**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**KING'S BENCH DIVISION**
Case No: KB-2024-002894
Neutral Citation Number: [2024] EWCH 3150 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 December 2024

**Before** :

**MR JUSTICE LINDEN**

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**Between :**

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| **MS SPYRIDOULA-MARIA ARMENIAKOU** | **Applicant/ Claimant** |
| **- and -** | |
| **MR JAMES ALEXANDER SCOTT THOMSON** | **Respondent/ Defendant** |

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**Alastair Tomson** (instructed by Stokoe Partnership Solicitors) for the Applicant/Claimant
**Gideon Shirazi** (instructed by Cooke, Young & Keidan LLP) for the Respondent/Defendant

Hearing date: 14 November 2024

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# JUDGMENT

**Mr Justice Linden:**

## Introduction

1. At a without notice hearing on 12 August 2024, HHJ Pelling KC made an interim freezing order and ancillary orders ("the Pelling Order"). The Return Date which he directed took place on 13 September, and on 10 October I handed down my judgment ([2024] EWHC 2568 (KB) - "the 10 October judgment"). In summary:

    i) I determined a number of issues about the admissibility of late evidence.

    ii) I also concluded that the Freezing Order made by Judge Pelling ("the FO"), which applied to the Respondent's assets in England and Wales up to the value of £11 million, should be continued.

    iii) However, in fairness to the Respondent, I was not prepared at that stage to widen the scope of the FO so that it applied to his assets worldwide, as the Applicant had asked for the first time in Mr Tomson's skeleton argument on the day before the Return Date. I said that if the Applicant sought such an order she should issue a formal application on notice.

    iv) I also left open the question whether the worldwide Asset Disclosure Order ("the ADO") made by Judge Pelling should be discharged or varied so that it only applied to the Respondent's assets in England and Wales. I said that the parties could make further submissions on two legal issues raised by the Respondent if he wished to challenge the provisional view in relation to them which I expressed at [137] of my judgment. These issues had not been dealt with sufficiently in Counsels' skeleton arguments or, because of lack of time, at the Return Date hearing. In the meantime, the ADO as varied would remain in place.

2. On 9 September 2024, I had also determined an application by the Respondent to vary the ADO. By the time of that hearing the relief which he sought was that, pending the Return Date, he was only required to disclose his assets in England and Wales, and that the disclosure be into a confidentiality club which did not include the Applicant or any of her current lawyers, whether in England or in Greece ("the variation application"). I rejected this proposal, but I varied the ADO so that the information was required to be disclosed into a confidentiality club of which the members on the Applicant's side comprised only her lawyers in England who were instructed in these proceedings. This had been agreed to by the Applicant as an interim measure, for pragmatic reasons. I also set a new deadline for compliance given that the Respondent had not complied with the deadline set by Judge Pelling.

3. Although the parties were able, at my invitation, to agree a number of points in relation to the order consequent upon the 10 October judgment, there were various issues which they were unable to resolve and they did not agree on the costs of the variation application, which I had reserved. A consequentials hearing was therefore listed for 5 November 2024. In advance of that hearing Mr Shirazi put in a skeleton argument on 22 October and Mr Tomson put in written submissions on the points of difference between the parties on 28 October. These documents were helpful in that they identified the issues for determination, and they set out the parties' arguments in relation to them.

The parties also provided draft orders which indicated, in coloured text, the terms of the orders which each contended for in relation to each disputed issue.

4. Unfortunately, on Friday 1 November it was necessary to reschedule the 5 November hearing to 14 November because of the unexpected unavailability of Counsel for the Applicant. On 13 November:

   i) At 4.15pm, Mr Tomson lodged a 29 page skeleton argument on behalf of the Applicant. For reasons which are not the fault of the Applicant's legal representatives, I was not aware of this until the beginning of the consequentials hearing. In addition to addressing the issues which were identified in Counsels' helpful October documents referred to above, the new skeleton sought additional orders for disclosure against the Respondent. No application notice had been issued despite the approach which I had taken in the 10 October judgment, and there was no draft order.

   ii) The Applicant also filed an application notice seeking a worldwide freezing order ("the WFO application").

5. Mr Tomson recognised that the WFO application would need to be determined at a future date. He was apologetic for the fact that his skeleton argument was late but said that it was not necessary to issue an application notice in relation to the additional relief which the Applicant now sought given that it would form part of the order made as a consequence of the 10 October judgment. Key information had only come to the attention of the Applicant's legal team on Monday 11 November and they had informed the Respondent's solicitors, by a 16 page letter sent late that night, that they intended to apply for the additional relief.

6. Mr Shirazi's position was that this was an ambush. It would be unfair for me to entertain the request for additional relief given the inadequate notice and given that he had therefore not had an opportunity to prepare his case or put in evidence in relation to it.

7. I had some sympathy for Mr Shirazi's position. It appears that important new information about the accounts for Vulcan Forged Limited ("VFL") for 2021-2023 did come to the attention of the Applicant's legal team on 11 November (see, further, below). But this provided an additional reason for the relief which was now sought. Mr Tomson also relied on a number of other points which had been known for some time and had been debated in detail in the correspondence. They were known as at 28 October when his written submissions effectively confirmed the agenda for the hearing which was, at that stage, scheduled to take place a week later. I therefore was not convinced that the new application could not have been made formally and with the required notice, even taking into account Mr Tomson's unavailability in the week or so before the 5 November hearing.

8. In the event, it was not necessary to hear full argument and make a final decision on this question or whether to consider the Applicant's request for additional relief. Both Counsel indicated that they preferred to proceed with the consequentials hearing and for me to determine such issues as I could fairly determine at this stage. It was effectively agreed that I would hear argument on the following issues which were identified in their October documents and would deal with the request for additional

relief if time allowed, and subject to consideration of any submissions which Mr Shirazi wished to make to the effect that this issue should be determined at a future date:

i) Whether I should discharge or vary the ADO so that it applies only to the Respondent's assets in England and Wales, rather than worldwide as Judge Pelling ordered? ("Issue 1")

ii) Whether the information disclosed by the Respondent pursuant to the ADO should remain subject to existing confidentiality club arrangements? ("Issue 2")

iii) Fortification of the Applicant's cross undertaking in damages. ("Issue 3")

iv) The costs in relation to the Respondent's variation application which I reserved on 9 September. ("Issue 4")

v) The costs of the Return Date ("Issue 5")

9. In the event, time did not allow consideration of any issues other than those which had been addressed in Counsels' October documents. The hearing concluded at nearly 5pm with Counsel having covered these issues, albeit the bulk of the hearing was spent on Issues 1 and 2 and the other issues were dealt with fairly briefly, reliance being placed on their written submissions. I therefore reserved my judgment so that I could follow up the references which they gave me in their written and oral arguments.

10. Mr Shirazi had applied for permission to appeal but he suggested, and I agreed, that this question should be considered in the light of my decisions on the five issues set out above.

11. Mr Tomson also confirmed that, contrary to the impression which had been given by the draft orders, he was not making any application for the information which was aired in private sections of the Return Date hearing on 13 September to be made public, nor to vary the orders which were made in this regard. The consequentials hearing was also conducted with the same derogations from the open justice principles as applied to the hearing on 13 September and for the same reasons: see [4] of the 10 October judgment. Submissions based on information which was disclosed pursuant to the ADO were made in private and on the basis that the documents to which reference was made would not be treated as in the public domain by virtue of them being referred to at the hearing. The hearing was otherwise conducted in public. Both parties were content with this approach.

**Summary of decision**

12. Having considered the materials and Counsel's arguments I have come to the following conclusions:

i) The ADO will be continued;

ii) The confidentiality club arrangements will be discontinued;

iii) The Applicant will deposit additional fortification in the sum of £325,000 into the Designated Client Account;

iv) The Respondent will pay 100% of the costs of the variation application;

v) The Respondent will pay 90% of the costs of the Return Date.

13. I have written this judgment with the current position in relation to protecting the information which was disclosed pursuant to the ADO in mind. However, in the light of my decision in relation to the ADO it will also be necessary to revisit the question of what information disclosed pursuant to that Order should now be available to the public. My decision that this information should be dealt with in private was made at a stage when the validity and continuation of the ADO were in dispute, and therefore partly on the basis that dealing with it in public may be self-defeating for the Respondent. That will no longer be the position in the light of my decision. Moreover, at least some of the information disclosed appears to be publicly available information and a question therefore arises as to whether it is necessary or appropriate to deal with some or all of it in private and whether some or all of the documents should be available to the public.

14. I am aware that there are other applications which remain to be considered including the Applicant's applications for additional disclosure and for a WFO. On 7 September 2024 she made an application to commit the Respondent for contempt of court and for service out of the jurisdiction which I understand is pursued. Steps are being taken to list these matters.

## Background

15. I refer to the 10 October judgment for the background, which I do not repeat here. There is also an approved transcript of the oral judgment which I gave on 9 September ([2024] EWHC 3027 (KB)).

## Issue 1: whether the Asset Disclosure Order should apply only to the Respondent's assets in England and Wales

The hearing on 12 August 2024

16. In the relevant part of his judgment ([2024] EWHC 2136 (Comm)) Judge Pelling referred to the principles identified by Popplewell J in *ICICI Bank UK plc v Diminco NV* [2014] 2 CLC 647 at [27] in relation to applications for freezing orders pursuant to section 25 of the Civil Jurisdiction and Judgments Act 1982. He cited the principle, at [27(2)], that where there is reason to believe that the defendant has assets within the jurisdiction the English court will often be the appropriate court to grant protective measures by way of a domestic freezing order over such assets. He said that this principle applied in full measure in the present case but it was not just and convenient or expedient to make a worldwide order given that *"there is some evidence that, in the past, this respondent has formed companies in jurisdictions other than England and Wales and Greece but no evidence that they are of any significance currently"*: see [16]-[17] of his judgment. Judge Pelling went on to consider whether or not there was an issue with comity if he were to grant an order in relation to proceedings in Greece and held that there would not be given that a Greek Court would only make orders which applied to assets in Greece: see [18].

17. In a brief exchange after judgment had been given and when the drafting of the Interim Order was being finalised with Judge Pelling, Mr Tomson drew attention to the fact

that the proposed ADO would apply worldwide, notwithstanding that the Judge had refused the application for a WFO. The Judge made the point that this would not normally be the approach and that the order would normally be limited to England and Wales, as the FO was. Mr Tomson asked for the ADO to be made on a worldwide basis nevertheless *"given the nature of the case and the international dimension….it would protect my client if we could leave that as worldwide"*. The Judge said: *"Alright, I will leave it as it is"*.

Submissions on behalf of the Respondent

18. Mr Shirazi's position was that there was and is no basis or justification for the ADO to apply worldwide. There was also a breach of the duty of full and frank at the hearing before Judge Pelling in that he had not been addressed on the very real legal difficulties with the order asked for by Mr Tomson. Nor had any of the relevant authorities had been drawn to the Judge's attention.

19. On the Return Date, and at the consequentials hearing, Mr Shirazi submitted that in the circumstances of this case there is no power to order disclosure of information for use abroad. This was the effect of *Green v CT Group Holdings Limited* [2024] 2 All ER (Comm) 342 where Mr Charles Hollander KC (sitting as a Deputy High Court Judge) held that *Norwich Pharmacal* relief is not available to obtain evidence for the purpose of using it in foreign civil proceedings. The common law governing such applications is, in effect, subject to the Evidence (Proceedings in other Jurisdictions) Act 1975 and the requirements of that Act must therefore be satisfied before an order for the provision of evidence or information for such use will be made. Mr Shirazi submitted that no meaningful distinction can be drawn between *Norwich Pharmacal* orders and freezing orders for these purposes. He said that this analysis was consistent with Gee on Commercial Injunctions, 7th Edition ("Gee"), at 23-009 but, insofar as it was not, Gee was wrong. He also emphasised the point, at [48] of *Green*, that the identification of the purpose for which the relief is sought is crucial in multi-jurisdictional cases because if the intended purpose is illegitimate, the court will not make the order.

20. Further, Mr Shirazi argued that, in any event, CPR Rule 25.1(1)(g) provides that the court may grant the following interim remedy:

> *"an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction".*

21. His position was that all of the cases in which this power has been considered have involved ongoing litigation in England. The cases in which an order was made were almost invariably ones in which the applicant was considering whether to seek an injunction. He relied on *JSC Mezhdunarodniy v Pugachev* [2016] 1 WLR 160 ("*JSC*") at [48]-[52] (which in fact involved litigation in Russia) and emphasised that the Court of Appeal had said that Rule 25.1(1)(g) requires that there is some credible material on which such an application might be based: see [49]-[51].

22. In the present case, Judge Pelling had refused the application for a WFO and so the Respondent's assets other than in this jurisdiction were no longer the subject of an application for a freezing injunction when the ADO was made. In his 22 October skeleton argument he argued that nor, realistically, would they be the subject of such

an application at the stage of the application before Judge Pelling, as at the Return Date or at the stage of the consequentials hearing. In the 10 October judgment I had said that if the Applicant sought to expand the scope of the FO so that it applied worldwide she should apply on notice. That had not happened despite the length of time which had elapsed since then and it was not going to happen now. Rule 25.1(1)(g) therefore did not apply.

23. Mr Shirazi said that there was a further problem which is that the English Courts are not seized of the litigation to enforce the Mediation Agreement. The court only has jurisdiction to make an order where the requirements of section 25 of the Civil Jurisdiction and Judgments Act 1982 are satisfied. Section 25(2) provides that the court may refuse to grant that relief if it is of the opinion that the fact that it has no jurisdiction, apart from under section 25, in relation to the subject-matter of the proceedings in question makes it inexpedient to grant it. As Judge Pelling recognised, the English courts should generally be slow to make orders under section 25 because of the issues in relation to comity which they may raise. At [23] he said that it was not inexpedient to make a FO under section 25 *"as long as ….its territorial effect is limited to England and Wales"*.

24. Mr Shirazi submitted that even if the power to make the ADO did or does exist it should not have been exercised for the reasons he had given. Asset disclosure orders are made to police an injunction and not merely because a party wants such an order. It is no answer to say that in this case the purpose of a worldwide ADO was for use in the English proceedings rather than for use abroad in that it was to police the FO which had been granted. Information about the assets which the Respondent owns abroad are of no use in policing an order which applies to England and Wales and is irrelevant to the question whether he will dissipate those assets. In any event, nor has the Applicant produced any evidence to support any such justification, which is what *Green* requires.

25. In his oral submissions Mr Shirazi cited *Derby v Weldon (Nos 3 and 4)* [1990] Ch 65. Whilst appearing to accept that the question whether a disclosure order could be of wider ambit than the freezing order to which it is ancillary was left open by the Court of Appeal (see 86G, 94H-95B and 96A), he particularly wished to emphasise that Neill LJ said (at 94H) that *"as at present advised"* his opinion was that the general rule was that it should not be, albeit Neill LJ did not find it necessary to consider whether there may be exceptions and if so what they were (see 95B). Mr Shirazi referred to this as "the mismatch point".

26. In his oral submissions Mr Shirazi addressed *Lakatamia Shipping Co Ltd v Su & Others* [2015] 1 WLR 291 ("*Lakatamia*") and *JSC* (supra), which were relied on by Mr Tomson. His submission was that the former was irrelevant and he emphasised that the facts of the latter were different and that the principles identified by the Court of Appeal were therefore stated in a different factual context to the present.

27. Mr Shirazi recognised that the position had moved on since his skeleton argument in that an application for a WFO had since been filed but, in effect, he submitted that it had no credible basis and/or would fail. In particular, he argued that:

    i) The evidence on which the application relies was obtained as a result of an order which should never have been made;

ii) The application does not grapple with the comity issues and nor is there any reason why the English court should take a role in relation to the Respondent's assets in Greece given that the Greek courts are able to make appropriate orders;

iii) I should regard the application with great scepticism given what I had said in the 10 October judgment about the need for an application notice, given the timing of the WFO application and given that no explanation has been proffered for its lateness after the Respondent's solicitors had specifically asked whether such an application was to be made.

Submissions on behalf of the Applicant

28. Mr Tomson submitted, in agreement with the provisional view which I expressed at [137] of the 10 October judgment, that *Green* is correct, and the position which it confirmed is in principle applicable in the context of freezing order proceedings as well as applications for *Norwich Pharmacal* orders. But *Green* is irrelevant in the present case because the information sought by the Applicant and required by the ADO is not for the purpose of proceedings abroad: it is for the purpose of the freezing order proceedings in this jurisdiction.

29. Mr Tomson relied on *JSC* to submit that the overarching principle is that the jurisdiction to make a freezing order *"also carries with it the power to make whatever ancillary orders are necessary to make the freezing order effective"* (per Lewison LJ at [47]). Mr Shirazi's submission that the Court did not have the power, in circumstances where the FO applied to assets in England and Wales, to make an ADO in relation to the Respondent's assets abroad was simply wrong as *JSC* itself clearly shows.

30. Mr Tomson submitted that in this case a worldwide ADO was and is needed to police the FO and, in any event, a credible application for a WFO was a realistic possibility and has clearly been in prospect for some time. One of the Respondent's most significant assets appears to be his 100% shareholding in VFL, which is caught by the FO. The value of this asset is in dispute. Moreover, the worldwide scope of the ADO has utility in identifying other elements of the Vulcan Forged business which might be dealt with by the Respondent so as to deal with the assets of VFL other than in the ordinary course of business, thereby reducing the value of the Respondent's shareholding. Such dealings would be capable of amounting to a dissipation of the assets which are subject to the FO.

31. In this connection, Mr Tomson relied on *Lakatamia* (supra) where the Court of Appeal held that the assets of a company which was wholly owned by a person who is subject to a freezing injunction were not directly affected by the injunction. However, that person was nevertheless restrained from procuring the company to make a disposition which was likely to result in a diminution in the value of his shareholding, as that would impermissibly diminish the value of his asset. As Sir Bernard Rix put it at [43]:

> *"a company owner will not be permitted to deplete the assets of his companies, thereby diminishing the value of his own assets in the form of his shareholdings, unless he can bring such dispositions within an order's exception for the ordinary course of business. It is unlikely however to be within the ordinary course of business for a shareholder to act so as to diminish the value of his shareholdings."*

32. Mr Tomson also referred to *FM Capital Partners v Marino* [2019] 1 WLR 760 in this connection and submitted that this is a case in which the degree of control which the Respondent has over the whole of the Vulcan Forged business is such that there is good reason why the assets of VFL should be considered as personal assets of the Respondent and therefore caught by the FO.

33. As for the question whether there was any basis in the present case for the view that the Respondent might dissipate his assets in this way Mr Tomson referred to my findings as to the opacity of the Vulcan Forged business and as to the risk of dissipation at [105]-[114] of the 10 October judgment. His submission was that the evidence that the Respondent is deliberately seeking to conceal and mislead as to the location and value of his assets, and the structure of the Vulcan Forged and associated businesses, has grown stronger in the light of the information disclosed pursuant to the ADO. On the current state of play in terms of the privacy or otherwise of this information, the following points can be highlighted in this (public) judgment which, in my view, are sufficient for present purposes.

34. First, at [106] of the 10 October judgment I accepted Mr Tomson's submission that the structuring and operation of the Vulcan Forged and associated businesses was opaque on the evidence. At [107] I found that the lack of transparency in the Respondent's business activities was compounded by the fact that VFL, which he implied was the principal vehicle for the business, had filed highly misleading accounts for 2021 - i.e. accounts which stated that the company was dormant - and no accounts thereafter. This had been identified as an issue at the time of the application to Judge Pelling on 12 August. I did not accept the Respondent's claim that he was unaware that this was what the 2021 accounts said, and I noted that his evidence did not address the question why the 2022 accounts were late.

35. On 11 November it became apparent to the Applicant's legal representatives that accounts for VFL for 2022 and 2023 had now been filed at Companies House, in each case on the basis that the company was dormant in the relevant year. In both cases the accounts purport to have been approved by the Board on 31 October 2024 and signed on their behalf by the Respondent. Although the Respondent's solicitors stated, e.g. in a letter dated 4 October 2024 which is currently subject to the confidentiality club arrangements, that he was *"taking steps to resolve"* the *"dormancy issue"*, no change in relation to the accounts for this year has been made. The position in terms of the statutory accounts of VFL is therefore that they state that the company has been dormant in all three of the years since it was incorporated. In a part of the hearing which was conducted in private, Mr Tomson took me to compelling evidence that this could not possibly be true in the case of any of these years.

36. It is not necessary to repeat the detail of this evidence because I did not understand Mr Shirazi to dispute that VFL was not dormant in any of the three years in question. The Respondent himself has said publicly that the Vulcan Forged business is "run through" VFL. Mr Shirazi's explanation, on instructions, was that the Respondent had asked his accountant *"to resolve the issue"*. For reasons which were not explained by Mr Shirazi, the accountant had filed dormant accounts for 2022 and 2023 and had not corrected the 2021 accounts. As Mr Shirazi put it *"for some reason he did the exact opposite"* to resolving the issue. The accountant had since been in contact with Companies House with a view to correcting the position and had been told that he should make an application to rectify the accounts or to file amended ones.

37. Mr Tomson submitted that this explanation was lacking in any credibility. He also noted that it is an offence knowingly to file misleading, false or deceptive statutory accounts: see sections 1112 and 1112A of the Companies Act 2006.

38. A second point made by Mr Tomson is that it has also become apparent that an important part of the Respondent's evidence about the Vulcan Forged business, in his first witness statement dated 4 September 2024, is misleading. As I noted in the 10 October judgment, one of the Applicant's concerns in making her application to Judge Pelling was that the Respondent had been restructuring the business by setting up companies in Singapore and the British Virgin Islands without fully informing her, and had made use of her identity documents and signature in relation to one of these companies, Elysium Tech Ptd. Ltd ("Elysium Tech"), without her knowledge: see e.g. [22] and [23]. Her case was that this was part of a pattern of excluding her from the business so that she would not be aware of the wealth which it was generating and he would be able to renege on their agreement that they were equal partners in it.

39. It was common ground that the Respondent had set up three companies in early 2021, he said on the advice of a Singaporean company called Jenga:

    i) Vulcan Forged Foundation Ltd ("Vulcan Foundation"), a Singaporean company, with him as the sole shareholder and director. This company was to own the BVI company;

    ii) A BVI company, also called Vulcan Forged Ltd ("BVI Co"), which was to be the issuer of the PYR tokens; and

    iii) Another Singaporean company, Elysium Tech, with the Applicant as sole shareholder and director. This was the company which would convert tokens into real currency: see [22].

40. However, in the 10 October judgment I noted that:

    i) The Respondent's evidence was that the Applicant was aware of these steps and that, in any event, *"he never actually implemented the business changes to fit the corporate structure"*.

    ii) Mr Tomson challenged this evidence for reasons which included the fact that the Vulcan Forged terms and conditions and privacy policy were stated to be governed by Singaporean law, thus indicating that a Singaporean company was an operational part of the business, albeit no legal entity was identified: see [25].

41. At [106] I accepted that:

> *"the Respondent's evidence that he never actually implemented the business changes to fit the structure is questionable, not least in the light of the fact that the contractual rights of its customers are governed by Singaporean law."*

42. It has since become apparent, through information disclosed pursuant to the ADO, that on 1 September 2022 BVI Co entered into a Token Purchase Agreement ("TPA"). Under the TPA, BVI Co was the Seller of PYR crypto-currencies for a very substantial price, implying that the BVI as well as the Singaporean structural changes were in fact

implemented, and supporting the Applicant's case that an important part of the Vulcan Forged business, from an economic point of view, was operated by the Respondent through offshore companies.

43. When this point was raised by the Applicant's solicitors in a letter dated 24 September 2024, by letter dated 4 October the Respondent's solicitors gave the following explanation:

> *"When our client gave evidence about the business structure proposed by Jenga and that it was not adopted, our client was referring to the interplay of the three separate companies described in Thomson 1 which were the foundation, the token issuer, and the fiat exchange. Our client did not say that he never implemented <u>any</u> business changes in line with Jenga's advice, as our client does consider the BVI company to be issuer of the PYR tokens…our client's evidence that "I never ended up using the structure" (and similar phrasing) follows and was clearly in relation to the Singaporean structure and in particular, to Elysium Tech, by way of explanation as to why [the Applicant's] name was used on that company"*

44. Again, Mr Tomson submits that this attempt to explain away this part of the evidence in the Respondent's first witness statement is *"desperate"* and wholly unconvincing. It was only because of the worldwide ADO that the Respondent was caught out in his deliberate attempt to mislead the Applicant and the Court. He also submitted that the position has been rendered *"murkier still"* by the fact that (contrary to the passage from the letter of 4 October 2024 quoted above) BVI Co was dissolved in November 2023. The Respondent claims to have been unaware of this and that he is seeking to have the company restored but Mr Tomson suggests that this should not necessarily be taken at face value.

45. <u>Third</u> there were a number of other points in relation to the Respondent's asset disclosure on which Mr Tomson addressed me, in a section of the hearing which was conducted in private. These are set out in detail in the correspondence between the parties since 12 September 2024 in the context of the confidentiality club arrangements. Bearing in mind that this material was heard in private, and that it is not necessary for me to repeat the detail here in any event, it is sufficient for me to record that Mr Tomson argued that, amongst other things:

i) the Respondent had failed to provide proper valuations of his shareholdings and had dramatically understated the value of his shareholding in VFL in particular;

ii) in July 2024, the Respondent had transferred 85% of his 100% shareholding in a Greek company [REDACTED PASSAGE]. He had done so in anticipation of the litigation about the Mediation Agreement and, effectively, to dissipate his assets;

iii) the Respondent's evidence that what appeared, from publicity at the time, to be a USD 8 million investment in Vulcan Forged by Skybridge Capital was in fact an investment of far less than this, was lacking in credibility;

iv) the Respondent's backtracking from public statements that VFL had more than 100 employees was lacking in credibility; and

v) his evidence about his ownership of crypto assets lacked credibility.

46. Mr Tomson submitted that these points, together with the points which I accepted in the 10 October judgment, clearly demonstrate that the Respondent's asset disclosure – whether in relation to the assets which are subject to the FO or his assets abroad - cannot be considered to be truthful or reliable. Moreover, there was and is a substantial risk that he has dealt or will deal with his assets here or abroad, or procure that assets are dealt with, so as to dissipate his key assets in this jurisdiction, namely his shareholding in VFL. Given that he has ultimate control of the corporate structures and the whole of the Vulcan Forged business, given the opacity of the evidence about how that business is conducted and given that the business involves cryptocurrency, this is easy for him to achieve.

47. His submission was that it was and is therefore necessary and appropriate for the ADO to apply worldwide so as to police the existing FO. But, in any event, even before Judge Pelling the position was that there might be a further application for a WFO. As at the Return Date there was such an application (albeit made in Mr Tomson's skeleton argument) and an application notice has since been filed. Mr Tomson disputed each of Mr Shirazi's points as to why this application was not credible.

Discussion and conclusion on Issue 1

48. I agree with Mr Tomson that *Green* is irrelevant in the present case given that the purpose of the information which Judge Pelling ordered to be disclosed was not for use in the proceedings in Greece. It was for use in the freezing order proceedings in this jurisdiction. Indeed, the Judge required an undertaking from the Applicant not to make collateral use of this information i.e. any use of it other than in the English proceedings.

49. The court clearly has the power to make the ADO which was made by Judge Pelling. He could make any disclosure order which was necessary to ensure that the freezing order was effective: see *JSC* at [47]. As Gee says, at 23-005:

> *"An order can be made if the purpose is to make an injunction effective, including identifying and preserving assets of the defendant which might otherwise be dissipated notwithstanding the injunction and policing the injunction."*

50. Moreover, per Gee at 23-006:

> *"The disclosure order will reveal and evidence the existence of assets, and therefore encourage compliance with the injunction for fear of contempt proceedings. It is essential in enabling policing of the injunction. It enables the claimant to consider whether further steps should be taken to preserve or safeguard the assets which are within the scope of the injunction, and whether there are other assets which should be made the subject of an application for freezing relief whether in England or abroad…"*

51. And at 23-007:

> *"The jurisdiction may be used to enable a claimant to consider making an application for existing freezing relief to be varied to apply to other assets which are not, or may not be currently with in the scope of the order. As long as there is*

*a possibility that an application may be made to freeze assets using the information to be disclose this will suffice and the question becomes one of discretion."*

52. Indeed, *JSC* confirms that it may be sufficient, for the court to make an asset disclosure order with the aim of ascertaining whether freezing relief is warranted, that there is some credible material on which an application for such relief might be based. It is not necessary to establish that such relief would be granted on the information currently available.

53. As to the question whether that power ought to have been exercised (see the citation from *Fourie v Le Roux* [2007] 1 WLR 320 [25] at [46] of *JSC*), insofar as it was and is necessary to bring the order within the terms of CPR Rule 25.1(1)(g), this Rule provides that the court may direct a party to provide information "about" relevant property or assets:

i) which are the subject of an application for a freezing injunction; or

ii) which may be the subject of such an application.

54. In this case, the position at the point when Judge Pelling granted the ADO was that all of the Respondent's assets, here and abroad, were the subject of an application for a freezing injunction and an asset disclosure order. Rule 25.1(1)(g) permitted him to make an order that information be provided "about" these assets. Per *JSC*, as a matter of principle the fact that the Respondent's assets abroad were not directly the subject of the FO and the fact the evidence at that stage did not justify a WFO did not necessarily mean that no asset disclosure order could be made in respect of the Respondent's assets abroad. Per *Lakatamia*, in circumstances where the Vulcan Forged business was controlled by the Respondent, its structure was opaque and there was a real risk of dissipation, it was permissible for him to make an order for information with a view to ensuring that the Respondent did not procure dealings with relevant assets which dissipated the value of the assets which were the subject of the FO. What the Judge ordered was a matter for his discretion.

55. It is plain from the transcript of the 12 August hearing that the Judge took into account the fact that he had refused a WFO. But that was not the end of the matter given the international dimension to the case and the Vulcan Forged business, given the nature of the business and given the opacity of the Respondent's asset position in this jurisdiction and abroad, as well as the evidence about the risk of dissipation. Judge Pelling clearly and permissibly accepted, on the evidence before him, that a worldwide ADO was necessary to *"protect"* the Applicant i.e. to police the FO and to enable decisions as to whether further steps should be taken to protect her against dissipation.

56. Moreover, although this does not appear to have been the basis for the Judge's decision, it did not follow from the refusal of the application for a WFO at that stage that any further application for a freezing injunction in respect of assets outside England and Wales could now be ruled out i.e. that it could not be said that the Respondents' assets abroad may be the subject of a further application for a freezing injunction. The Judge had simply held that a WFO was not justified at that stage.

57. Nor do I accept that there was a failure of full and frank disclosure in that Mr Tomson did not cite the authorities or raise the arguments against his application which Mr

Shirazi put to me. The reality is that Judge Pelling was very well aware of his powers in relation to these types of application as is quite apparent from the transcript and his judgment. But even if he had asked for, or been taken to, authority, *Green* was irrelevant as I have said. The key authority is *JSC*, which considers *Parker v CS Structured Credit Fund Limited* [2003] 1 WLR 1680 in a passage to which Mr Shirazi made reference in his oral submissions. *JSC* confirms that the Judge had the requisite discretion. So there was no need for Mr Tomson to cite *Parker* as Mr Shirazi suggested. Rule 25.1(1)(g), which might also have been cited, was satisfied as I have said. The passages from Gee which I have cited above, had they been cited to Judge Pelling, further confirmed that he had a discretion to make an appropriate order to protect the Applicant and, indeed, to make the order which he made. The key consideration relied on by Mr Shirazi as militating against a worldwide ADO was the so called "mismatch point" (although this description suggests a rather more simplistic approach than the law requires) but this was raised by Mr Tomson and the Judge had it in mind when he made his decision.

58. By the Return Date the position was that the Respondent's assets outside England and Wales were the subject of a WFO application, albeit I decided that in fairness to the Respondent a formal application should be made. The Applicant therefore easily satisfied the requirement under Rule 25.1(1)(g) that these assets were or may be the subject of an application for a freezing relief. Moreover, the case for the ADO applying worldwide had grown stronger in the light of the Respondent's disclosure pursuant to the ADO in that, as the Applicant's solicitor's letter of 12 September 2024 showed, there was a number of issues in relation to the accuracy and completeness of that disclosure.

59. By the time of the consequentials hearing, an application notice for a WFO had been filed. This is largely based on the issues in relation to the Respondent's compliance with the ADO which I have referred to above. In any event, the case for a worldwide ADO to police the existing FO had grown stronger in the light of the concerns raised by the Applicant about the accuracy of the Respondent's asset disclosure. At this stage, and bearing in mind that the Respondent has not filed detailed evidence in response and the WFO application remains to be determined, it is sufficient to say that the evidence thus far supports the following conclusions:

    i) The fact that the statutory accounts of VFL wrongly state that it has been dormant since its incorporation and the lack of clarity about the operation of the Vulcan Forged and associated business are important. The Respondent's shareholding in VFL is subject to the FO, VFL appears to be the principal entity through which the Vulcan Forged business is conducted and there is a dispute between the parties as to his stated valuation of that shareholding. Moreover the explanation which Mr Shirazi relayed to the court in relation to the statutory accounts of VFL is, on the face of it, extraordinary and incredible, particularly bearing in mind what was said about this issue in the 10 October judgment and in the solicitors' correspondence. These matters serve to heighten the concerns about the accuracy and reliability of the Respondent's asset disclosure and the risk that he will dissipate his assets.

    ii) I also agree with Mr Tomson that the Respondent's evidence in his first witness statement sought to give the impression that the corporate structure which had been created in early 2021 had not in fact been implemented. There was therefore no reason to be concerned that he may use offshore entities to dissipate

his assets. Indeed, the meaning which he conveyed is apparent from what I said about his evidence in the 10 October judgment. The Respondent said that *"in the end I never actually implemented the business changes to fit the structure"* and he made this point no fewer than three times at [23]-[25] of his statement as part of his answer to an important part of the Applicant's case, including on the risk of dissipation. He also said, in the same context, that BVI Co *"was supposed to be the token issuer"*, implying that this was the intention but in the end it had not happened. The position as it appears from the TPA is wholly at odds with this meaning and his solicitors' attempt to square it with what he said in his written evidence, and other publicly available information about BVI Co, was as unsuccessful as it was valiant.

iii) The other points made by Mr Tomson (see [45], above), and in the correspondence between the parties as part of the confidentiality club, give rise to real concerns about the accuracy and implications of the information disclosed by the Respondent pursuant to the ADO. All of these points, save for the recent issue in relation to the VFL accounts which was responded to by Mr Shirazi, have been aired in the correspondence. Mr Shirazi also had a fair opportunity to address them during the consequentials hearing and I therefore consider that it is fair to take them into account.

iv) The explanations in relation to these other points provided by the Respondent's solicitors thus far do not allay the additional concerns raised in the correspondence. Moreover, it was noticeable that Mr Shirazi chose to leave this aspect of the case to late in his submissions (in contrast to Mr Tomson who dealt with it first), to deal with it mostly in broad generalisations, along the lines that the concerns expressed were mere assertions, and to state more than once that he could not see the relevance of the points made by Mr Tomson when to my mind their relevance was obvious. Without implying that the Respondent should limit the scope of his responsive evidence for the purposes of the Applicant's further applications, I would highlight the issues in relation to the July 2024 transfer of shares [REDACTED PASSAGE] and the Skybridge Capital investment, which are set out in the Applicant's letter of 24 September 2024, as appearing particularly cogent and calling for a detailed response from him.

60. As for Mr Shirazi's submission that the WFO application is not credible or is bound to fail, I reject this for the reasons which I have given above and in the 10 October judgment. Whether it will succeed is to be determined in due course but, in addition:

i) As will be apparent, I do not accept that the evidence on which the WFO application relies was obtained as a result of an order which should never have been made;

ii) As a matter of fact, the WFO application does address the comity issues including by canvassing the possibility, as an alternative, that the FO would be expanded to cover the Respondent's assets abroad other than in Greece;

iii) I agree that the WFO application could have been made sooner but this, of itself, does not mean that it is lacking in credibility or bound to fail, not least given that it was indicated shortly before the Return Date.

61. So for all of these reasons I accept that the ADO made by Judge Pelling should continue, essentially for the purposes identified by Mr Tomson. Such an order is not inexpedient. I do not accept that it gives rise to comity issues in the same way as an order freezing the Respondent's assets in Greece would. It is also just and convenient to order that such information be disclosed given the need to police the existing FO and the fact that such assets are the subject of the WFO application.

**Issue 2: whether the confidentiality club should continue to apply**

The Respondent's position

62. Mr Shirazi submitted that the confidentiality club arrangements should continue to apply. He argued that this is implicit in my decision to continue the Pelling Order and there would have to be a material change of circumstances for the court to revisit the matter or set aside the confidentiality club. The only material change identified by the Applicant since I made the 9 September variation order is that, on 3 October 2024, the Respondent made an application in the Greek proceedings to reduce the alimony payments which he is required by the Mediation Agreement to make to the Applicant. In that context he has disclosed information about his assets with a view to proving to the Greek court that he cannot afford these payments. But his disclosure in those proceedings does not cover all of the information disclosed pursuant to the ADO, and so this is not a sufficient basis to set aside the confidentiality club arrangements.

63. In any event, Mr Shirazi submits, the existing arrangements should not be discharged. As is usual, the Applicant has given an undertaking against collateral use to the Court. However, the Court is required to consider the enforceability of such an undertaking when deciding whether to grant relief. As Nicholls LJ said in *Babanaft International v Bassatne* [1988] 2 Lloyds Rep 435 at 454:

> *"…The disclosure of information is an irreversible step. The only means available to the English court to control the use made abroad of information disclosed concerning foreign assets is such control as the English court may have in the circumstances over the plaintiff to whom it has compelled the defendant to make disclosure. Thus before making a disclosure order in respect of foreign assets, the court normally will need to be satisfied that, by reason of the plaintiff's continuing connection with this country or otherwise, the court has over the plaintiff a degree of control sufficient to ensure compliance with any orders it may make regarding the use of the information."*

64. Here, the Applicant is a Greek national who lives in Greece. Mr Shirazi submits that it is highly doubtful that the court has sufficient control over her to ensure compliance with undertakings given to the Court and any orders which it may make. Moreover, there is evidence to support the contention that the Applicant may misuse the information:

    i) The Respondent alleges that there has been collateral use, in criminal proceedings in Greece which were initiated by the Applicant's lawyers on 5 September 2024, of the witness statement of Mr Arjun dated 24 August 2024 to which I referred in the 10 October judgment. This statement was served by the Respondent on the Applicant's solicitors in England on 28 August as part of his application to discharge or set aside the Pelling Order.

ii) Mr Shirazi also relies on the Respondent's allegation that the Applicant had engaged in a campaign of unlawful surveillance and hacking in order to obtain information (referred to at [32], [37], [110] and [116(ii)] of the 10 October judgment). He argues that the use by her of information which has been unlawfully obtained indicates that she would be willing to make collateral use of information obtained in the course of the freezing order proceedings. Although the allegation of hacking is denied by the Applicant, and was not accepted by me, he submits that there is sufficient evidence, including the evidence of the two Bamboo employees to whom I referred at [32] of the 10 October judgment, for it to be right that I should proceed on the basis that there is at least a significant risk.

iii) He also submits that in the solicitors' correspondence in the freezing order proceedings the Applicant has implied that she might seek to make use of the information disclosed pursuant to the ADO.

iv) And he notes that the Applicant also originally asked for her Greek lawyers to be included in the confidentiality club and, although she then agreed to exclude them, insisted that she did not accept that it was inappropriate for them to be included but without explaining how the Greek lawyers could have any role in policing the FO.

The Respondent's position

65. Mr Tomson argued that the confidentiality club arrangements should not continue. He argued that, first, there is no legitimate basis for these arrangements and no need for them given that the Applicant has given an undertaking not to make collateral use of the information obtained without the permission of the Court. The Respondent only agreed to the confidentiality club arrangements for pragmatic reasons given the proximity of the Return Date.

i) As to the question of the enforceability of the undertaking given by the Applicant, the court has control over her by virtue of the fact that she has a bank account in the United Kingdom to which she referred in her first affidavit at [132] as enabling her to give a credible cross undertaking in damages. This issue was the subject of a number of emails from the parties following the consequentials hearing in which they argued about what was and was not in evidence.

ii) As to the risk that the Applicant would not comply with her undertaking, her position has consistently been that if she seeks to make use of information disclosed by the Respondent in the freezing order proceedings, she will make an application to the court. It is denied that there has been collateral use of Mr Arjun's witness statement. The true position is fully explained by the Applicant's solicitors in the solicitors' correspondence.

66. Second, my decision was to continue the Pelling's Order which did not require the information about the Respondent's assets to be disclosed into a confidentiality club. Mr Shirazi's submission is therefore contrary to my decision on the matter.

67. Third, the information disclosed pursuant to the ADO is now known to the Applicant in any event through the Respondent's application to vary the alimony payments due under the Mediation Agreement. Save for two items of small value, all of information disclosed pursuant to the ADO has been disclosed by the Respondent to her in the Greek proceedings.

68. Fourth, the confidentiality club arrangements now cause significant inconvenience and unnecessary complication to the Applicant and her legal team given that she is in the dark as to some matters of which they are aware as a result of being members of the confidentiality club. She is therefore unaware of the reasons for certain steps that they propose in the litigation. The fact that the Respondent has put his wealth, including the extent and value of his assets, in issue through his application in the Greek proceedings is also good reason, in the light of the concerns about his truthfulness in this regard, to seek to minimise his ability to be saying different things about his assets in the different sets of proceedings.

Discussion and conclusion

69. As noted above at [2], what the Respondent was seeking at the 9 September hearing was a variation of the ADO pending the Return Date. At the Return Date hearing, Mr Shirazi submitted in his skeleton argument that the confidentiality club arrangements should remain in place. In his oral submissions he said that it ought to have been suggested to Judge Pelling that there be confidentiality club arrangements pending the Return Date and, towards the end of the hearing, he suggested that any issue as to the continuation of these arrangements be dealt with as part of the consequentials flowing from my judgment when it was handed down. In my 10 October judgment I therefore did not make a specific decision on this issue one way or the other and, indeed, left the issue of the terms of the ADO to be resolved after further argument if it remained the Respondent's position that it should no longer apply to his assets abroad. At [11(iii)] I said that *"In the meantime, the ADO as varied will remain in place"* (emphasis added). The question of the continuation of the confidentiality club arrangements was therefore left open.

70. Turning to the merits of the competing arguments, I have decided that the confidentiality club arrangements should not continue. This conclusion is based on the following factors, of which the first two are the most important:

    i) The extent and value of the Respondent's assets is clearly an issue in the Greek proceedings which are on going. There is already an overlap in terms of the evidence provided by the Respondent pursuant to the ADO and the information disclosed by him in the Greek proceedings of which the Applicant is aware. As those proceedings progress, no doubt he will be required to provide further information which overlaps with his asset disclosure in the proceedings in this jurisdiction. That being so, the purpose of the confidentiality club arrangements is significantly undermined by the Respondent's application in the Greek proceedings.

    ii) Whether or not the information disclosed by the Respondent pursuant to the ADO (which, contrary to Mr Shirazi's approach, is not the same question as whether the same documents or correspondence have been disclosed or exchanged between the parties) is precisely the same as what the Respondent

has disclosed to the Applicant in the Greek proceedings, it does not seem to me to be just and convenient to complicate the ability of the Applicant or her legal team to identify discrepancies between what the Respondent has said in the two sets of proceedings and act on them. The possibility that there will be such discrepancies is, on the evidence, not a theoretical one.

iii) The Applicant has also given an undertaking against collateral use. As for the degree of control which the Court has over her in order to enforce such an undertaking, she has a bank account here which currently contains more than £3 million although I accept that this affords limited comfort to the Respondent given that she could, presumably, move these funds abroad if she wished to. She will also be ordered to pay additional fortification: see, further below.

iv) As for the risk of collateral disclosure, the Applicant has been clear in the correspondence that she may wish to make use of information disclosed pursuant to the ADO but she has also been clear that in the event that she did wish to do so she would make an application to the court for permission. I do not consider that the risk that this is untrue, and that she would simply take the matter into her own hands, is such as to outweigh the first three points, above. I agree with Mr Shirazi that there is evidence which is consistent with the Respondent's allegation that there was collateral use of the Arjun witness statement but this is denied by the Applicant's solicitors, who have provided an explanation in the context of the confidentiality ring in their letter of 3 October 2024 in particular. I am not in a position to reach a clear view on this issue but I note that there is no evidence that any collateral use was at the instigation of the Applicant.

**Fortification**

The Respondent's position

71. Mr Shirazi points out that Judge Pelling took the view that fortification of the Applicant's cross undertaking in damages was required, given that she is resident abroad. The Judge's approach was to require a sum to be held by her solicitors in England and Wales pending the Return Date, and to quantify that sum based on the cost of the loss of use of the money frozen by the FO. He estimated this at 5% per annum on the basis of the interest payable on an average US Dollar account.

72. Mr Shirazi relies on *Alta Trading UK Limited v Bosworth* [2021] 4 WLR 72 at [15]-[18], and particularly on the test at [17] where Mr Peter MacDonald Eggers QC (sitting as a deputy High Court Judge) said:

> *"17. ...It is ultimately a matter for the court's discretion, but the principles which guide the exercise of that discretion are that fortification should follow if the respondent to the injunction (the applicant for fortification) can demonstrate a good arguable case (and not to any higher standard) that:*
>
> > *(1) The respondent has suffered or will suffer a loss. For this purpose, there must be an intelligent estimate, being informed and realistic but not mathematically or scientifically precise or rigorous, of the likely amount of*

*that loss which has been or might be suffered by the respondent to the injunction by reason of the interim injunction.*

*(2) The making of the interim injunction is or was a cause without which the relevant loss would not have been suffered.*

*(3) There is a sufficient level of risk of loss to require fortification, meaning that if the court orders that the applicant for the injunction is directed to comply with its undertaking in damages and to compensate the respondent, there is a risk of the applicant for the injunction not satisfying any such order for damages."*

73. Mr Shirazi submitted that the standard for a good arguable case is as stated by the Court of Appeal in *Isabel dos Santos v Unitel SA* [2024] EWCA Civ 1109 i.e. a serious issue to be tried. The *Alta Trading* test is therefore readily satisfied in the present case, based on the evidence of the Respondent in his second and third witness statements dated 22 October and 7 November 2024 respectively.

74. In his second witness statement the Respondent says that since at least August 2023 he has been exploring different options with various banks for earning interest on deposits and/or on basic over the counter asset management investment products. Ultimately he did not proceed at that time but since then he has continued to consider options from time to time including various types of savings accounts which suit his criteria and needs. Were it not for the FO he would be looking to invest the £3.5 million from funds held in his non interest bearing Revolut account over 3-6 month periods at a time, rolling those investments over at the end of each period subject to his financial position and needs at the time.

75. The FO prevents him from doing this. Although the Applicant suggests that he could move the monies to an interest bearing account in England and Wales, the Respondent's third witness statement says that he is not able to do so because he is not resident in this country. He has not been able to find any savings accounts at institutions in England which are available to non-UK residents. In a letter dated 13 November 2024 the Applicant's solicitors noted that Revolut offers a savings account with a 4.75% interest rate for sterling. However, on 14 November 2024 it was pointed out to them that the account was only open to UK tax residents, which the Respondent is not.

76. Mr Shirazi says that the proceedings between the parties in Greece are likely to last for 3-4 years bearing in mind that there is an automatic right of appeal. The Respondent's evidence is that, by investing the money he could earn interest or returns of well in excess of 5 % and the payment should be calculated accordingly. Judge Pelling's approach was therefore a conservative estimate of the cost of the loss of the use of the funds in the Revolut account.

<u>The Respondent's position</u>

77. On analysis, Mr Tomson's principal viable argument that I should not order additional fortification at all was that I should be sceptical about the Respondent's evidence that, were he permitted to do so, he would wish to invest the Revolut monies in an interest bearing account. It appeared that the Respondent had not previously wished to do so and there was no reason to think other than that this was a tactical manoeuvre by him

in the context of acrimonious litigation. Fortification is a discretionary matter and I should exercise my discretion to refuse it in this case.

78. Mr Tomson submitted that, in any event, any award should recognise that the Respondent is rapidly depleting the sums in the Revolut account. His monthly expenditure pursuant to the Mediation Agreement is 100,000 Euros, and there has also been substantial expenditure on this litigation. I should therefore make any award on the basis that by the end of the three or four year period the sums available for investment would be spent or, at least, very substantially diminished.

Discussion and conclusion on Issue 3

79. I agree with Mr Shirazi that the test for fortification is satisfied in this case and that I should order fortification based on loss of use of the monies frozen in the Respondent's Revolut account.

80. As to quantum, the effect of the Respondent's evidence is that he would not invest the whole of the funds which are in the Revolut account. He would leave headroom of in the order of £1 million or perhaps 22% of whatever funds there were: his suggested approach is not absolutely clear. He would hope to make in the order of 5% on what he invested and he might make considerably more.

81. The funds in the Revolut account are being depleted at a rate of £1 million plus per year leaving aside payments in respect of legal costs, which are substantial and will continue. Doing the best I can based on a 5% return it appears that over a four year period he might make roughly £400,000 leaving aside legal costs and allowing for depletion of E100,000 per month. He might make more if he invested more aggressively, if he invested the £1 million or if his approach was to leave 22% headroom, but he has also had to pay legal costs and looks set to continue to do so.

82. I will therefore order that a further £325,000 is paid by the Applicant into her solicitors' Designated Client Account. This takes account of fact that USD 60,000 (c£50,000) have paid in and it is on the assumption that the Greek proceedings last 3 years from 23 August 2024. It is a rough estimate rather than the result of a mathematical calculation which takes into account all of the variables.

**Issue 4: the costs of the variation application**

The Respondent's position

83. Mr Shirazi recognised that the Respondent should be liable to pay the costs of the variation application but submitted that he should only be ordered to pay one third of these costs. His argument was that:

    i) The Applicant did not respond to the Respondent's request, dated 15 August 2024, to vary the Pelling Order, which raised the possibility of a confidentiality club. So it was necessary to make the application on 19 August ("the 19 August application") given the short deadline for compliance with the ADO.

    ii) The Applicant's solicitors refused to agree to any variation of the ADO until Friday 23 August, when they indicated that they were willing to agree to a

confidentiality club. But they did not include a draft confidentiality club agreement and, on the same date, they filed a witness statement which resisted the Respondent's application.

iii) In response to the Respondent's letter of 26 August, enclosing a draft confidentiality club agreement, on 28 August the Applicant agreed to the draft with the exception of the two points which were determined by me on 9 September.

iv) Effectively the Applicant therefore resisted the variation application until 28 August. Although the Respondent lost on the two points which were in issue from 28 August onwards, he won overall in that the result of the application was that the Pelling Order was varied: the time for provision of the information was extended and a confidentiality club was put in place.

The Applicant's position

84. Mr Tomson submitted that the Respondent should pay the whole of the costs of the variation application on the basis that costs should normally follow the event. There was no reason to make any reduction in this case.

Discussion and conclusion on Issue 4

85. I note that the 19 August application was to vary the ADO so that there was no obligation to disclose until after the Return Date, and subject to the outcome of that hearing. By the time of the hearing on 9 September the Respondent's position was that pending the Return Date he should only be required to disclose his assets in England and Wales, and that the disclosure should be into a confidentiality club which did not include any of the Applicant's lawyers who were acting for her in England in the freezing order proceedings: see [28] of Mr Shirazi's skeleton argument dated 6 September 2024.

86. It is true that in a letter of 15 August the Respondent's solicitors said that they were open to proposals which would enable the Applicant to police the FO, including a confidentiality club. But the suggestion was that the arrangements would be *"with a ring-fenced part of your client's legal team"*. It is clear from the correspondence and the Respondent's position at the 9 September hearing that this meant that the Applicant's legal team in the freezing order proceedings would be excluded, a point which I determined against the Respondent.

87. Moreover, the Respondent's position in the 15 August letter was that information about his assets abroad was not necessary for the purpose of policing the FO. The paragraph in which the suggestion of a confidentiality club appeared followed one in which his solicitors proposed the postponement of any disclosure until after the Return Date. It is also clear from the subsequent correspondence and the Respondent's position at the 9 September hearing, that the confidentiality club would only ever have been agreed by him on the basis that, pending the Return Date, disclosure would be limited to his assets in England and Wales.

88. The principal answer to Mr Shirazi's argument is therefore that at all material times the Respondent's position was that there should be no disclosure other than in respect

of his assets in England and Wales. Moreover, that disclosure should be into a confidentiality club and this should not include the Applicant's legal representatives in the freezing order proceedings. This was the issue by the time of the hearing on 9 September and it was always going to be an issue. Whether the Applicant should have agreed in principle to a confidentiality club earlier is neither here nor there given that it would not have resolved the variation application and her position on this did not add significantly to the costs. Moreover, reliance on the fact that there was a variation of the ADO to extend time for compliance does not assist the Respondent. The new deadline for compliance was set, without objection from the Applicant, because there had been a failure to comply with the original order.

89. Nor did I accept that there were any other reasons why, in the exercise of my discretion, I should order that the Respondent pay less than 100% of the costs of the variation application.

**The costs of the Return Date**

The Respondent's position

90. Mr Shirazi referred me to CPR Rules 44.2(2), (4) and (7) and the commentary in the White Book at 44.2.7, 44.2.8 and 44.2.10. His submission was that the Applicant should have 75% of her costs rather than the 100% for which she contends. His argument for a reduction is principally based on various criticisms of the conduct of the proceedings by the Applicant (see, also, Rule 44.2(5) and 44.2.20 et seq).

91. First, Mr Shirazi submitted that the Court found that there was a material non-disclosure in that the Applicant did not disclose the Preliminary Agreement in the context of her application without notice on 12 August 2024: see [129] of the 10 October judgment.

92. Second, the Applicant's arguments in relation to "good arguable case" included her claim for breach of contract in relation to the EDVs which I found not to have a real prospect of success: see [94] of the 10 October judgment.

93. Third, Mr Shirazi alleges that there was unreasonable conduct in the manner in which the Applicant pursued the freezing order proceedings;

    i) He alleges that the Applicant breached undertakings and orders of the court in that:

        a) The Applicant dragged her heels in effecting the transfer of the matter from the Commercial Court to the King's Bench Division as ordered by HHJ Pelling.

        b) She undertook to provide fortification of her cross undertaking in damages within 7 days of the date of the Pelling Order (see Schedule B paragraph (2)) but did not do so until 21 August.

        c) The Applicant undertook to issue her claim in Greece as soon as practicable (see Schedule B paragraph (3)) but it was not issued until 23 August.

d) She undertook to serve a note of the hearing "as soon as practicable after" the hearing (see paragraph 4(2)(i) of Schedule B) but what she provided omitted Judge Pelling's judgment until it was pointed out that it was missing.

e) The Applicant was directed, in my Order of 9 September 2024, to serve any reply evidence no later than 1pm on 10 September 2024. In the event, she did not do so until 2.52pm that afternoon. It was therefore necessary for the Respondent to apply for relief against sanctions (which I granted: see [10(i) and (ii)] of the 10 October judgment).

f) On 9 September I also directed that the bundle be filed by 4pm on 10 September but it was served late.

ii) Mr Shirazi also says that the Applicant unreasonably refused to provide a translation of her pleading in the Greek proceedings or to confirm, until very late in the process, that she was restricting her case on the application for the freezing injunction to the points which Mr Tomson ultimately argued at the Return Date hearing.

iii) Mr Shirazi also submits that the Applicant should pay the costs of her late and retrospective applications for extensions of time in the usual way.

94. I will deal with each of Mr Shirazi's points in turn, but briefly given that I have decided to make a 10% reduction in the costs to be paid to the Applicant based on a broad assessment of their cumulative effect.

i) It is true that I found that the Preliminary Agreement ought to have been disclosed, albeit the non-disclosure was "innocent", Judge Pelling was not misled. In all the circumstances, this criticism of the Applicant did not provide a sufficient basis to discharge the FO for lack of full and frank disclosure, but it has contributed to my overall view on costs.

ii) Very little time was spent on the breach of contract claim in respect of the EDVs. By some margin, the bulk of the time and therefore costs related to the misrepresentation claim in relation the EDVs, and significant time was spent on the contract claim in respect of the PYRs, on both of which points the Respondent was unsuccessful. As a consequence, he was unsuccessful in his overall contention that the Applicant did not have a good arguable case in the Greek proceedings.

95. In relation each of the alleged breaches of orders/undertakings:

i) I do not accept that the Applicant deliberately dragged her heels in relation to the transfer of the matter from the Commercial Court to the King's Bench Division. It is true that there could have been more focus on the Applicant's side on getting the case transferred, and that the Respondent's solicitors had to chase the matter more than they should have had to. I have factored this into my overall reduction. It is also true that the process took some time – the transfer was not confirmed until 4 September 2024 – but this was due to error and uncertainty as to the process, and administrative delays on the part of the courts. There was a

significant period – from 22 to 30 August - when it was understood by the parties that the transfer had been effected, only for it then to become apparent that it had not been. These delays did not affect the timing of the Return Date. They did affect the timing of the hearing of the variation application but, if anything, that was to the advantage of the Respondent because it meant that his disclosure in relation to his assets was not provided until shortly before the Return Date, therefore leaving the Applicant little time to react to it.

ii) The fortification ordered by Judge Pelling was to be held in an account by her legal representatives. The fact that it was paid into that account a day or two late is not material in relation to the question of costs.

iii) The Greek proceedings were issued 11 days after the hearing before Judge Pelling. There is no evidence that this was later than was practicable. Nor does this factor appear to have had any significant impact on costs.

iv) As for the note of the hearing, on 13 August a transcript was served with the Pelling Order and the other documents which were required to be served. However, the transcript did not include a transcript of the judgment. This was pointed out by the Respondent's solicitors on 15 August and an approved transcript of the judgment of HHJ Pelling was served on the following day. There is no evidence that this was any later than was practicable and it appears that the delay was because approval of the transcript was awaited. In any event, this did not have a significant impact on costs.

96. The position in relation to the translation of the Applicant's Greek claim is that on 23 August 2024 the document was provided in Greek to the Respondent and to his Greek lawyer. A machine translation into English was also provided by the Applicant. However, the certified translation was not available at this stage and it appeared that it would not be ready until the morning of 4 September 2024. There is no reason to doubt the Applicant's solicitors' letters when they say that the translators (who were in London) were told of the urgency of the matter but said they were not able to produce the certified translation any earlier. It may well be that the Applicant should have sourced a different translator but, in any event, the Respondent had a Greek speaking lawyer and obtained his own translation within 2 working days of 23 August i.e. on or before 28 August. I agree that he should not have had to do so and have factored this into my overall reduction in the costs awarded to the Applicant.

97. The parties then fell to arguing about whether the Greek claim was the same as the claim which had been indicated to Judge Pelling would be made. However, it is clear from the Respondent's solicitors' letter of 28 August that they understood the three core claims against the Respondent in the Greek proceedings. These claims formed the basis for the Pelling Order and were then the basis for the continuation application before me. They were spelt out again in detail in a letter dated 3 September after the Respondents had argued, in a letter dated 2 September, that the Greek claim was very different to what had been indicated in that it included allegations of fraud. This was a complaint which I considered but rejected in the context of Mr Shirazi's arguments on full and frank disclosure: see [131] of the 10 October judgment. I do not consider that the fact that the Greek claim included additional allegations added significantly to the Respondent's costs.

98. I agree that, in principle, the Applicant should pay the costs of her applications for relief agaInst sanctions/extensions of time. Given that these costs were or ought to have been negligible relative to the overall costs, I have factored this into my overall reduction rather than make an order in respect of this discrete item. The delays in the finalising of the bundle appear to have been due in part to the Respondent's variation application which required significant work and was unsuccessful. It may also have been due in part to the lateness of the Applicant's reply evidence, again owing at least in part to the variation application.

99. Overall, then, I do not accept that there was a pattern, on the Applicant's side, of failing to comply with the orders of the court or the undertakings which were given by her. For the most part there was compliance. Where there was a failure to comply it was generally minor and did not have a significant impact on costs. In light of the considerations set out above, then, I have concluded that there should be a reduction in the costs payable by the Respondent and that reduction should be 10%.

**The quantum of costs**

100. There was no suggestion that assessment should be anything other than on the standard basis.

101. The position on quantum appeared from the correspondence and the draft orders to be that a figure was agreed in respect of the Return Date but not the variation application. Mr Shirazi's skeleton argument stated, at [86], that quantum was agreed in the sum of £170,020.44 and my understanding was this referred to the former. However, when this point was made in court it appeared that a further statement of costs had been served on behalf of the Applicant and that the Respondent's side were no longer agreeing to this figure. I asked for the parties to clarify the position by letter to the court.

102. The subsequent correspondence which I have seen suggests that Mr Shirazi agreed the £170,000 figure in error and/or on the basis that it was for the whole of the costs rather than just the costs of the Return Date. In my view, and contrary to the Applicant's position, it would not be just to hold his client to this figure, not least given that there was a failure on the Applicant's side to comply with the CPR as to the service of statements of costs and that the agreement appears to have been based on an error or misunderstanding. The parties should either agree a figure or figures or the Applicant should make brief submissions in reply to the Respondent's letter of 21 November 2024 and, if appropriate, I will then make an assessment on the papers. I would ask that, consistently with the overriding objective, the parties concentrate on adopting realistic positions and attempting to agree figures, and omit the sorts of petty points which have featured in the correspondence on this topic thus far.