700.27
16-Aug-19	Hampden GBP	SG Financial Group Ltd	£334,000.00
		GBP Total	£1,940,631.90

* total transfer value of £314,974.28, in respect of which Mrs İşbilen believes £150,000 to relate to an application for citizenship of St Kitts & Nevis that Mr Turk advised her to make (and which she believes she obtained).

Fourth Respondent - Sentinel Global Asset Management, Inc.

Date	Transferor	Recipient	Amount
03-Mar-17	YapiKredi Netherlands USD	Sentinel Asset Management	$1,700,000.00
10-Mar-17	YapiKredi Netherlands USD	Sentinel Asset Management	$1,000,000.00
30-Mar-17	YapiKredi Netherlands USD	Sentinel Asset Management	$1,110,575.75
30-Mar-17	YapiKredi Netherlands EUR	Sentinel Global Asset Management	€ 479,625.38
07-Apr-17	YapiKredi Netherlands USD	Sentinel Asset Management	$982,277.77
23-Oct-17	Varengold USD	Sentinel Global Asset Management	$676,989.00
25-Jan-18	Varengold EUR	Sentinel Global Asset Management	€ 502,000.00
		USD Subtotal	**$5,469,842.52**
		GBP (approx.)	*£3,879,001.15*
		EUR Subtotal	**€ 981,625.38**
		GBP (approx.)	*£844,740.92*
		GBP Total (approx.)	*£4,723,742.07*

Fifth Respondent - Sentinel Global Partners Limited (SGP)

Date	Transferor	Recipient	Amount
03-Feb-17	YapiKredi Netherlands USD	Sentinel Global Partners Ltd	$205,000.00
23-Feb-17	YapiKredi Netherlands USD	Sentinel Global Partners Ltd	$312,750.00
03-Jun-19	Hampden USD	Sentinel Global Partners Ltd	$600,000.00
		USD Total	**$1,117,750.00**
		GBP (approx.)	*£792,439.38*

SCHEDULE E – TRACEABLE PROCEEDS (TRANSACTIONS)

1. Any purported loan(s) taken by the First Respondent from the Applicant, including but not limited to the two transfers to the First Respondent listed in Schedule D, and any transactions entered into using funds from any and all such purported loans.

2. Any and all investments made by Sentinel Global Fund A LP that were made using monies transferred from Mrs İşbilen or assets derived from such monies, and the traceable proceeds of such investments.

3. Any and all transactions entered into using funds redeemed or redirected from Sentinel Global Fund A LP.

SCHEDULE F – BARTON ASSETS

All subtotals have been provided with an approximate conversion rate value in GBP, based on the following conversion rates from the website www.xe.com on 24 February 2021 between 17:00 and 17:09:

1 USD = 0.709 GBP
1 EUR = 0.861 GBP

Third Respondent – Barton Group Holdings Limited

Date	**Transferor**	**Recipient**	**Amount**
10-Oct-18	Varengold GBP	Barton Group Holding	£125,000.00
12-Mar-19	Varengold EUR	Barton Group Holding	€ 533,000.00
12-Mar-19	Varengold EUR	Barton Group Holding	€ 1,550,000.00
12-Mar-19	Varengold EUR	Barton Group Holding	€ 1,550,000.00
01-Apr-19	Varengold EUR	Barton Group Holding	€ 472,000.00
24-Jul-19	Varengold EUR	Barton Group Holding	€ 937,000.00
20-Aug-19	Varengold EUR	Barton Group Holding	€ 345,000.00
09-Oct-19	Swiss Global USD	Barton Group Holding	$3,399,893.09
15-Oct-19	Swiss Global USD	Barton Group Holding	$2,850,000.00
05-Nov-19	Swiss Global USD	Barton Group Holding	$135,000.00
28-Nov-19	Swiss Global USD	Barton Group Holding	$2,200,000.00
31-Jan-20	Swiss Global USD	Barton Group Holding	$447,676.77
		USD Subtotal	**$9,032,569.86**
		GBP (approx.)	*£6,403,474.86*
		EUR Subtotal	**€ 5,387,000.00**
		GBP (approx.)	*£4,635,689.38*
		GBP Subtotal	**£125,000.00**
		GBP Total (approx.)	*£11,164,164.24*

Annexe 2 -The surviving counts of contempt

[The original document contained cross-references to paragraph numbers in the evidence to explain the Counts. There are omitted here because they are meaningless without the evidence.]

Ground 1: Bethlehem Group

- Provisions of the Miles J Order allegedly breached:

  (2) Paragraph 16 (read with the definition of "Traceable Proceeds" in paragraph 15, and Schedule E, paragraphs 2 and 3).

  (3) Paragraph 18(1) (read with paragraph 19).

- Summary of alleged breach:

  (a) In July 2018 and February 2019, US$6.4 million of sums redeemed from the Sentinel Fund were transferred to Bethlehem (on Mr Turk's case) on the basis that Mrs İşbilen was investing in it.

  (b) Over US$1 million of the funds transferred to Bethlehem were transferred on to Mr Turk and Mr Lewis.

  (c) US$4 million of the funds transferred to Bethlehem were transferred from Bethlehem to its subsidiary, Penn Dairy, and used to acquire assets (including a yoghurt factory) in Pennsylvania.

  (d) Penn Dairy was sold (or purportedly sold) in late 2019 to Antioch Investments LLC.

  (e) Part of the sale proceeds were transferred to Alphabet, American Reliable Tasks LLC, and Rezarta Begaj on Mr Turk's instructions or for his benefit.

  (f) Mr Turk knew matters (b)-(e) and has failed to disclose them.

  (g) (By inference) Mr Turk knows more about what happened to the funds transferred to Bethlehem which he has not disclosed.

- Whether alleged breach total or partial:

  Total: Mr Turk has never any provided information about the onward transfers of funds transferred to Bethlehem.

- Extent of compliance:

  a) Mr Turk disclosed limited documents relating to the Bethlehem transfer and the group business.

  b) (To the extent admissible) Mr Turk gave some evidence at the Cross-Examination hearing about what happened to the Bethlehem funds, the value

of Naturlich (another group entity), and the nature of Naturlich's assets.

Ground 2: Alphabet

- Provisions of the Miles J Order allegedly breached:

  a) Paragraph 17(1)-(4) (read with Schedule F), in his capacity as a director of Barton.

  b) Paragraph 18(1) (read with paragraph 19).

- Summary of alleged breach:

  a) Over £1 million was transferred from the Swiss Global accounts in the names of Barton and Mrs İşbilen to Alphabet Capital Ltd.

  b) A significant portion of these funds were transferred onto HRH Duke of York; Sarah, Duchess of York, and entities controlled by Adrian Gleave.

  c) Mr Turk knew this and failed to disclose it.

- Whether alleged breach total or partial:

  - Total, insofar as Mr Turk did not disclose any onward transfers after the funds were transferred to Alphabet.

- Extent of compliance:

  - Mr Turk disclosed copies of three invoices and a payment instruction which showed that funds were transferred to Alphabet (but not any further transfers).

Ground 3: AET Global

- Provisions of the Miles J Order allegedly breached:

  a) Paragraph 16(1)-(4) (so far as the traceable proceeds of transfers listed in Schedule D were later transferred to AET Global), in his personal capacity and in his capacity as a director of SGP.

  b) Paragraph 17(1)-(4) (so far as the traceable proceeds of transfers listed in Schedule F were later transferred to AET Global), in his capacity as a director of Barton.

c) Paragraph 18(1) (read with paragraph 19).

- Summary of alleged breach:

  - Transfers totalling at least €2.3 million and US$2 million were made to AET Global:
    - from Mrs İşbilen's own accounts; and
    - out of the traceable proceeds of transfers in Schedules D and F to the Miles J Order (including from an account in Mr Turk's name).
  - Mr Turk knew:
    - that AET Global was under the control of Aytac Erdem;
    - that the purpose of some or all of these transfers was to further business projects which Mr Turk and Mr Erdem were pursuing together;
    - the onward destination of at least one AET Global transfer;
    - that Mr Erdem would know the onward destination of all AET Global transfers; and
    - how to contact Mr Erdem; but failed to disclose this information.
  - Mr Turk knows the onward destination of some or all of these transfers (by inference from his significant personal and business relationship with Mr Erdem).

- Whether alleged breach total or partial:

  - Partial:

  a) The relevant transfers from Barton to AET were disclosed by Mr Turk.

  b) Under this ground, contempt is not alleged on the basis that Mr Turk did not disclose the existence of transfers which Mrs İşbilen has discovered through other disclosure orders, including from disclosure provided by SGAM.

  c) The allegation is that Mr Turk did not provide information necessary to locate funds transferred to AET Global, and that he knows further information about the onward destination of funds which he has not disclosed.

- Extent of compliance:

  a) Disclosed two transfer to AET Global from Barton.

  b) Disclosed certain invoices relating to some AET Global transfers (to the extent these identified the destination of transfers; the Claimant does not accept that they were genuine invoices).

c) Complied with the Isaacs J Order in signing mandates for his own bank accounts.

Ground 4: SGP

- Provisions of the Miles J Order allegedly breached:

  Paragraph 16(1)-(4) (read with the definition of "Traceable Proceeds" in paragraph 15, and Schedule D), in his capacity as a director of SGP.

  Paragraph 18(1) (read with paragraph 19).

- Summary of alleged breach:

  (a) Mr Turk was in possession of bank statements showing complete information about onward transfers of two transfers (totalling c.US$500,000) to SGP listed in Schedule D to the Miles J Order.

  (b) Mr Turk knew, and did not disclose, this information.

- Whether alleged breach total or partial:

  - Total

- Extent of compliance:

  - None

Ground 8: Sphera

Provisions of the Miles J Order allegedly breached:

- Paragraph 16(1)-(4) (read with the definition of "Traceable Proceeds" in paragraph 15, and Schedules D and F)
- Paragraph 17(1)-(4) (read with Schedule F), in his capacity as a director of Barton.
- Paragraph 18(1) (read with paragraph 19).

Summary of alleged breach:

(a) Mr Turk knew a range of information concerning the Sentinel Fund's purported investment in Sphera Investment Spain SL, and in relation to (at least) the transfers listed in the table at (c.£5 million), which he has failed to disclose.

(b) In particular, Mr Turk knew:

(i) That a substantial proportion of the Sphera funds had been transferred to Messrs Teo Sarda and Carlos Malet.

(ii) That they, and Mr Zandre Campos, would be likely to have information about how Sphera (or related persons) had applied the funds received.

(iii) The terms on which the Sphera transfers were made.

(iv) How Sphera was likely to have applied to the funds received.

(v) That he had personally transferred part of the traceable proceeds of the Barton assets to Sphera in April 2019.

Whether alleged breach total or partial:

Total, in respect of the information relied upon in support of the ground, which was not disclosed by Mr Turk.

Extent of compliance:

Mr Turk provided mandates for bank accounts in the name of Sphera pursuant to the Isaacs J Order.

Ground 9: Softco

Provisions of the Miles J Order allegedly breached:

(a) Paragraph 16(1)-(4) (read with the definition of "Traceable Proceeds" in paragraph 15, and Schedules D and F)

(b) Paragraph 18(1) (read with paragraph 19).

Summary of alleged breach:

(a) Mr Turk arranged for US$1,275,000 to be redeemed from the Sentinel Fund and

(b) transferred to Softco Consultants FZE.

(c) Mr Turk knew, and failed to disclose:

(a) That the purpose of the Softco Transfer was related to a proposed business venture involving Mr Turk, Mr Reha Sahin and Mercury Merchants Ltd.

(b) That funds transferred to Softco were, or were likely to have been, transferred to Mr Sahin.

(c) That Mr Sahin was in control of the Softco account and would have information about onward transfers of the funds.

Whether alleged breach total or partial:

Total

Extent of compliance:

None: Mr Turk has put forward the documents referred to [reference to evidence], which on Mrs İşbilen's case were used to put forward a false explanation of the transfer.