Neutral Citation Number: [2022] EWHC 2385 (Comm)

Case No: LM-2022-000197

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND & WALES
LONDON CIRCUIT COMMERCIAL COURT (KBD)

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 22/09/2022

Before :

MR SIMON BIRT KC
(Sitting as a Deputy Judge of the High Court)

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Between :

(1) David Tyler Moss **(2) Brandon Gabriel Keating** **(3) Fidelissimus LLC**	**Claimants**
- and –	
(1) Brian Martin **(2) Holly Susan Bone**	**Defendants**

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Roger Laville (instructed by **Kelly Owen Ltd**) for the **Claimants**
James McWilliams (instructed by **Birketts LLP**) for the **Defendants**

Hearing date: 16 September 2022

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 14:00 on Thursday 22nd September 2022.

Mr Simon Birt KC:

1. This is an application to vary a freezing order in two respects:

   (1) First, to discharge the passport order contained in it such that the Defendants are able to leave the jurisdiction, alternatively to suspend that part of the order such that the Defendants can take a planned holiday.

   (2) Second, to vary the amount that the Defendants are entitled to spend on living expenses, by (i) increasing the monthly permitted amount, and (ii) by permitting two items of one-off expenditure.

Background

2. In these proceedings the Claimants bring an action on judgments that they have obtained against the Defendants (and others) in proceedings in the courts of Texas, USA, totalling several million dollars.

3. The background to the dispute arises in the relationship between the First and Second Claimants, the First Defendant and another individual called Marko Princip, during the period 2012 to 2014, when they were involved together in the United States in relation to a YouTube channel called "VideoGames". This is said by the Claimants to have been a lucrative venture and that in a series of agreements they were each promised a 30% revenue share. The Claimants say they did not receive that share of the revenue, and as a result issued proceedings against the First Defendant and others in Texas in June 2014.

4. Those proceedings resulted in a judgment in favour of the First and Second Claimants in April 2016 ("the First Judgment"). That judgment held the First Defendant and Mr Princip liable for breach of fiduciary duty, fraud, tortious interference and conspiracy, and required that the First Defendant pay each of the First and Second Claimants $2.1 million in compensatory damages. There were also awards of exemplary damages, but the Claimants do not seek to enforce those amounts in these proceedings.

5. The First Defendant's appeal to the US Court of Appeals was dismissed in February 2019.

6. Subsequently, the Second Claimant assigned his interest in the First Judgment to the Third Claimant.

7. The Claimants say that they met with little success in seeking to enforce the First Judgment, but that their efforts to enforce the judgment focussed on revenues from a YouTube channel called "FuturisticHub", which the Claimants believed was owned by the First Defendant. However, in May 2019 the Claimants' US attorney received emails stated to be from the Second Defendant saying that she, not the First Defendant, owned FuturisticHub, though acknowledging that the First Defendant had been her lead animator for some of her channels and had been helpful to her in marketing them.

8. The Second Defendant is a UK citizen who describes herself as "a creator of animations and content creator on YouTube". She maintains she started the FuturisticHub channel in around October 2012. She emigrated to Texas in May 2019 to live with the First Defendant, and the First and Second Defendants married shortly afterwards in June 2019.

I was told that the Second Defendant was about 18-19 years old at the time of their marriage, and that the First Defendant had divorced his previous wife earlier in 2019.

9. In around February 2020, a house at 12452 Cajun Drive, Frisco, Texas was purchased in the name of the Second Defendant with, it appears, funds supplied by the First Defendant's mother. The Claimants contend that those funds had previously been supplied by the First Defendant to his mother.

10. On 24 July 2020, the Claimants registered the First Judgment in Texas as a federal judgment and notified the First Defendant they had done so. In August 2020, the Second Defendant left the US for the UK, followed in September 2020 by the First Defendant. The Claimants characterise this as the Defendants fleeing the jurisdiction of the Texas courts. The Defendants say that the Second Defendant had decided to return home to live in the UK, not having enjoyed Texas, and that the First Defendant joined her. I will return to what the parties say about that below.

11. In September 2020, the First and Third Claimants issued a second set of proceedings in Texas, seeking to set aside certain transfers from the First Defendant to the Second Defendant and for damages. They pursued claims in fraudulent transfer, civil conspiracy, aiding and abetting, conversion, common law fraud and statutory fraud in a real estate transaction.

12. The Claimants sought and obtained various interlocutory orders from the Texas court in the second set of proceedings. On 18 September 2020, the Claimants obtained a temporary restraining order preventing the Defendants from dealing with funds generated from the FuturisticHub channel, among others, transferring their interest in the channel and disposing of the Cajun Drive property ("the Temporary Restraining Order"). This was followed on 15 October by a temporary injunction in similar terms ("the Temporary Injunction"). On 21 September 2020 and 23 November 2020, the Claimants obtained "turnover orders" from the Texas court ordering Google and YouTube to pay into court all funds payable in respect of FuturisticHub and certain other channels ("the Turnover Orders").

13. Between 14 and 22 December 2020, the Claimants say that the Defendants transferred the content of FuturisticHub to a new YouTube channel called Wildcraft, which is owned by an English company called Wild MC Ltd ("Wild MC"), which had been incorporated on 23 Sept 2020 and is wholly owned by the Second Defendant.

14. In February 2021, the Claimants obtained a writ of garnishment from the Texas court against Google LLC executing the First Judgment against the revenues from the FuturisticHub channel. Pursuant to that, on 17 February 2021, Google LLC deposited $290,947.46 into court in Texas.

15. On 23 June 2021, the First Defendant was held by the Texas court to be in breach of the Temporary Restraining Order, the Temporary Injunction and the Turnover Orders, and was held to be in contempt of court. It was ordered he be arrested, and in March 2022, the Texas court issued a writ for his arrest.

16. In April 2022, the trial of the second proceedings was heard in Texas, at which I was told by the Claimants that the Defendants made full legal submissions and gave oral evidence

by video link. The Claimants were successful and the judgment dated 12 April 2022 ("the Second Judgment") ordered the First Defendant to pay each of the First and Third Claimants the sum of approximately $4.5 million and the Second Defendant to pay each of the First and Third Claimants to sum of approximately $2.8 million. Declarations were also made as to the ownership of certain YouTube channels and other related orders were also made.

17. An appeal has been lodged against the Second Judgment. It has yet to be determined.

These proceedings

18. The claim form in these proceedings was issued in the Commercial Court on 14 April 2022, bringing an action upon the money sums due under both the First and Second Judgments. A freezing order was made by Andrew Baker J against the First and Second Defendants on 6 May 2022, which included an order preventing them from leaving the jurisdiction and for surrender of their passports. As a result, the Defendants handed their passports to the Claimants' solicitors, who currently retain them.

19. The freezing order was varied by Andrew Baker J on 12 May 2022, to permit limited expenditure on living expenses and legal costs. On 16 May 2022, each of the First and Second Defendants filed and served affidavits giving details of their assets pursuant to the terms of the freezing order.

20. At the return date of the freezing order, the Defendants indicated an intention to seek to discharge the order, as a result of which the return date was adjourned for that purpose and is now listed to be heard in December 2022.

21. The Claimants have served Particulars of Claim (dated 19 May 2022) and on the same date applied for summary judgment. The Defendants served evidence in response on 23 June 2022. Although that summary judgment application was listed to be heard in July, and the parties prepared skeleton arguments and attended court for that purpose, the time estimate was held to be insufficient, and that application has been adjourned to be heard at a 2-day hearing at the end of October 2022.

22. On 2 September 2022 these proceedings were transferred from the Commercial Court to the London Circuit Commercial Court.

This application

23. As already noted, by this application (dated 5 September 2022) the Defendants seek return of their passports to allow them to leave the jurisdiction, as well as a variation to the amount of living expenses they are permitted under the freezing order. The former took up by far the larger part of the argument, and I will deal with that first.

Application for return of the passports

24. As noted above, when the freezing order was made (on a without notice basis), the Claimants also sought, and were granted, an order requiring the Defendants to hand over their passports (which I will refer to as "a passport order"). The reason identified in

skeleton argument for that hearing why the order was required was that if the Defendants left the jurisdiction, they "would be highly unlikely to give disclosure of their assets in accordance with the freezing order". The Claimants were concerned that the Defendants might seek to flee the UK, the Claimants contending that they had already acted in a similar way when leaving the US for the UK in August-September 2020. On the without notice application, Andrew Baker J was satisfied that there was a "flight risk" (as described in the Claimants' note of the hearing) in particular as regards the First Defendant (but also, because they remained a couple, as regards the Second Defendant).

25. The passport order provided as follows:

> "9. In order to ensure their compliance with the terms of this order, the First and Second Respondents shall forthwith deliver up to the person serving this order on them or (if the Applicants so request) to the Applicants' solicitors their United Kingdom, United States of America and any other passports.
>
> 10. Until the return date or further order of the court:
> a) the Respondents shall not leave the jurisdiction of England and Wales;
> b) the Respondents' passports shall be held by the Applicants' solicitors; and
> c) the Respondents shall not make any application for replacement passports."

26. The passports were handed over. When the freezing order was subsequently continued by the Order of Butcher J dated 20 May 2022 (which the parties have referred to as "the Continuation Order"), the passport order was continued in materially the same terms as paragraph 10 of the original freezing order. I was not told that there was any particular argument about it on that occasion.

27. The immediate impetus for the Defendants now seeking the return of their passports is a holiday they hope to take in October 2022, which (on the evidence they have produced) has been booked for some time. This forms part of the background to the current application, and I say a little more about it below, though ultimately it is not a critical factor in my determination.

28. The Defendants say, in short summary, that i) there is no good reason to believe that they would not return from their holiday, or otherwise permanently leave the jurisdiction, if their passports were returned to them, and ii) the passport order was granted to support the various disclosure provisions of the freezing order, which have now been complied with, such that the reason underlying the original grant of the passport order is now spent. In other words, they say that the order to which the passport order was ancillary – the disclosure orders in the freezing order – have been complied with, and the Claimants have taken no steps with regard to the Defendants' asset disclosure since then; so, the Defendants say, there is nothing to which the passport order is now ancillary.

29. The request that the passports be returned was first raised by the Defendants' solicitors, Birketts, on 22 August 2022. That was the first reference to the holiday that the Defendants said they had previously booked, and were due to take in October 2022. The Claimants point out that in May 2022, the Defendants had agreed that the passport order would continue until the adjourned return date, albeit reserving the right to challenge it at that hearing, and that nothing was said then, or at any other time prior to 22 August, that the Defendants might seek the return of their passports at any earlier time.

30. The Defendants accepted before me that there was no reason that they could not have raised the return of their passports earlier, and that they did not need to wait until 22 August before first raising this. They had no explanation why it had been left so late.

Passport Orders

31. The court's jurisdiction to make an order which prevents defendants from leaving the jurisdiction and requires them to surrender their passports is found in section 37 of the Senior Courts Act 1981. The power to grant such an order is available both pre-judgment and post-judgment.

32. The applicable legal principles were identified by the Court of Appeal in *JSC Mezhdunarodny Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 1108 at [36]-[37] as having been set out by Mostyn J in *Young v Young* [2012] EWHC 138 (Fam) at [26]:

> "i) The power to impound a passport pending the disposal of a financial remedy claim exists in principle in aid of all the court's procedures leading to the disposal of the proceedings.
>
> ii) But it involves a restriction of a subject's liberty and so should be exercised with caution. The authorities emphasise the short-term nature of the restraint. The law favours liberty.
>
> iii) A good cause of action for a substantive award must be established.
>
> iv) The Applicant must establish that there is probable cause for believing that the Respondent is about to quit the jurisdiction unless he is restrained.
>
> v) The Applicant must further establish that the absence of the Respondent from the jurisdiction will materially prejudice her in the prosecution of her action.
>
> vi) Provided that the principles in (i) – (v) are carefully observed a passport impounding order will represent a proportionate public policy based restraint on freedom of movement founded on the personal conduct of the Respondent."

33. Reliance was also placed by the Defendants on what was said by Zacaroli J in *Corbiere Limited v Xu* [2018] EWHC 112 (Ch) at [31] (in summarising the considerations to be taken into account that were described by Fox LJ in the Court of Appeal in *Bayer v Winter AG* [1986] 1 WLR 497 at 502-503):

> "(1) First, it is necessary to consider the harm that would be done to the defendant in making the order;
>
> (2) Second, it is necessary to consider the harm to the Claimants if no order is made. In *Bayer v Winter AG* itself, where the order was sought in aid of an order for disclosure, Fox LJ noted that if the defendant left the United Kingdom, then the plaintiffs were at risk that they would be unable to obtain

the information, noting that while within the jurisdiction the defendant could be compelled to attend for cross-examination;

(3) Third, the essential question is whether the order was reasonable and necessary, ancillary to the due performance of the court's functions;

(4) Fourth, recognising that the order interferes with individual liberty, it should be for a period of time that was no longer than necessary to enable the plaintiffs to serve the orders to which the restraint order was ancillary, and to endeavour to obtain from the defendant the information referred to in those orders;

(5) Fifth, Fox LJ noted that the court had both the power, and the duty – where an order such as an order for disclosure had been made – to take such steps "as will enable the order to have effect as completely and successfully as the powers of the court can procure."

34. As emphasised in those cases, a passport order interferes with the freedom of movement of the individual. Such an order is normally confined to assisting in enforcement of another order of the court or an order which may be made. Zacaroli J's fourth point above emphasises the ancillary nature of the order. Such an order is made in aid of other orders (such as orders requiring the defendant to give information about assets or to attend court for cross-examination about assets), and that might include being made in anticipation of an order being made at a hearing which is about to take place. It is not, however, available as a means of putting pressure on a judgment debtor to pay a money judgment; it is not a freestanding enforcement procedure in its own right: see *B v B (Injunction: Jurisdiction)* [1998] 1 WLR 329.

The holiday

35. Before turning to the application of the above principles to the facts of this case, I explain a little more about the holiday that has motivated the Defendants to bring this application now.

36. The Defendants say that in March/April 2020 they booked a 10-day honeymoon, which they had to postpone so that the Defendants were not away for a court hearing in the US proceedings and, they say, which then became "inevitably delayed" due to the restrictions put in place as a result of the Covid pandemic. It was subsequently rebooked in March 2022 for October 2022. The evidence about it is relatively sketchy, being described in outline in the witness statement of Maria-Christina Peyman (a partner at Birketts), and was supported by some, heavily redacted, documentation. Precise dates and the location of the holiday have not been revealed. The Defendants expressed a concern that if they disclosed further details the Claimant might make illegitimate use of that information, though no application was made to me for any particular order in relation to the information and its sensitivity or making particular provision as to its confidentiality.

37. It was said in Ms Peyman's statement on behalf of the Defendants that this holiday was pre-paid, including flights and resort, and that it was non-refundable, with revisions incurring additional charges. The value put on the holiday was approximately $6,500.

However, the only terms of booking that were relied upon in support of the "non-refundable" point covered cancellation within 30 days of the holiday commencing. The Claimants contended, and at the hearing the Defendants' counsel accepted, that the holiday could have been fully refunded had it been cancelled 31 days or more before the re-booked commencement date. (Although the Defendants have not identified the date on which their booked holiday would start, Ms Peyman's witness statement asserted that the date on which the statement was made, namely 5 September 2022, would fall within 15-30 days before the start of the holiday, which, given the Defendants also say that the holiday is in October, suggests a start date of between 1 and 5 October 2022).

38. Therefore, although the Defendants complain that if they have now to rebook or cancel the holiday, they will suffer financially, that is something largely of their own making. They could have avoided losing the money if they had cancelled before (for argument's sake) 1 September 2022.

39. However, the Defendants left it very late to raise with the Claimants' solicitors whether or not the Claimants would be prepared to vary the passport order, and even later to make their application to court. The first time they made that request in correspondence was 22 August 2022. The Claimants responded promptly, on 24 August, making it clear that they did not consent to the release of the passports. It was then clear that the Defendants would have to come to court to seek that release. By not cancelling the holiday at that point, they were clearly taking the risk that they might lose the application, or that it would take too long to resolve, with the consequence that they would not be able to go on the holiday and would suffer a financial penalty. In those circumstances, I do not regard the fact that if the holiday was cancelled now, there would be a financial loss to the Defendants, to be a weighty factor in how this application should be determined.

40. One other point about the holiday which I mention in passing, only because a point was raised in argument in relation to it by the Claimants, is that the description of the holiday as a honeymoon was said to fit ill with the fact that the Second Defendant presented a divorce petition to the First Defendant on 7 August 2020. Mr McWilliams (who appeared for the Defendants) pointed out that the Second Defendant has explained in her evidence in response to the summary judgment application that she did so file for divorce (having become upset when she found out about the First Judgment against the First Defendant in August 2020), but subsequently withdrew that petition when the Defendants reconciled and agreed to move the UK. In any event, the description of the holiday as a honeymoon does not make any difference to the points I have to determine.

41. I have set out the above matters in order to put in context the reasons why the application was brought when it was, and to explain why (given the fact that the holiday was refundable if cancelled more than 30 days before its start date) any financial loss that might now be caused by cancellation would in large part be something of the Defendants' own making. However, it does not appear to me that the fact that this holiday is booked affects the matters I have to determine on this application, which are more fundamental than whether the Defendants should be allowed to go on a particular holiday. If there remains good reason for the passport order to remain in place, the fact the Defendants have booked a holiday (which they could previously have cancelled with a full refund) would not be sufficient to cause a release of the passports; if there is no such good reason, then the Defendants would be free to go on their holiday anyway. The retention of the

passports is a restriction on the Defendants' liberty to travel, and needs to be justified whether they have a holiday booked or not.

Whether the passports should be retained

42. I now therefore turn to the question whether the Defendants' passports should be retained. The parties' argument was directed very largely to factors (iv) and (v) in the Court of Appeal's list of factors in *Pugachev*, namely that the Claimants must establish (iv) that there is probable cause for believing that the Defendants are about to quit the jurisdiction unless restrained, and (v) that the absence of the Defendants from the jurisdiction will materially prejudice the Claimants in the prosecution of their action.

43. There was no argument about factor (iii) in the Court of Appeal's list, namely establishing a good cause of action. The Claimants have two US judgments which they are seeking to sue on. Although I have been told that the Defendants intend to defend the case "robustly" and some aspects of the defences they intend to run were briefly summarised before me, this is not the occasion to deal with that in any detail.

44. In considering whether to continue the passport order I also keep in mind that (as identified at factor (ii) of the Court of Appeal's list) it involves a restriction on the Defendants' liberty, is therefore to be exercised with caution, and that the law favours liberty.

Probable cause for believing the Ds are about to quit the jurisdiction

45. The Court of Appeal in *Pugachev* considered what is meant by "probable cause" in this context. They concluded that something less than proof on the balance of probabilities would do (Floyd LJ at [44] and Bean LJ at [67]), though "quite a lot more than a fear expressed on the party of the person applying for such an order is required" (Floyd LJ at [44]). As articulated by Floyd LJ at [45]:

    "By analogy with the test applied when a freezing order is applied for, I would hold as a minimum that there must be evidence from which it can be reasonably inferred that the party to be subject to the order will leave the jurisdiction and not return."

    And by Bean LJ at [68]:

    "If the evidence, viewed objectively, demonstrates a real risk that the defendant will leave this country in order to frustrate the court's processes, that is sufficient to give the court jurisdiction, provided that the restriction is proportionate in all the circumstances of the case."

46. There is no doubt that, if they are given their passports, the Ds will go overseas – that is part of the reason for their making this application – the issue is whether they will go for their short holiday and return, as they say they will, or whether they will not return.

47. One of the points pressed by the Claimants in relation to this issue is that they said that the Defendants had already fled the jurisdiction of the Texas courts (when coming to the UK), demonstrating a propensity for such conduct. That is not accepted by the

Defendants, who give other reasons for moving from the US to the UK, as I have already mentioned. In brief summary:

(1) Both parties point to the chronology in seeking to urge inferences about the Defendants' motivations in leaving Texas.

a. The Claimants say this took place shortly after the First Judgment (a federal judgment) was registered in the Texas state courts and notified to the First Defendant on 24 July 2020, which they suggest caused the Defendants to flee, first the Second Defendant followed shortly by the First Defendant, having sold the Cajun Drive property swiftly and at a loss.

b. The Defendants point out that the Claimants had been seeking to enforce the judgment for a number of years prior to mid-2020, and that the 24 July registration was just the latest in a series of steps to attempt to do so such that it does not make sense as a particular "trigger" event.

(2) The Defendants identify the reasons provided in witness statements by the First and Second Defendants for leaving (in summary that the Second Defendant was unhappy in Texas and wanted to return to the UK). They say the Second Defendant moved back to the UK before any claim against her in Texas was intimated.

(3) The Defendants say that their conduct does not fit the mould of someone fleeing their judgment creditors in that they did things such as (a) the First Defendant contacting the Claimants' US lawyers to explain he had moved to the UK, and (b) the Second Defendant purchasing a property in her own name.

(4) There are also a number of Facebook Messenger chats that the Claimants exhibited to their evidence in support of the freezing order, in which the First Defendant appeared to boast to the First Claimant in various ways that he was "judgment proof", that the "protections" in the UK were "good", and that Wildcraft was owned by a British company which "makes it untouchable". Those messages certainly give the sense of someone who thinks moving to the UK has improved his prospects of avoiding payment of the First Judgment in Texas. Whether that was his reason for moving is less clear from the messages.

48. I cannot determine on this application, giving the competing accounts in witness statements, what the motivation of the Defendants was in leaving Texas. There are obviously points both ways. I do however note that, whatever the motivations for leaving, what the move illustrates is the willingness of the Defendants to move countries when it suits them, and their ability to continue their business operations from a different country.

49. However, that is not the only point relied on by the Claimants in support of their argument on this issue. There are various other matters that support their position. On the basis of the material that has been put before the Court on this application, I consider that the Claimants have established there is probable cause for believing that the Defendants will not return to the jurisdiction:

(1) The business in which the Defendants have been, and still are, involved are internet-based operations, running YouTube channels and similar. The operation of those

activities is not tied to any particular jurisdiction. The Defendants require only an internet connection and a computer in order to carry them out.

(2) The Facebook messages referred to above reinforce the impression of the First Defendant as someone who does not intend to pay the First Judgment if he can avoid it (although that was probably clear in any event by the time those messages were sent). He is clearly keen to remain "judgment proof" and the messages do not give the impression he is an individual who would be concerned about moving again in order to do so.

(3) The Defendants are judgment debtors in Texas, owe substantial sums of money to the Claimants, and have to date not sought to pay anything in discharge of those debts. The second set of proceedings in Texas was about the Defendants' steps in transferring assets to defeat the First Judgment, and the Texas court found they had been engaging in such practices, and found them liable in various ways, as well as holding the First Defendant to be in breach of the Temporary Restraining Order, the Turnover Order and the Temporary Injunction resulting in the issue of a writ for his arrest. This is consistent with an approach of seeking to defeat legal process and avoid obligations.

(4) The First Defendant's connections with the UK are slight and could be cut relatively easily. He is a US citizen, who has lived in the UK only since September 2020. His only real tie to the UK appears to be his marriage to the Second Defendant. I recognise that the Second Defendant has stronger ties. She is a UK citizen, and had grown up here and lived here until she moved to Texas in May 2019, where she lived there for only just over a year until August 2020. However, she is married to the First Defendant and they are now operating as a couple. If the First Defendant were to decide to leave the jurisdiction, it is realistic to infer that the Second Defendant is likely to go with him.

50. As noted above, establishing probable cause for believing that the Defendants will not return to the jurisdiction does not require proof on balance of probabilities that will take place. But it does require quite a lot more than a fear expressed on the part of the Claimants. On the basis of the matters set out above, I am satisfied that the evidence, viewed objectively, demonstrates a real risk that the Defendants will leave this country in order to frustrate the court's processes (to use the formulation of Bean LJ in *Pugachev*) and that there is evidence from which it can be reasonably inferred that they will leave the jurisdiction and not return (to use the formulation of Floyd LJ in *Pugachev*). I therefore find that there is probable cause for believing that the Defendants will leave, and not return to, the jurisdiction.

Will the Defendants' absence materially prejudice the Claimants in the prosecution of their action?

51. As I have noted above, it is not enough in order to support a passport order that a defendant's flight from the jurisdiction is anticipated. There has to be a good reason to keep a defendant here beyond the mere existence of proceedings against them.

52. The Defendants contend that the passport order was made in order to support the asset disclosure provisions of the freezing order, and that the disclosure obligations have now been complied with. There have been no follow up applications seeking further relief in relation to the provision of information or disclosure. They noted that the Claimants have the benefit of the freezing order, which had been served on third parties including the relevant banks and the land registry had been notified, such that the assets could not be dissipated. This was in addition to the orders in the USA, including those served on Google and YouTube relating to certain revenue streams. There was, therefore, no further need to keep the passport order in place and no basis to do so.

53. The Claimants identified a number of matters which they said justified keeping the Defendants in the UK.

54. First, the Claimants said that they have specific concerns about what the First Defendant has failed to reveal about certain cryptocurrency assets (which the Claimants believe may be worth around $700,000). The Claimants say that in the period 2018-2019, the First Defendant traded cryptocurrency through an account with Coinbase in the name of his then wife, Chrissie Martin. They exhibited part of a transcript of Chrissie Martin's evidence given in the trial of the second Texas proceedings in April 2022, which was to the effect that the First Defendant had traded cryptocurrency which she suspected he had done in her name.

55. The freezing order (at paragraph 11(b)) required the Defendants to say "*where and how any cryptocurrency which was held by him with Coinbase as at January to May 2018 is currently held ... or ... if any of those assets are no longer owned by the Respondent, when they were disposed of and what has happened to their proceeds.*" The Claimants say that must encompass cryptocurrency which was held not in his name, but in his (then) wife's name, and in support of that they rely on paragraph 6 of the freezing order, which provides: "*For the purposes of this order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.*"

56. In his affidavit dated 17 May 2002, the First Defendant stated that he did not hold any cryptocurrency with Coinbase in the period January to May 2018. The Claimants' solicitors sent an email to the Defendants' solicitors on 18 May saying that they understood the cryptocurrency assets were held in the name of Chrissie Martin but controlled by the First Defendant and treated by the First Defendant as his own. They asked the First Defendant to answer paragraph 11(b) of the Freezing Order so that it covered cryptocurrency in the name of Chrissie Martin and said that if he refused to do so, they would seek an order to that effect "at the hearing" (presumably a reference to the then imminent 20 May 2022 hearing). They appear not to have sought such an order, but repeated the request by email on 29 May, reserving the right to seek an order from the court. The Defendants' solicitor responded on 31 May 2022 repeating what Mr Martin had said in his affidavit and contending that the request went beyond the scope of the requirement for information in the freezing order. They asserted that the Defendants had complied with their disclosure obligations under the freezing order.

57. There was no further follow up from the Claimants in relation to this, and they made no application for any order relating to it.

58. In the evidence filed for this application, the Claimants narrated the background and their position in relation to the cryptocurrency allegations, as summarised above, noted that they did not accept the First Defendant's statements, and said they intended to return to this matter when it came to enforcement of any judgment they might obtain in these proceedings. They did not suggest they would seek any further order or direction from the court in relation to this point in the near future or indeed at all pre-judgment. At the hearing it was made clear that the Claimants took the view that the Defendants were in breach of the freezing order in not having provided the information they contend it required, but the Claimants' counsel confirmed they did not intend to seek any further order (for example for disclosure) in relation to the cryptocurrency at the present stage (though he subsequently suggested that the court might direct a witness statement be provided without an application, as I mention below).

59. During the course of his submissions, the Defendants' counsel told me that his instructions from the First Defendant (which could be confirmed in a witness statement from the First Defendant) were that the First Defendant had never held any cryptocurrency in his own name (whether on his own behalf or for someone else) and he had never traded any cryptocurrency in his own name. I was not given any information from the Defendants about whether or not the First Defendant had traded cryptocurrency for his former wife in her name.

60. This, therefore, is an area of dispute in relation to the freezing order, where the Claimants say that the Defendants are in breach of it, and the Defendants refute that. However, the exchanges in correspondence relating to this issue took place some time ago, resting with the Defendants' solicitors' letter of 31 May 2022, and the Claimants have not since sought to take the point any further. They have not made any application that further information or documents be provided, or sought to bring to court their allegation that the Defendants are already in breach of the order (for example, with a contempt application) or sought any other order that might progress it (such as seeking to cross-examine the First Defendant).

61. This is not, therefore, equivalent to a situation where the Claimants are making an application for disclosure with the freezing order, and require the Defendants to remain within the jurisdiction so as to ensure that disclosure order is effective. That was the original purpose of the passport order, made supporting the disclosure and information provisions of the freezing order, but the Defendants provided their responses to those parts of the order some time ago, and the Claimants have not sought any further relief in relation to them. It would have been open to the Claimants to seek further orders relating to this issue, depending on what they thought and were advised was the best course, and if the court had considered such an application well-founded it might also have considered that the passport order needed to be retained in order to ensure such ordered were effective. However, the Claimants did not do so.

62. The fact that there was raised in correspondence, some 4 months ago, a dispute as to whether the Defendants had properly complied with their disclosure obligations under the freezing order and that the Claimants might return to that topic at some point in the future is not (at least in this case) a sufficient basis to continue to retain the Defendants' passports. The retention in such circumstances would be open-ended, continuing for as long as the Claimants chose not to bring their contentions that they were entitled to

further information or other relief to a head, and not consistent with the general principle that the passport order should remain in force for no longer than necessary to accomplish its legitimate purpose.

63. Second, the Claimants contend that there has been a recent and serious breach of the freezing order by the Defendants, by way of effective closure on 12 September 2022 of the FuturisticHub YouTube Channel owned by Wild MC by way of removal of its content. The Claimants allege that this closure is likely to result in a significant loss of revenue for Wild MC (which is wholly owned by the Second Defendant). The Claimants' solicitor referred in his evidence to external sources estimating monthly earnings of $1,900 - $29,000 for this channel. The Claimants wrote to the Defendants raising this as an alleged breach of the freezing order on 14 September 2022, asking them to "purge their contempt by restoring the channel" and saying if they did not do so the Claimants were likely to initial committal proceedings.

64. In response, the Defendants say that closing the channel did not breach the freezing order. They say that Wild MC's assets, including the FuturisticHub channel, already belong to the Claimants pursuant to the Second Judgment in the US proceedings (although the Defendants do not accept that judgment) and that any income generated since then by the FuturisticHub channel has been held by Google and not paid to Wild MC or the Defendant, but rather paid into court in Texas. They say, therefore, that FuturisticHub has not been generating any revenue for Wild MC since that point in time so removing its content has not diminished any value to Wild MC or to the Defendants. In fact, the Second Defendant says her intention is to remaster the content and release it on another channel that still belongs to Wild MC such as to increase its value. However, the Claimants do not accept that there has been no breach, in particular given that the freezing order expressly identifies "the assets of Wild MC" as covered by the prohibition in the freezing order.

65. There is clearly a dispute between the parties as to whether what has taken place was a breach of the freezing order. That was canvassed, but not with a view to resolution on this application. Evidence responding to that allegation was served by the Second Defendant on the eve of the hearing, after skeleton arguments had been exchanged, and the Claimants' solicitors had not by the time of the hearing had a chance to take instructions in relation to it from their clients. I do not determine on this application whether or not here has been a breach of the freezing order in this respect, but the Claimants appear to have a real (as opposed to fanciful) prospect of establishing that there has been.

66. However, even if the closure of the channel was properly to be characterised as a breach of the freezing order, the question arises as to what the Claimants say should happen as a result of that. If they were seeking some form of further relief which would only ultimately be effective if the Defendants were in the jurisdiction, that would have a direct bearing on the issue of retention of the passports. As things currently stand, they are not doing so, although they have threatened in correspondence to initiate committal proceedings in relation to this. I will return below to how I consider this ought to be dealt with.

67. Third, the Claimants said that the Defendants had breached the freezing order by failing to disclose in their affidavits of assets the value of the holiday for which they have now explained they had pre-paid and which was, at least at that point, refundable. Whether this

did constitute a breach was contested by the Defendants and, in any event, Mr Laville (for the Claimants) did not press this very hard in his oral submissions. He said it was not determinative, but was an example of the Defendants not taking their disclosure obligations seriously. The Claimants have not suggested they intend to take the point any further or to seek any orders in relation to it.

68. Similarly, there was reference in the Claimants' skeleton argument to the Defendants having not answered questions in correspondence about the source of the funds used to purchase the holiday. The Defendants said they were under no obligation to do so. Mr Laville did not press this point orally, and it does not advance the issue either way.

69. Fourth, the Claimants sought to say that absence of the Defendants from the jurisdiction would cause them material prejudice in relation to future enforcement of a money judgment, if the Claimants are successful in obtaining one in these proceedings. They contended that a post-judgment freezing order would be more effective if the Defendants were in the jurisdiction (for example in ensuring compliance with any further information or disclosure orders) and that enforcement generally would be likely to be more effective if the Defendants were within the jurisdiction (for example in commencing bankruptcy proceedings if the Claimants were so advised).

70. This presupposes that the Claimants will be successful in obtaining a money judgment against the Defendants in these proceedings, something which is currently uncertain. It would also be something that could be said in many cases, and yet it the courts generally require something more specific and immediate in terms of the processes which the passport order is said to support.

71. The Court may, in an appropriate case, make a passport order that lasts until after trial (and the Defendants did not contend otherwise). Such an order was considered by Zacoroli J in *Corbiere v Xu* (above) (he having already decided to make a passport order until a disclosure order had been complied with). He noted that the principles were those set out by Mostyn J in *Young v Young* (which I have already referred to above) and noted (at [40]) that, in the case before him, two of those principles arose in particular for consideration in relation to the question whether a passport order should be made until after trial. Those were (i) the importance of the restraint being for as short as possible and (ii) the need for the claimants to show they were materially prejudiced without the restraint order. Here:

    a. There was no suggestion before me that the Claimants would be materially prejudiced *at* trial by the absence of the Defendants.

    b. There may be, as the Claimants have suggested, potential for material prejudice in respect of enforcement of any order for money judgment they obtain at trial, but as in *Corbiere v Xu* it lies in the Claimants' hands to obtain pre-trial relief which would (if enforced) substantially remove such post-trial prejudice. They already have a freezing order, which will remain in place, and have obtained information as to assets. They could (if they had thought it appropriate and worthwhile to do so) have sought orders for provision of further disclosure and/or information, to sought to cross-examine the Defendants on their assets or pursued some other form of similar relief. They have not done so. But having not taken such steps,

they cannot rely on that as constituting potential prejudice when it comes to post-judgment enforcement such as to justify continued retention of the passports.

c. The Claimants said that they would want to come back to the issue of whether the First Defendant owned any cryptocurrency post-judgment, and that his presence in the jurisdiction at that stage would assist them to do so. However, no explanation was proffered why they had not sought to take that issue further at this stage. The points made in the immediately preceding sub-paragraph apply, as well as those set out above when dealing with the cryptocurrency point.

d. It was suggested the post-judgment enforcement would generally be easier with the Defendants in the jurisdiction (the example given was it being easier to instigate bankruptcy proceedings), and that may as a generalised statement often be the case, but no specifics were given as to particular assets that it was envisaged would be easier to enforce against (beyond the cryptocurrency point mentioned above).

e. Although the Claimants have applied for summary judgment (and that application is now due to be heard at the end of October 2022), there is no certainty that application will succeed. Neither party suggested when they thought a trial might take place. The period for which the Defendants would be deprived of their passports would therefore be of an uncertain duration, and potentially lengthy.

72. In these circumstances, I do not consider that a passport order made on that basis (continuing post-trial) is justified in this case.

73. Fifth, the final point taken by the Claimants in their skeleton argument in seeking to maintain the passport order was the suggestion that, by making the application now, rather than having either raised the issue in May 2022 or left it until the listed return date (in December 2022), the Defendants were abusing the process of the Court.

74. Mr Laville did not address me at length orally on this point and his submissions made it clear that the Claimants did not suggest that this was itself a bar to the relief that the Defendants sought. Rather, he said, it was a point that went to the Court's discretion in deciding what to do about the passports that (i) the Defendants had not raised it earlier in May when the freezing order with the passport order was before the court and was continued, (ii) they had not waited until the adjourned return date to raise it when the parties would be before the court again to deal with the freezing order and (iii) they had therefore caused a further hearing to take place when it need not have done.

75. I do not find anything of substance in these points in relation to the question whether the passports should be returned. First, even if this application had been made at the hearing on 20 May 2022 it is difficult to see how it could have been immediately resolved. At that stage, the Defendants' affidavits of assets had only very recently (on 16 and 17 May 2022) been served, and the parties were engaged in correspondence about their adequacy (which went on until the end of May). Even, therefore, if it had been raised at that point in time, it is likely it would have required at least one further, later hearing to deal with it in light of the outcome of the correspondence about the affidavits of assets. Second, parties are generally permitted to come back to court before the return date to seek variations of the freezing order where they are required, and it does not appear to me that by agreeing

to continuation of the freezing order, including the passport order provisions contained in it, until the adjourned return date the Defendants were agreeing not to apply for any variation of the order in the interim period. The Continuation Order contained a provision confirming that anyone served with the Order could apply at any time to vary or discharge it (on notice to the Claimants' solicitors) and the paragraph dealing with the passport order in the Continuation Order starts, "*Until the Adjourned Return Date or further order.*" Third, whilst it may have been more procedurally convenient to deal with this point on the adjourned return date at the same time as with any application to discharge the freezing order, where what is at stake is the restriction of movement of the Defendants and an injunction against their travel outside the jurisdiction, in other words a direct interference with their personal liberty, I do not consider it to be abusive of the process to return to court seeking the lifting of that injunction once it appears that the reason for its imposition is no longer in place.

76. As a result, this point does not affect my decision about the appropriate order to make on this application.

Conclusion and disposal of the application relating to the passports

77. I have set out the matters above in detail under the two particular headings which took up the majority of the argument before me, namely whether there is probable cause to believe the Defendants will quit the jurisdiction (i.e. that they will not return from their holiday) and whether their absence would materially prejudice the Claimants in the prosecution of their action. I also keep in mind the other matters listed in the authorities that I have identified above, including the need to exercise the jurisdiction with caution and that the law favours liberty.

78. I have considered above each of the matters advanced by the Claimants in support of the retention of the passport order individually, but I also consider their collective and cumulative effect. As things stand, even though I have found that there is probable cause for believing that the Defendants will not return to the jurisdiction, taking into account the matters I have referred to above and the factors set out in *Pugachev* and in *Corbiere v Xu*, I do not consider the matters advanced by the Claimants sufficient to support the retention of the order, either separately or if considered together and cumulatively.

79. As things stand, the Claimants have not been able to point to any element of the court's process which is currently engaged which requires the Defendants' presence in the jurisdiction, and nothing specific in the orders already made which requires their presence in order to render them effective (and no other orders have been articulated as relief which the Claimants now seek which may require the Defendants' presence in order to render them effective). As a result, they have not established that the absence of the Defendants from the jurisdiction will materially prejudice them in the prosecution of their action.

80. In terms of the particular considerations identified in *Corbiere v Xu* at [31], they have been covered by what I have already said, but in summary:

    a. Retaining the passport order would cause harm to the Defendants in terms of continued restriction of their personal liberty. (It would also prevent them going

on their holiday but, as already mentioned, I do not regard that as a determinative or particularly strong factor).

b. However, as things stand, there will be no immediate material harm to the Claimants if the passports are released, and such harm as they say that might suffer post-judgment is an insufficient justification in this case. I have dealt with each of the points they raised above. Whilst, there may be potential for material prejudice in respect of enforcement of any order for money judgment that the Claimants obtain at trial, as I have explained above it lies in their hands to seek to remove such prejudice as they can at this stage, and an order to reain the passports until post-trial would be for an uncertain and potentially lengthy period, which I do not consider can be justified in this case.

c. In the circumstances here, retention of the passports is not reasonable or necessary, and it is not ancillary to any particular order.

d. The passport order has already been in place for a considerable period of time, supporting the disclosure obligations in the freezing order. In circumstances where the Claimants have not taken any steps to seek further relief from the court in relation to those obligations, or in relation to any other matter which would require the Defendants' presence within the jurisdiction in order to be effective, retaining the order in place would be to do so for longer than was necessary.

e. The order for disclosure in the freezing order, which was the initial justification for the passport order, cannot here continue to justify the retention of passports. And there is no other order that the Claimants have sought which currently does so.

81. There is, in short, currently nothing to justify the restriction on the liberty of the Defendants that the orders would continue to impose. The basis for the imposition of the passport order in the first place was to ensure compliance with the disclosure orders; affidavits were served pursuant to those orders, and the Claimants have never pursued any form of further relief in relation to them or otherwise in relation to disclosure or the provision of information. Nor have they sought any other order (whether for cross-examination, or committal, or otherwise) which would require the Defendants' presence within the jurisdiction in order to be effective.

82. The Claimants suggested, halfway through the hearing, that if I was concerned that there was an insufficient basis to continue the passport order, I could adopt the following course:

a. Direct the First Defendant to file an affidavit within 7 days identifying how and where any cryptocurrency which belonged to Chrissie Martin, and/or belonged to any other third party and was traded or dealt with by the First Defendant, is currently held or if disposed of when it was disposed of and what happened to the proceeds.

b. Give the Claimants 14 days to decide whether to make any application for cross examination or committal of the Defendants in relation to the cryptocurrency issue or the closure of the FuturisticHub YouTube channel, and if no such application

was issued within that 14 days allow the Defendants' passports then to be returned.

83. The first part of that suggestion effectively constituted an informal application for additional information on affidavit, made on the hoof, without an application notice or specific evidence in support (though some of the background had been traversed in the evidence filed in opposition to the Defendants' application), and which was not flagged in the skeleton argument. It was also in wide terms dealing with assets belonging to unnamed third parties (going beyond any cryptocurrency in Chrissie Martin's name), which had not been canvassed at all in any evidence. Mr Laville did not seek to make this as a formal application, nor did he seek to explain the basis for it in any detail. Rather, it was presented as an approach that the court might adopt as some sort of fall-back to keep in place the passport order.

84. I am not attracted by that approach. Any application for information of that type, in particular where the perceived need for the information has not arisen only recently and is not said to be urgent, generally ought to be the subject of an application notice, or at least some other form of proper and advance notice. Here, the Claimants have been aware of the issue about the cryptocurrency since May, and have not advanced it at all since then. It is difficult to see why they could not have sought such an order before now. If they want to pursue an order for such an affidavit, they ought to apply for it, support it and explain it.

85. The Claimants may feel that the loss of the passport order will hamper them if they wish to continue to explore matters relating to disclosure, for example the cryptocurrency point, or the recent events concerning the closure of the YouTube channel referred to above. However, in relation to the cryptocurrency issues, this is of their own making. They threatened to make an application for further information in May, yet never pressed it, and were content to leave this point untouched until referring to it in response to the current application.

86. In relation to the closure of the YouTube channel, that took place much more recently, and there was little time before the hearing for the Claimants to advance matters in relation to it. However, the Claimants did not say at the hearing whether they would pursue any further relief in relation to it. Although contending that it constituted a breach of the freezing order, and having threatened in correspondence to bring an application for committal, at the hearing the Claimants did not say that the current situation would cause them to take any further particular steps. Mr Laville said his clients were considering whether to make an application for contempt, but had not yet decided whether or not to do so. Accordingly, it does not provide a current reason to retain the passport order.

87. However, it will be open to the Claimants to make a further application for the Defendants' passports to be retained if they were to make an application which may require such an order to ensure its effectiveness, whether that be for disclosure, cross-examination, committal or otherwise. In so saying, I am not seeking to encourage (or to discourage) the making of such an application, but simply recording that remains a course open to the Claimants if, on further consideration of the recently discovered matters, they feel able to and consider it advisable to make one. It would of course be a matter for the court hearing that application as to whether, in those circumstances before it, a further passport order was then justified.

88. I will therefore order the release of the Defendants' passports. I will not do so with immediate effect, but will provide that they be released to the Defendants after a short period of time. I am minded to order their release by 30 September 2022. That provides a period for the Claimants to consider matters in light of this judgment, including the recently discovered closure of the YouTube channel, to decide whether to take any further action. The Claimants' counsel acknowledged in his submissions that if the Claimants wanted to take any further steps in relation to that, they needed to do so within a relatively short period of time. Although retaining the passports until that date continues to act as a restriction on the Defendants' liberty, it does so for only a short further period of time which is justified in the circumstances. However, if either party wants to make submissions that it should be a different date, I will hear them on that point.

89. I have considered whether I ought to adopt a course similar to that suggested by the Claimants in the second part of their proposal made half way through their oral submissions i.e. that the passports should be released only if the Claimants have not made an application for some form of further relief within a short period of time. I do not think that would be an appropriate order in these circumstances. Without knowing in detail what further relief the Claimants may have in mind and what it might require, it is not possible to say in advance whether or not that would justify further retention of the passports.

90. I will therefore grant the Defendants' application for return of their passports, on the terms as to timing that I have referred to.

91. In terms of the information given to me by the Defendants' counsel on instructions during the hearing, he said that could be confirmed in a witness statement from the First Defendant. I will direct such a witness statement to be provided.

Variation relating to living expenses

92. The second part of the application was for a variation in the amount permitted by the freezing order for the Defendants to spend on their living expenses. The Continuation Order permits the Defendants to spend "an aggregate sum of £1,800 per month" towards ordinary living expenses (in addition to a reasonable sum on legal advice and representation in relation to these proceedings and the proceedings in the US up to £200,000, which sum was provided by a consent order dated 26 August 2022). Both parties agreed that this meant that the limit on living expenses was £1,800 between the First and Second Defendants i.e. not £1,800 each.

93. The Defendants now seek an increase in their monthly living expenses, as well as two one-off expenditures. I will deal with the monthly increase first.

94. As a preliminary point, the Defendants emphasise that this is a pre-judgment freezing order, not a post-judgment freezing order. Although there are outstanding US judgments they are not directly enforceable in this jurisdiction, and there is as things stand no English judgment in place. Moreover, the Defendants are seeking to contest these proceedings, and have said they will do so robustly. On this application, I have not been able to form, and have not formed, any view on the merits of the points they have said they are raising.

95. I was told during the hearing that the current figure of £1,800 was set following argument in front of Butcher J at the hearing on 20 May 2022. I was told that the Defendants' evidence for the purpose of that hearing calculated their monthly expenditure to be £1,735 (by reference to household bills where available, and best estimates otherwise), although I was not shown or taken through that evidence for the purpose of this application.

96. The Defendants have confirmed to their solicitors that the £1,800 limit is currently sufficient for their expenditure, but only just. They say that they anticipate they may need up to a further £500 per month over the next few months, which they say is to cover increased projected household energy costs as well as other costs which are generally rising.

97. There was little evidence placed before me to support this. The only real detail was given in relation to the Defendants' household energy account (which is in the name of the Second Defendant). This was (as at 8 August 2022) £469.20 in debit, and whilst that amount was not being immediately demanded by the Second Defendant's energy supplier, she was being encouraged to increase her monthly payment. That monthly payment currently stands at £139. The energy supplier's estimated annual energy cost for the next 12 months was £2224.27, in other words £185.36 per month.

98. There was said to be also some uncertainty as to the future both because of generally increasing energy costs and the fact that the Second Defendant's fixed tariff expired in November 2022. However, the bill exhibited to the Defendants' solicitors' statement stated that the current tariff was due to end on 6 November 2023 (not 2022). As a result, those matters do not fall to be taken into account at this stage.

99. The Claimants oppose any increase in the living expense allowance. Their position is that the Defendants have not done enough to prove that any increase in it is required.

100. As I have said, I do not have the evidence that was put before the court at the Continuation Hearing to justify the £1,800 per month then granted. A short excerpt from that evidence was provided in the Claimants' skeleton argument for this hearing, but only so much as to give the overall figure then put forward for utility bills, petrol, internet for business, and communications, for which in total £750 was estimated. The Claimants say that that particular figure appears very generous (given the monthly energy bill), but without getting into the estimates for those other items (which I was not given), it is impossible to say whether it is or not. In any event, having been given the evidence and heard argument, Butcher J determined that £1,800 was the appropriate amount.

101. I have to start with the £1,800 previously ordered by the court. In terms of changes since then, the evidence is that there is a current shortfall on the energy account, and also that the current monthly amount is not sufficient to cover the estimated costs over the next 12 months. There is also, as relied upon by the Defendants, a general increase in living costs at the moment which will feed through to their household expenses more generally.

102. Whilst there is something to be said for the Claimants' suggested approach of requiring the Defendants to wait for the actual cost increases and then seeking consent to an increase in the allowance (and, if agreement is not forthcoming, make a further

application to court), that is also capable of leading to a process that itself increases legal work and costs, and potentially a series of disputes at hearings.

103. In the circumstances, I will order an increase in the monthly allowance, to reflect what can be seen about the fact that their monthly energy payments will have to increase (for the two reasons identified above) as well as an amount to reflect the general rise in prices. I will increase it from £1,800 to £2,000 per month.

104. That is less than the Defendants seek, but they have not fully evidenced why they say they need an additional £500 per month. If it turns out that their costs increase by more than this over the course of the autumn they can of course always return to court with a further application, potentially on the adjourned return date if not before.

105. The two items of one-off expenditure are:

a. A sum of £469.20 to clear the current debit on the energy account. This is not currently being demanded as a one-off payment by the energy company, and I have already taken into account that this outstanding debit is one of the reasons that the monthly payments are likely to go up in my increase to the monthly allowance above. In other words, it is anticipated that this figure will be cleared through the increased monthly energy payments that I have already allowed for. I do not consider it right to give a further one-off allowance for this sum.

b. A sum of £800 for "general holiday expenditure". This does not seem to me to be expenditure of the type which is ordinarily permitted under a freezing order and was not in any event supported by sufficient detail.

106. The result is that I will vary the monthly allowance from £1,800 to £2,000 but not permit the two additional items of one-off expenditure.