Neutral Citation Number: [2024] EWHC 2527 (Comm)

Case No: CL-2023-000401

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 04/10/2024

Before :

MR JUSTICE JACOBS

- -

Between :

ZIYAVUDIN MAGOMEDOV & OTHERS	**Claimants/ Applicants**
- and -	
	Defendants
KONSTANTIN KUZOVKOV & OTHERS	
- and -	
(1) 1291 PRIVATE OFFICE LTD (2) 1291 GROUP (DIFC) LIMITED (3) 1291 GROUP EUROPE (UK) LTD	
	Respondents

- -
- -

James Morgan KC, William Hooper and Jonathan Scott (instructed by **Seladore Legal**) for the **Applicants**
Bobby Friedman (instructed by **Kingsley Napley LLP**) for the **1st Respondent**
Ruth den Besten KC (instructed by **Clyde & Co LLP**) for the **2nd Respondent**
Andrew McLeod (instructed by **Forsters**) for the **3rd Respondent**

Hearing dates: 20th – 21st August 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 4th October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives
(see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

MR JUSTICE JACOBS

MR JUSTICE JACOBS:

A: The parties and the application

A1: The parties and the procedural background

1. The 1st – 10th Claimants ("the Applicants") in these proceedings apply for "Norwich Pharmacal" relief against three financial services companies which share the brand "1291". None of the three Respondents to the application is party to the underlying proceedings, which were commenced in 2023 and have already led to a number of judgments of the Commercial Court including a lengthy judgment of Butcher J dismissing the Claimants' application for various freezing orders: see [2023] EWHC 2655 (Comm).

2. The 1st Respondent is a Liechtenstein company, 1291 Private Office Ltd ("1291 Private Office"). The 2nd Respondent is a DIFC (Dubai International Financial Centre) company, 1291 Group (DIFC) Ltd ("1291 Dubai"). The 3rd Respondent is an English company, 1291 Group Europe (UK) Ltd ("1291 UK").

3. On 26 March 2024, Foxton J granted a without notice application made by the Applicants for permission to serve the application for Norwich Pharmacal relief (referred to in Foxton J's Order ("the Order"), and herein, as the "NP Application"), and any other documents in these proceedings, out of the jurisdiction on 1291 Private Office and 1291 Dubai. He also gave permission to serve the NP Application and any other documents in these proceedings on 1291 Private Office and 1291 Dubai by the following alternative methods of service, set out in paragraphs 2 (a) – (c) of the Order:

    (a) On 1291 Private Office, by email to a firm of Liechtenstein lawyers which had been engaged by1291 Private Office, namely BWB Legal: the e-mail address identified in the Order was Ralph.Wanger@bwb.legal;

    (b) On 1291 Dubai by email to a firm of Dubai lawyers, Global Advocates: the e-mail address identified in the Order was Patric.McGonigal@globaladvocates.net;

    (c) On both 1291 Private Office and 1291 Dubai, by post to the registered address of 1291 UK at 73 Cornhill, London, EC3V 3QQ.

4. Paragraph 3 of the Order contained provision for when documents served pursuant to the Order were deemed served. Paragraph 4 provided that the Respondents had the right to make an application to set aside or vary the Order under CPR r. 23.10. The time limit for the making of such an application in CPR r. 23.10 is 7 days following service of the Order.

5. The application which led to the Order was supported by a lengthy witness statement (his Second Witness statement – "Bushell 2") of Mr Simon Bushell, the senior partner of Seladore Legal Ltd, the Applicants' solicitors. Foxton J was also provided with a 25-page skeleton argument, signed by leading counsel (not then Mr Morgan KC) and junior

counsel, which set out the legal and factual basis for the NP Application itself, as well as for the orders for service out and alternative service which the Applicants sought.

6. At the time that Foxton J made the Order, he gave a direction which was communicated to the Applicants (and later to the Respondents) as follows. This features in the arguments of 1291 Private Office and 1291 Dubai. The directions were as follows:

> "1. The application is to be listed for an expedited directions hearing once AOS have been filed at which the court will consider further directions including the issue of expedition.
>
> Applications for expedition and listing of the Ds' jurisdiction challenge and SJ applications
>
> 1. This is a complex case and the issues relating to expedition and an appropriate time estimate cannot be resolved on paper.
>
> 2. There is to be a 2 hour directions hearing listed as soon as possible next term to consider the requests for expedition. Skeletons for that hearing are not to exceed 8 pages plus a 1 page timetable for the jurisdiction/SJ hearing showing how time would be allocated between the parties on that parties' estimates.
>
> 3. Parties should come armed with counsels' diaries for that directions hearing"

7. The directions hearing took place before Bright J on 7 May 2024. The Applicants, 1291 Private Office and 1291 UK were represented by counsel, and the judge read a letter from the solicitors for 1291 Dubai. Bright J decided to expedite the hearing of the application, and he gave directions for the service of evidence leading to a 1-day hearing in the week commencing 24 June 2024. In a later order dated 5 June 2024, the timetable for service of evidence was adjusted.

8. On the same day (5 June 2024), 1291 Private Office issued an application to set aside the orders made by Foxton J concerning alternative service in so far as it concerned that company. The basis of the application was that paragraph 2 (a) contravened CPR 6.40 (4), that it was not appropriate to order alternative service in England, and also that paragraphs 2 (a) and (c) were affected by the Applicants' failure to make full and frank disclosure on the without notice application. The application notice did not contain an application to set aside paragraph 1 of the Order, which granted permission to serve out of the jurisdiction. Mr Friedman confirmed in his oral submissions that no such application was being made. The application was supported by a witness statement of Ms Susan Thackeray, a partner of Kingsley Napley LLP. 1291 Private Office also served an expert report on Liechtenstein Law from a Liechtenstein lawyer, Dr Oliver Nesensohn LLM of LNR Nesensohn Rabanser.

9. On the same day, 1291 Dubai applied to set aside the orders made by Foxton J granting permission to serve out of the jurisdiction (paragraph 1 of the Order) and for alternative service insofar as it concerned 1291 Dubai (paragraphs 2 (b) and (c)). 1291 Dubai also sought a declaration that the service of the NP Application by e-mail on 28 March 2024 was ineffective. The application was supported by (i) a witness statement of Edward

Eurof Lloyd-Lewis, a partner in Clyde & Co LLP, and (ii) a witness statement of Marc-André Sola, the Senior Executive Officer of 1291 Dubai.

10. There was no equivalent application by 1291 UK, since that company had been served within the jurisdiction and was not affected by the Order. 1291 UK did however serve a witness statement from Mr David Gregory, one of the directors of 1291 UK. It was apparent from that statement that 1291 UK opposed the NP Application.

11. On 19 June 2024, Mr Bushell served a witness statement (his sixth – "Bushell 6") which responded to the evidence hitherto served by the three Respondents. The Applicants also served an expert report from a Liechtenstein lawyer, Philip Raich of Ospelt & Partner Attorneys at Law.

12. The matter was listed for hearing on 26 June 2024, but was vacated by Calver J on 25 June because a 1-day time estimate was plainly inadequate. The case was then relisted for hearing during the vacation, on 20-21 August 2024, with 1 day pre-reading.

13. Prior to the vacated hearing on 26 June 2024, and subsequently prior to the relisted August hearing, the Applicants, 1291 Private Office and 1291 Dubai have served further evidence or reports, in summary as follows:

    (1) In relation to the application concerning 1291 Private Office, there are two further reports on Liechtenstein law from Dr Nesensohn, and one further report from Mr Raich;

    (2) Mr Lloyd-Lewis has served a second witness statement on behalf of 1291 Dubai;

    (3) The Applicants and 1291 Dubai have each served expert evidence, in the form of letters, addressing issues of Dubai and DIFC law. 1291's evidence comprises two letters (dated 31 May 2024 and 21 June 2024) from Global Advocacy and Legal Counsel. The Applicants' evidence comprises two letters (dated 18 June 2024 and 13 August 2024) from DLA Piper Middle East LLP.

A2: The NP order sought

14. The substance of the NP relief sought by the Applicants is set out in Paragraphs 3 and 4 of their proposed draft Order, as follows:

> "3. By [4.30pm] GMT on [●] 2024 (or by later date agreed in writing with the Applicants):
>
> (a) the Respondents shall each provide the Applicants with an affidavit, in each case givenby an officer of the relevant Respondent with knowledge of the truth of the matters deposed to, that provides:(i) The identity of the source of the enquiry communicated by Mr Muggli to Mr Bedjaoui on 25 November 2021 (the "Enquiry") or an explanation with full particularity as to why it cannot do so;

(ii) an explanation of the searches undertaken to identify the source of the Enquiry to include an explanation of whether relevant documents in its possession or control have been destroyed and, if so, why;

(iii) An explanation of the searches undertaken following the email of Mr Kuzovkov of 14 December 2023 to attempt to find the source of the Enquiry;

(iv) The identity of any of the Respondents' clients with whom any of the Respondents communicated in connection with (1) the Enquiry, (2) Mr Kuzovkov's email dated 14 December 2023, or (3) Seladore Legal's emails to the Respondents sent in January 2024 or an explanation with full particularity as to why it cannot do so;

(v) An explanation of who the ultimate beneficial owner of Rebetson Limited was (1) at the time of the Enquiry, and (2) as at 14 December 2023 or an explanation with full particularity as to why it cannot do so; and, if the ultimate beneficial owner was not Mr Kuzovkov (D13), why Mr Muggli described Mr Kuzovkov as Rebetson Limited's ultimate beneficial owner when making the Enquiry;

(vi) An explanation of whether it (or any of its officers, directors or employees) has had direct or indirect contact with Locko Bank, Mr Mikhail Rabinovich or Mr Andrey Severilov or anyone connected with them;

(vii) the identity of the source from which Mr Muggli received a certified copy of Mr Kuzovkov's passport and a copy of his CV and an explanation of how these came to be in his possession;

(b) To the extent in their possession or control, each of the Respondents shall serve on the Applicants' solicitors copies of the following documents, with all electronic documents to be provided in native format and all hard copy documents to be legibly photocopied insofar as is possible:

(i) the email received from Mr Kuzovkov dated 14 December 2023 and any other correspondence between Mr Kuzovkov and the Respondents or any of its officers, directors or employees;

(ii) all documents relevant to the Enquiry or received from the source of the Enquiry or any other persons in connection with the Enquiry;

(iii) any other documents held which might assist in identifying the source of the Enquiry, including but not

> limited to bank account and payment card details, email addresses, residential addresses, phone numbers, bank statements, correspondence and documents provided on account opening or verification.
>
> 4. Nothing in this order authorises or requires a Respondent to do anything which is contrary to the law of the country where the Respondent is incorporated."

A3: The grounds of opposition

15. Each of the 1291 entities is separately represented by solicitors and counsel, and there are issues between the parties as to the extent to which the entities are or are not closely connected. The arguments advanced by the three Respondents overlap in many respects, but their positions are not the same. In broad summary, the main points advanced by each of the Respondents are as follows.

16. *1291 Private Office:* 1291 Private Office challenges the court's jurisdiction in respect of the NP Application, and seeks to set aside paragraphs 2 (a) and (c) of the Order, on four grounds:

    (1) Service on 1291 Private Office via BWB Legal in Liechtenstein, as ordered by paragraph 2 (a) of the Order, is contrary to Liechtenstein law and contravenes CPR 6.40 (4);

    (2) There was no "good reason" to order alternative service as required by CPR 6.15 (1);

    (3) There is no originating process against 1291 Private Office, because the Applicants issued the NP Application by CPR Part 23 only. They should have applied to join 1291 Private Office to the existing proceedings or issued a Claim Form against 1291 Private Office;

    (4) The Applicants breached their duty of full and frank disclosure in respect of the without notice application to Foxton J.

17. In relation to the substance of the NP Application, 1291 Private Office repeats the point that there is no originating process as against 1291 Private Office. Otherwise, it says that it "adopt[s] a neutral position in respect of the relief sought in the draft order". However, it asks the court to consider two specific matters. First, 1291 Private Office has already confirmed on 3 separate occasions that it does not have the information sought by the NP Application. Secondly, they contend (relying on Dr Nesensohn's evidence) that disclosure of the material sought by the NP Application would contravene Liechtenstein law; that the order sought would be incapable of enforcement in Liechtenstein; and that the NP Application therefore serves no useful purpose.

18. *1291 Dubai:* 1291 Dubai contends that the Order for permission to serve out, and for alternative service, should be set aside. It relies upon the following arguments:

    (1) There is no originating process capable of service on 1291 Dubai;

(2) There is no serious issue to be tried in respect of the NP Application. 1291 Dubai did not exist at the time of the enquiry in respect of which the Applicants now seek information. The Applicants did not identify this when seeking the Order which was granted by Foxton J;

(3) This is not the appropriate forum for the determination of the Applicants' application for NP relief against 1291 Dubai, which ought to be brought (if at all) in the DIFC Courts;

(4) There was no good (far less exceptional) reason to order alternative service. In particular, the NP Application is not, properly considered, urgent (and if it is urgent, that is only as a result of the Applicants' conduct). Additionally, the method permitted for service by email on a law firm was impermissible under local, DIFC, law, and 1291 Dubai did not receive the service pack sent alternatively by post to 1291 UK; and

(5) The Applicants committed serious and culpable breaches of their duties of full and frank disclosure and fair presentation when obtaining the Order.

19. Even if, however, the Order does stand, or if set aside is nevertheless regranted, 1291 Dubai substantively opposes the grant of NP relief against it. It contends that:

(1) It has no information or documents to provide in response to the orders sought against it, and has already confirmed this to the Applicants. The orders sought are inapplicable to an entity which did not exist when the relevant enquiry was made.

(2) The relevant enquiry in this case, which has given rise to the NP Application, was made of 1291 Private Office, at a time when 1291 Dubai did not exist. The Applicants cannot circumvent this via their attempts to link 1291 Dubai with the enquiry, because a Mr Peenz later became an employee of 1291 Dubai.

(3) The various 1291 entities are structurally independent, including for regulatory reasons. 1291 Dubai does not have access to the records of the other Respondents.

20. *1291 UK*: 1291 UK contends that there are three main reasons why the relief sought against 1291 UK should be refused. As with 1291 Dubai, a central point is that 1291 UK did not exist at the time when the enquiry giving rise to the NP Application was made. Its principal points are as follows:

(1) The Applicants have failed to establish the jurisdictional threshold conditions that would entitle the Court to grant NP relief against 1291 UK. Specifically, (1) the Applicants have failed to establish to the standard of a good arguable case that one or more of them are the victims of actionable wrongdoing; (2) there is no evidence that 1291 UK was mixed up in the alleged wrongdoing on which the Applicants rely so as to have facilitated it; and (3) there is also no evidence that 1291 UK has any knowledge or information of the alleged wrongdoing and there is direct evidence from a 1291 UK director that it does not. Accordingly, the Court has no power to grant the relief sought.

(2) Even if the Applicants could satisfy the jurisdictional threshold conditions, the relief sought against 1291 UK goes well beyond what is necessary or proportionate.

(3) In any event, 1291 UK has already provided all information that it holds in relation to the matters set out at paragraph 3 (a) of the draft Order and confirmed that it has no documents within the categories described in paragraph 3(b) of the draft Order. That is set out in the witness statement of Mr David Gregory, the director of 1291 UK who initiated and led its formation.

21. The above points were developed in the Respondents' written and oral submissions of Mr Friedman (1291 Private Office), Ms den Besten KC (1291 Dubai), and Mr McLeod (1291 UK). The Applicants arguments were presented by Mr James Morgan KC.

22. After Mr Morgan had made his submissions as to why, as a matter of substance, NP relief should be granted against all 3 Respondents, I indicated that I did not intend to call on Ms den Besten for 1291 Dubai, or Mr McLeod for 1291 UK. This was because, in summary and principally, I did not consider that there was a sufficient case, either to the "good arguable case" standard, or "serious issue to be tried" standard relevant to service out on 1291 Dubai, that either company was "mixed up" in the alleged wrongdoing. I said that I would provide more detailed reasons for this conclusion in due course. Section G below contains those reasons. I did, however, consider that there was a sustainable argument as far as 1291 Private Office is concerned. In the end, however, for the reasons which follow, I considered that it would not be appropriate to make the proposed NP Order, or any variant of it, as against 1291 Private Office. My reasons for refusing the application, insofar as it concerned 1291 Private Office, were provided to the parties in writing on 23 August 2024. Sections A – F of this judgment are substantially the same as the reasons provided on 23 August 2024, save for the additional factual narrative in paragraphs 32-41 below, and typographical and similar corrections proposed by the parties to the written reasons provided on 23 August.

B: Factual background

23. The factual background relevant to the NP Application is as follows.

24. The Claimants have brought the underlying action against 22 defendants for two connected unlawful means conspiracies. The Claimants allege that their assets, including two extremely valuable investments in ports of strategic importance to the Russian State, were unlawfully wrested from them by individuals and entities closely affiliated with the Russian State. The detail as to the conspiracies is set out in Bushell 2 and is pleaded in some detail in the Amended Particulars of Claim.

25. One of these conspiracies relied upon by the Claimants, the "NCSP Conspiracy", is not material to the present NP Application. The important alleged conspiracy for present purposes is the "FESCO Conspiracy". The Claimants contend that all Defendants bar Transneft combined to deprive the 1st to 9th Claimants of their interests in PJSC Far-Eastern Shipping Company ("FESCO"). Several steps were taken to seize the Applicants' shares in FESCO, prevent them from exercising voting powers and weaken their position within the company. One of these steps involved, on the Claimants' case, a bribe paid to a Mr Kuzovkov to support certain proposals at the FESCO Board.

26. The Applicants became aware of the alleged bribe when Mr Bushell was informed by Mr Reda Bedjaoui of Privat 3 Money Limited ("P3"), that Mr Bedjaoui had been contacted by Mr Oliver Muggli of 1291 Private Office on 25 November 2021. Mr Muggli sought to open a bank account so that a payment of US$ 20 million could be made into an account for Rebetson Ltd, a Belizean company, said to be ultimately beneficially owned by Mr Konstantin Kuzovkov, the 13th Defendant in these proceedings. The US$ 20 million was said to stem from an option contract on around 3% of the shares of FESCO. The Applicants contend that they are not aware of any legitimate basis on which Mr Kuzovkov could have obtained such economic rights stemming from an option over FESCO shares, nor has Mr Kuzovkov suggested that such a basis exists. They allege that the 12th Defendant, a company called Ermenossa Investments Ltd ("Ermenossa"), had by this time acquired treasury shares in FESCO. The Applicant say that this company had the means to grant Mr Kuzovkov and others interests in those shares. The Applicants believe that the US$ 20 million represents a bribe to Mr Kuzovkov for his involvement in the FESCO Conspiracy.

27. The Applicants' case as to the involvement of 1291 Private Office in these events is based upon e-mail exchanges that the Applicants have received from Mr Bedjaoui. The first e-mail in the sequence is dated 25 November 2021, at 17.02 from Mr Muggli to Mr Bedjaoui (and copied to an individual called Sabrina Aloui). It is headed "Account application REBETSON LTD". The full text is as follows:

> "Dear Reda
>
> I trust you are doing well.
>
> Please apologize for disturbing you, but I understand that Sabrina is on holidays, so I take the liberty in contacting you for a quick assessment whether P3 would have an appetite to open a transactional account for the following case:
>
> **REBETSON LTD.**
>
> > Belize International Business Company with a sole director
>
> > UBO is a Cypriot national with tax residence in Cyprus, solid KYC
>
> > The client would inject an amount of USD 20mn into the company account, which stems from an option contract on around 3% of the shares of Fesco Group (https://en.wikipedia.org/wiki/Fesco_Transport_Group). The transaction can be fully documented.
>
> > The amount would be transferred from Locko Bank (Russia) (https://www.lockobank.ru/en/). Potentially, it could be sent in EUR or GBP to avoid the USD transfer.
>
> > It would then be invested in different investments, which can be specified prior to making the transfers. I understand that we have a few challenges with this case, namely the Belize

> registration of the company and the incoming payment from a Russian bank. However, the amount is quite large and we would definitely be able to charge a decent fee of around 25bps on the transfer (USD 50'000 one-way!). May I kindly ask you to give me your view whether this would be doable?
>
> Many thanks and kind regards
>
> Oliver Muggli
>
> lic. oec. HSG, LL.M., TEP | Managing Partner
>
> **1291 PRIVATE OFFICE LTD**
> Schlossstrasse 1, 9497 Triesenberg, Liechtenstein, Phone +423 262 10 36, Mobile +41 79 433 64 53
> www.1291group.com | muggli@1291group.com
>
> 1291 GROUP
> *– from our family to yours*
>
> ”

28. Mr Bedjaoui replied promptly as follows (at 18.16 pm according to the email):

> “Dear Oliver,
>
> As long as the transaction can be documented we can certainly manage the challenges.
>
> As a first step could you share the KYC or at least the name of the UBO, in order to assess that there is no adverse/PEP issues affecting him.
>
> We could pre-clear him on the compliance side and then move forward on the Belize IBC.
>
> Best regards.
>
> Reda Bedjaoui
>
> CEO”

29. Mr Muggli then replied (at 17.29 on 25 November 2021) by sending the following:

> “Many thanks for your swift response, Reda. Much appreciated.
>
> Please find attached the passport copy and CV of the UBO. I can wait until Monday for a clearance of the individual, so no rush.
>
> I wish you a nice evening and send you kind regards
>
> Oliver Muggli”

30. As indicated in the text of the e-mail, and in the “Attachments” identified in the e-mail header, there were two attachments which were sent: the passport copy and CV of the UBO. Those attachments have been exhibited to a witness statement of Mr Bedjaoui dated 13 December 2023. The passport copy and the CV are those of Mr Kuzovkov.

Mr Bedjaoui's witness statement explains that, as far as P3 is concerned, matters did not progress further with Mr Muggli in relation to the latter's enquiry.

31. The Applicants allege that they have no information as to who was behind the payment of that bribe, although the evidence contained in Mr Muggli's email to Mr Bedjaoui points clearly to the payment coming from a Russian bank, Locko Bank. They say that this is a bank with strong connections to the ultimate beneficial owner of Ermenossa, Mr Mikhail Rabinovich (Ds 12 and 11, respectively). Mr Rabinovich is alleged by the Applicants to be a chief architect behind the FESCO conspiracy. The essential aim of the NP Application is to obtain information as to who was behind the payment of the bribe which the Applicants contend was either paid or agreed to be paid.

32. At the end of 2023, there were some further developments in the factual position, and these provided the basis for some of the arguments advanced by the parties, in particular by the Applicants.

33. In October 2023, Butcher J dismissed the Claimants' application for various freezing orders. At that time, the Claimants had only deployed redacted copies of the e-mails which Mr Bedjaoui had received from Mr Muggli. The identities of both Mr Bedjaoui and Mr Muggli were anonymised, because of Mr Bedjaoui's concerns for his safety. It was only shortly before the hearing that Mr Bedjaoui agreed to provide redacted copies of the e-mails that he had received from Mr Muggli.

34. Butcher J held that the e-mails had been deployed late by the Claimants, that a good reason had not been given for the non-disclosure of at least the identity of Mr Muggli, and that it had not been explained what steps had been taken to check the authenticity of the e-mails. He held that he could not find, in the context of the applications that he was considering, that there was a good arguable case in relation to the alleged bribe. However, he noted that this did not "mean that that the evidence might not hereafter be capable of being added to and its quality improved".

35. The Claimants applied to the Court of Appeal for permission to appeal against the refusal of the freezing injunction against, amongst others, Mr Kuzovkov on 24 November 2023. As part of this application, the Applicants applied for an order that a non-anonymised witness statement from Mr Bedjaoui, who was now willing to give evidence in his own name, be admitted as fresh evidence. On 15 December 2023, Phillips LJ refused the application for permission to appeal, and said that the evidence from Mr Bedjaoui should be deployed in a fresh application in the Commercial Court.

36. In the meanwhile, the application to admit fresh evidence had itself given rise to correspondence between Mr Kuzovkov and Mr Muggli. On 14 December 2023, Mr Kuzovkov e-mailed Mr Muggli as follows:

> "Dear Mr Muggli,
>
> My name is Konstantin Kuzovkov. I apologise for contacting you without proper introduction, but I really need your help with a very important problem. I'm a former manager of Russian businessman-oligarch Ziyavudin Magomedov. In summer this year Mr. Magomedov started proceedings in the High Court in

London against 22 defendants, me being one of them. You could find more information, for example, in this article in Financial Times ***https://www.ft.com/content/73f8e43e-ba11-4240-b803-a3c5113240e2***

In October 2023 High Court ruled that there was no good arguable case against me. Back in September this year Claimants (Mr. Magomedov's lawyers) made a statement that a fiduciary services provider from Liechtenstein in November 2021 sent an email to London banker, known to Mr. Magomedov's family, asking to open a bank account for me (more specifically, to a Belizian company I allegedly owned). This fiduciary mentioned that I (Konstantin) wanted to transfer USD 20m from a Russian Locko-bank to a bank in Europe. The source of these funds being revenue from liquidation of stock options in FESCO (the company I worked for, where Mr. Magomedov was a shareholder). As a proof, claimants attached redacted emails with my passport and CV. I asked them a few times to disclose identities of at least the fiduciary. They refused.

However yesterday evening I received a submission to the Court of Appeal by the claimants, to which unredacted emails were attached, disclosing identity of both the fiduciary and the banker. The fiduciary is you, and the banker is Mr. Reda Bedjaouli the founder of Privat 3 Money Limited, a fintech firm based in London.

I would tremendously appreciate if you could confirm to me that:

- You don’t know me.

- I never contacted you and/or your company directly, or indirectly.

- Neither me, nor companies affiliated with me are (or were) clients of your company.

Also, if you have any idea about how the request about bank account opening came to you and from whom, please let me know.

Again, I apologise for what could seem like a fishing request, however I have no choice, but to contact you, since I’m accused of things I never did.

Please let me know if you need more information, I would be happy to answer.

Hope to hear from you soon! Thank you very much in advance!

Konstantin”

37. Within a short time, Mr Muggli responded on the same day as follows:

> "Dear Mr. Kuzovkov
>
> Many thanks for your message.
>
> I would like to apologize for the inconvenience caused by this matter and for the unprofessional disclosure of these confidential information by Mr. Reda Bedjaouli of Privat 3 Money Ltd..
>
> I am happy to confirm to you that we have never met, neither electronically nor over the phone nor in person. I can furthermore confirm that I was never contacted by you directly or indirectly. I can also confirm that neither you nor companies affiliated with you are (or were) clients of our company 1291 Private Office Ltd.
>
> I have tried to find out the source of the enquiry and am sorry to inform you that I have been unable to find this information. I was contacted by Mr. Bedjaouli in autumn of this year. He mentioned a legal process in London and already asked me to check the source of the inquiry. I was unable to identify the source and informed Mr. Bedjaouli accordingly.
>
> One of our services is to support corporate clients around the world in opening transaction accounts for their business
>
> payments. We work with numerous intermediaries to do this. Some of these are established business partners with whom we maintain a close and regular dialogue, while others are companies that only send us individual enquiries and with whom we then break off contact.
>
> I remain at your disposal in case of any additional questions and wish you good luck in fending off these accusations.
>
> Kind regards
>
> Oliver Muggli"

38. Mr Kuzovkov replied as follows:

> "Dear Mr Muggli,
>
> Thank you so much for your quick response! This is really helpful! Very much appreciate!
>
> Just one more thing. Could you please prepare a short memo on a company letterhead with the information from your email below and send it to me? Also, could you please allow me to send this correspondence and the memo to the Court of Appeal in London and to my co-defendants?

> Pity you can't find the source of information.. If you happen to find it in the future, or have any ideas about who it might have been, please let me know.
>
> Once again, huge thank you for your help!
>
> Konstantin"

39. On the following day (15 December) Mr Muggli wrote as follows:

> "Dear Mr. Kuzovkov
>
> I refer to your enquiry from yesterday and am pleased to enclose the requested letter. I will be happy to support you in your defence of the allegations. I would like to reserve the right to claim appropriate compensation for my expenses should I incur additional costs, such as giving evidence in court.
>
> I continue to regard the disclosure of the information by Mr Reda Bedjaouli as an unjustified disregard of the confidentiality agreement. If it is possible for you to provide me with further documentation on the relevant statement by Mr Bedjaouli, this would be greatly appreciated.
>
> I will be happy to answer any further questions you may have. Many thanks and best regards
>
> Oliver Muggli"

40. Mr Kuzovkov's response was as follows:

> "Dear Mr. Muggli,
>
> Thank you very much! This is super-helpful!
>
> Let's get in touch next week regarding the next steps.
>
> Wishing you very good weekend and happy holidays!
>
> Konstantin"

41. The Applicants made various points about the e-mails (or some of them) in this sequence. They said that they were concerned by a number of matters, including: (i) the speed with which Mr Muggli was able to confirm that he had never interacted with Mr Kuzovkov, and that he was able to confirm that he had never been contacted by Mr Kuzovkov directly or indirectly; (ii) the meaning of the phrase "break off contact", and how the decision to break off contact was reached and whether this meant that documents had already been destroyed; (iii) the inability of Mr Muggli to recall the identity of a client who had, just over 2 years ago, requested him to assist in transferring a large sum of US$ 20 million; and (iv) the readiness of Mr Muggli to confirm the above to the Court of Appeal and the fact that Mr Muggli wished Mr Kuzovkov good luck in fending off the accusations, and thanked him for his support.

C: The merits of the NP Application against 1291 Private Office

Introduction

42. Although a large number of arguments have been advanced on behalf of 1291 Private Office in relation to the procedural steps which have resulted in its presence at the hearing on 20-21 August, I propose to start by considering the merits of the application. One reason for doing so is that the substance of the NP Application has been addressed in the submissions of both the Applicants and 1291 Private Office, and prior to the hearing I spent some considerable time (well over the 1 day time estimate) in reading into the case, and then conducting a 2-day hearing. Even if I were to conclude, for example, that the non-disclosure points advanced by 1291 Private Office had substance, I would be most reluctant to set aside the Order of Foxton J concerning alternative service simply on that basis. Since there is no challenge by 1291 Private Office to Foxton J's grant of permission to serve out of the jurisdiction, the consequence of setting aside the order for alternative service would be that the Applicants would have to re-serve their application using a different method, with the NP Application then coming back for determination at a later stage before a different judge. There is, in terms of judicial economy and efficiency, very little if anything to be said in favour of this course. Accordingly, I turn to the merits of the application and will deal with the procedural arguments subsequently.

43. The applicable principles concerning NP relief were conveniently summarised by Saini J in *Collier v Bennett* [2020] EWHC 1884 (QB) which the Privy Council was content to adopt in *Stanford Asset Holdings Ltd v AfrAsia Bank Ltd* [2024] 1 WLR 1131 [2023] UKPC 35, para [36]:

> "(i) The applicant has to demonstrate a good arguable case that a form of legally recognised wrong has been committed against them by a person ('the Arguable Wrong Condition').
>
> (ii) The respondent to the application must be mixed up in so as to have facilitated the wrongdoing ('the Mixed Up In Condition').
>
> (iii) The respondent to the application must be able, or likely to be able, to provide the information or documents necessary to enable the ultimate wrongdoer to be pursued ('the Possession Condition').
>
> (iv) Requiring disclosure from the respondent is an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction ('the Overall Justice Condition')."

Arguable Wrong

44. I am satisfied that the "Arguable Wrong Condition" is metin this case. In the Applicants' skeleton argument, and in Mr Morgan'soral submissions, the Applicants' case was summarised as follows.

45. There was a good arguable case, as held by Butcher J, that there was some sort of co-ordination between Mr Rabinovich (D11), Mr Severilov (D15) and Rosatom (D17) that a hostile takeover of FESCO was threatened, and this was accompanied by menacing behaviour. By November 2021, Mr Rabinovich had obtained control over a 9.1% shareholding in FESCO, and he therefore had the means to grant Mr Kuzovkov and others interests in those shares. There was no legitimate basis upon which Mr Kuzovkov and/or Rebetson were entitled to any 'option contract'. Where no legitimate basis has been proffered, and where Butcher J has held that there was a good arguable case that a hostile takeover of FESCO was threatened, the hard evidence of the e-mails, in which the unknown "client" attempts to arrange a transfer of US$ 20 million to Rebetson and identifies Mr Kuzovkov as Rebetson's ultimate beneficial owner, underpins a good arguable case that there was wrongdoing by an ultimate wrongdoer: i.e. an illicit payment to Mr Kuzovkov. Even if the payment did not ultimately pass through what Mr Morgan described as the "Muggli link", there was nevertheless a good arguable case of an illicit payment which was part of the conspiracy. The wrongdoing was therefore an illicit payment, or promise of an illicit payment, as part of an overall conspiracy.

46. The Applicants submitted that although Mr Kuzovkov had denied that he was bribed, he has not been able to explain why there was an enquiry made by Mr Muggli which was concerned with an intended transfer of US$ 20 million to a company of which he was said to be the ultimate beneficial owner, or why Mr Muggli identified him as the ultimate beneficial owner of Rebetson, or how Mr Muggli obtained a certified copy of his passport and his CV. Even if Mr Kuzovkov was not involved in the alleged bribe, there appeared to be ultimate wrongdoers attempting to arrange a transfer of US$ 20 million to a company claimed to be ultimately owned by Mr Kuzovkov, and there is a good arguable case that there was ultimate wrongdoing in relation to this money.

47. Mr Friedman, on behalf of 1291 Private Office, did not advance any submission to the effect that the "Arguable Wrong" condition was not satisfied. He was fully entitled not to do so, since his client's position on the substance of the application was neutral. I accept that in an application of this kind, even where a party is represented, I must be satisfied that the Arguable Wrong condition has been met.

48. It was no part of Ms den Besten's case, on serious issue to be tried, that the Arguable Wrong condition had not been satisfied. The focus of her argument was that 1291 Dubai was not mixed up in the alleged Arguable Wrong.

49. Somewhat surprisingly, at least in my view, it was Mr MacLeod on behalf of 1291 UK who advanced the argument, in his written submission, that the Arguable Wrong condition had not been satisfied. In response to questions from the bench during oral argument, he explained that if that argument was accepted, then it would impact not only upon the case of 1291 UK but also the respective cases of the other two Respondents because the Applicants relied on the same alleged wrongdoing in respect of each of the Respondents. Mr McLeod did not have the opportunity to develop this

point orally, because I did not consider it necessary to call upon him to respond to the application. I have, however, considered his written argument on this issue, and I see nothing to persuade me that the Arguable Wrong condition has not been satisfied.

50. Mr McLeod submitted that the Applicants had not explained even in general terms what actionable wrong they are seeking to vindicate. I disagree. The wrongdoing was an illicit payment, or attempted illicit payment, as part of an overall conspiracy. The case is pleaded out in some detail in paragraphs 116 – 118 of the Amended Particulars of Claim under the heading: "E2: Intra-group loans and the bribes to FESCO Board members". Paragraphs 116 – 119 are as follows:

> "116. In or around early 2020, the FESCO Board commissioned KPMG to formulate a restructuring plan for the FESCO Group's intra group debt structure, including the Sian Disputed Loan and the Maple Ridge Disputed Loans.
>
> 117. The restructuring plan for the FESCO Group's intra group debt structure duly produced by KPMG on its behalf, called "Project Moonlight", was comprehensive, achievable and in the best interests of the FESCO Group. Project Moonlight was considered by the strategy committee of the FESCO Board in or around April 2020, which committee duly recommended to the FESCO Board that it be approved and implemented. The strategy committee's recommendation was endorsed by Mr Maxim Sakharov ("Mr Sakharov"), FESCO's then Chief Executive Officer.
>
> 118. Notwithstanding that fact, and without good reason, the FESCO Board did not seek to progress or implement Project Moonlight or make any other reasonable efforts to extend or restructure the intra-group debt. Instead:
>
> (1) on or shortly after 12 February 2020, a letter was sent by Halimeda to Sian and Maple Ridge by way of purported demand under the Sian Disputed Loan and the Maple Ridge Disputed Loan (the "Purported Demand Letter");
>
> (2) on 29 April 2020, Ms Mammad Zade sent an email to the FESCO Board postponing consideration of Project Moonlight, for which decision she provided no detailed or adequate reason;
>
> (3) on 3 September 2020, a meeting of the FESCO Board took place at which the FESCO Board replaced Mr Sakharov as Chief Executive Officer of FESCO and purported to approve the commencement of proceedings by Halimeda against Maple Ridge with respect to the Maple Ridge Disputed Loans and against Sian with respect to the Sian Disputed Loan (the "3 September Proposals").

119. It is to be inferred that Mr Kuzovkov received a bribe from Mr Rabinovich and/or Ermenossa in exchange for his acquiescence in the failure by the FESCO Board to restructure or extend the intra-group debt and/or his support of the 3 September Proposals in circumstances where:

(1) As pleaded above, in or about late 2019, Mr Kuzovkov participated in the negotiation of the 2019 Option Agreement which provided for an incentive payment of US$ 5 million to be paid to Domidias (and thus Mr Garber) following a successful acquisition by unnamed parties of the SGS Branch's interest in FESCO. In the course of the negotiations, Mr Kuzovkov paid particular attention to the detail of this incentive payment and it is to be inferred that he stood to gain personally from it under an arrangement with Domidias and/or Mr Garber. The payment was never triggered.

(2) In November 2021, Mr Kuzovkov or a person or persons acting on his behalf approached a banker in London through an intermediary based in Lichtenstein, with a view to receiving an amount of US$ 20 million that stemmed from the proceeds of an "option agreement" over 3% of the shares of FESCO. The monies were to be transferred from an account held at Locko Bank, a Russian bank in which Mr Rabinovich held a substantial minority stake of 14.78%, and in which Mr Severilov held a stake of 4.79%. Mr Kuzovkov was due to be paid or wished to hold the monies in either GBP or EUR.

(3) There is no legitimate explanation for how Mr Kuzovkov could have acquired those rights to 3% of the shares of FESCO. He was not granted any rights to those shares as part of his employment at FESCO. His personal wealth was nowhere near sufficient to purchase those rights. The total remuneration paid to all members of the FESCO Board in 2019 was RUB 41,625,000 (approximately USD 645,000 using the average exchange rate for 2019 published on exchangerates.org.uk). Solicitors for the Claimants wrote to Mr Kuzovkov on 4 May 2022 and put this allegation of bribery to him. The response to that letter, sent on 17 June 2022 by solicitors acting for Mr Kuzovkov and extending over 13 pages, did not deny that Mr Kuzovkov had received the sums alleged but did not even attempt to explain any legitimate basis upon which he had done so. The Claimants will rely upon this implied admission.

(4) As noted above, Mr Rabinovich (through Ermenossa) acquired approximately 9% of the issued share capital of FESCO held through the Novator and Nautilius Branches in September 2021."

51. I did not consider that there was any lack of clarity in the pleading of the inferential case advanced in these paragraphs. Nor did I consider that there was any lack of clarity in the explanations which were provided by the Applicants as to their case in their written skeleton arguments. Their case as to the Arguable Wrong condition was explained both in the skeleton argument that was before Foxton J in March 2024, and the skeleton argument served in June 2024 for the hearing ultimately vacated by Calver J.

52. Mr McLeod also submitted that the Applicants' case falls short of establishing that it is well arguable that a bribe was in fact paid, and refers to Mr Kuzovkov's vehement denials supported by statements of truth. Mr McLeod also referred to other aspects of the evidence, including the evidence served by 1291 Private Office that the transaction did not proceed at all. However, it did not seem to me that that evidence was powerful, and indeed there is no direct evidence from Mr Muggli served by 1291 Private Office for the purposes of the present hearing. The evidence served by 1291 Private Office is that of its solicitor, Ms Thackeray, and she did not identify the source of her evidence on this point – although I was told during the hearing, and of course I accept, that her evidence was indeed based on what Mr Muggli said.

53. It seems to me that, as with many if not most cases of conspiracy and bribery, a party is likely to make a case based on an inference to be drawn from a series of facts. I do not consider it necessary or appropriate to seek to review the evidence in detail. It suffices to say that I think that the Applicants have crossed the threshold of showing a good arguable case that a form of legally recognised wrong has been committed against them by a person. I accept the submissions of the Applicants on that issue as summarised above. I considered that the points made by the Applicant, set out in paragraph 46 were powerful, and were not effectively answered in any of the materials I was shown or in the submissions made.

54. I make it clear that, in reaching this conclusion, I do so on the basis of the relatively brief arguments addressed to me. I am conscious of the fact that there are likely to be much more detailed arguments advanced in the context of the forthcoming jurisdictional challenges by various parties. It may be that, on different evidence and different argument, a judge may come to a different conclusion on issues which are similar to the one that I am here considering.

Mixed Up

55. The second condition is the "Mixed Up Condition". The Applicants submit that 1291 Private Office was mixed up in the wrongdoing because, in December 2021, it attempted to facilitate the transfer of US$ 20 million. I am satisfied that this is sufficient to meet this condition, and Mr Friedman did not argue to the contrary. It is not necessary to consider the Applicants' further argument based on Mr Muggli, in December 2023, seeking positively to assist Mr Kuzovkov with his defence.

Possession

56. The third condition is the Possession Condition. Here, in substance if not form, a point was taken by 1291 Private Office via Ms Thackeray's evidence and the skeleton

argument submitted on its behalf. The latter invited the court to consider that 1291 Private Office had already confirmed on 3 separate occasions that it does not have the information sought. In paragraph 43 of her witness statement, Ms Thackeray identified the following 3 occasions:

(1) Mr Muggli confirmed to Mr Bedjaoui in October 2023 that he had no records of the correspondence with Mr Bedjaoui in November 2021.

(2) Mr Muggli separately confirmed in a letter to Mr Kuzovkov that he had never met Mr Kuzovkov and that he was unable to establish from his records who had requested that he arrange the bank account for the transfer of US$ 20 million to Rebetson.

(3) BWB Legal confirmed in correspondence with Seladore on 31 January 2024 that:

> "Mr. Kuzovkov and his companies are not and have never been working with my Client. There was no communication between Mr. Kuzovkov and my Client prior to Mr. Kuzovkov's email in December 2023. My Client doesn't possess any information that could identify the origin or confirm the authenticity of the documents provided by you in your email of 10 January 2024."

57. The Applicants made various points as to why the evidence submitted hitherto, which did not include any direct evidence from Mr Muggli, was not satisfactory. They submitted that it is implausible that a business such as the "1291 Group" would have no information or institutional memory relating to an enquiry to arrange for the transfer of a significant sum of money in the not too distant past. t that it is unlikely that Mr Muggli, or other employees – such as Mr Peenz, whose name is connected with Rebetson and who appears to have been an employee of 1291 Private Office at the time – would have no recollection of a client who wished to transfer US$ 20 million.

58. I do not consider it necessary to discuss or express a view on all of the points made by the Applicants. It is sufficient to say that I consider it very plausible that Mr Muggli will know the identity of the persons (i.e. the client) who was or were behind the transfer request which he then made to P3. I would not be inclined, on an application of the present kind, to conclude that the Possession Condition is not met, on the basis that documentation no longer exists, without a full explanation of what searches have actually been made. However, even if I were to assume that documentation no longer exists, it does not follow that all information as to the identity of the client is unavailable. Mr Muggli is still there, and I do not consider that the evidence served on behalf of 1291 Private Office establishes that he has forgotten the relevant circumstances of this transfer request. Indeed, it is to my mind a striking point that when Mr Muggli provided a statement to assist Mr Kuzovkov in December 2023, Mr Muggli said that Mr Kuzovkov was not involved "directly or indirectly". It seems to me that, in order to make the statement that Mr Kuzovkov was not involved "indirectly", Mr Muggli must have known (or at least it is plausible to say that Mr Muggli must have known) who was behind the request. Furthermore, if (as Mr Muggli says) Mr Kuzovkov was not involved directly or indirectly, there is an obvious question as to how it was that Mr Muggli was able to send Mr Bedjaoui the passport and CV of Mr Kuzovkov.

Overall Justice

59. I now turn to the final condition, which is the "Overall Justice Condition". All other things being equal, I would consider that the justice of this case would favour the grant of a NP Order against 1291 Private Office. However, there is in my view one significant point which needs to be considered. In her witness statement, Ms Thackeray said that contravention of Liechtenstein law was the final and most important point which the court needed to consider. I agree that it is the most important point, and I consider it in detail in Section D below.

60. Before doing so, however, I will briefly address one point which was (rightly in my view) not raised by any of the Respondents as a reason why NP relief should be refused; namely that the NP Application is being made for an improper purpose.

61. The background to this potential point is that it is clear from the materials relied upon in support of the application originally made to Foxton J, including Mr Bushell's witness statement in support, that a significant driver for the NP application, and the Applicants' request for expedition and applications for alternative service, is the forthcoming jurisdictional challenges which are to be made by a number of defendants. I was not referred at the hearing to any significant material relating to these challenges. I understand, however, that there is a substantial hearing fixed for September 2024, and a further hearing between 19-21 November 2024. An order dated 25 April 2024 provides for various jurisdictional challenges, and summary judgment or strike out applications, to be heard from 10 – 20 September 2024. I was, however, told that amongst the arguments to be advanced by some of the defendants, including Mr Kuzovkov, is that they were not party to any conspiracy or bribery. A purpose of the present NP Application is to enable the Applicants to find out who was behind the enquiry made by Mr Muggli in November 2021. The information would potentially assist the Applicants in resisting the applications which are to be made in September, because it may reveal, for example, that one or more of the defendants, or persons connected with them, was or were in fact behind the enquiry. Alternatively, it may show that there were other people, who have not yet been joined as defendants, who were implicated in the matters on which the Applicants rely.

62. I did not consider that an application for NP relief, in a context such as the present, would be for an improper purpose. The ultimate purpose of a NP order is to identify a wrongdoer. In *Axa Equity & Law Life Assurance Society plc v National Westminster Bank plc* [1998] CLC 1177, the Court of Appeal considered the scope of the rule that a NP order could be made against someone mixed up in the wrongdoing of another, but not against a "mere witness". Morritt LJ (giving the judgment of the court) quoted Lord Reid in Norwich Pharmacal:

> "They [sc. the authorities] seem to me to point to a very reasonable principle that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did. It may be that if this causes him expense

> the person seeking the information ought to reimburse him. But justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration."

63. Morritt LJ went on to say, at paragraph [23], that the "mere witness" rule "does not apply in cases where the identity of the alleged wrongdoer is not known for in such cases there will be no trial unless the order for discovery is made". Here, the Applicants are facing the possibility that there will be no trial of the present case, because the person or persons who was or were behind the enquiry relied upon is or are not known. They wish to have information which will identify the alleged wrongdoer, in circumstances where those against whom they have pleaded an inferential case deny any involvement, and are seeking to dismiss the claim on the basis of (amongst other things) that denial. It seems to me that this is a situation where, bearing in mind the flexible nature of the remedy, the Overall Justice Condition would be satisfied.

64. I have dealt with this point at this stage, because it is relevant to one of the principal arguments advanced by 1291 Private Office in the context of the appropriateness of alternative service. However, before doing so I turn to the question of Liechtenstein law.

D: Liechtenstein law

The parties' arguments

65. 1291 Private Office submits, in reliance on Dr Nesensohn's evidence, that it is reasonable to assume that disclosure by 1291 Private Office of the material sought by the NP Application would contravene Liechtenstein law, such that 1291 Private Office is entitled to rely on paragraph 4 of the draft Order. They also rely upon Dr Nesensohn's conclusion that the order on the NP Application would be incapable of enforcement in Liechtenstein in any event, and they contend that the Applicants' expert, Mr Raich, appears to agree with that conclusion. Accordingly, the NP Application serves no useful purpose.

66. 1291 Private Office argues that compliance with the order by 1291 Private Office would contravene two distinct provisions of Liechtenstein Law.

67. First, the Strafgesetzbuch (translated as the Criminal Code ("StGB")) provides in Article 124 as follows (in the translation provided by Mr Raich in his report):

> "Anyone who discloses a business or trade secret, which they are obliged to protect, to exploitation, use or other utilisation abroad is liable to a custodial sentence of up to five years.* In addition, a fine of up to 360 daily rates may be imposed".
>
> (*Dr Nesensohn has exhibited the German text of the article, and this refers to 3 years, as stated by Dr Nesensohn in his report).

68. Secondly, 1291 Private Office relies upon Liechtenstein's data processing laws: the Datenschutzgesetz (translated as the Data Protection Act) ("DSG"), and in particular Articles 26 and 42. Article 26 provides (in the translation provided by Mr Raich in his report):

> "Anyone who processes personal data or has personal data processed must keep personal data from processing that has been entrusted to him or made accessible to him due to his professional employment confidential, irrespective of other statutory confidentiality obligations, unless there is a legally permissible reason for disclosure of the entrusted or accessible data".

69. In his oral submissions, Mr Friedman submitted that the court should not make a pointless order. Here, there was persuasive evidence that compliance with the proposed order would contravene both of the Liechtenstein statutes. Accordingly, paragraph 4 of the proposed order would be engaged, and therefore nothing could be provided. It was not appropriate to make an order which in one paragraph said "do something", and in the following paragraph says "Well, but you don't have to". In relation to the case of contravention of the DSG, Mr Friedman emphasised that Mr Raich's view, that it was arguable that compliance with an English court order was a "legally permissible reason", was nowhere near sufficient to justify the order. It would leave 1291 Private Office in the position of being ordered to do something which was prima facie contrary to Article 26, but where the best that could be said was that there was an untested argument that it was permissible.

70. In their written submissions, the Applicants submitted, relying on Mr Raich's evidence, that a definitive view on breach of criminal law could not be taken without review of the documents. It was also arguable that an English Court's order would amount to a valid legal reason to disclose any personal data. The appropriate course was therefore for an order to be made against 1291 Private Office and for it to review, in good faith, the responsive information and documents, and provide what it is able to without contravening Liechtenstein law, including through redaction where necessary. They also submit that the question of whether an NP order would be enforceable is an untested area of Liechtenstein law open to argument.

71. In his oral submissions Mr Morgan said (correctly in my view) that it would be difficult to form a final view on the Liechtenstein law issues one way or the other, bearing in mind that not all of the underlying materials had been provided and that there was no cross-examination. The question was therefore what order the court should make. He submitted that if there was a high degree of certainty that compliance with the order would contravene Liechtenstein law, that might restrain it from making the order at all. But if the court thought that the matter was arguable, then the court should make the order, and leave 1291 Private Office to rely upon paragraph 4 and then pursue any points in Liechtenstein. He referred to Mr Raich's evidence that there was the possibility of a Liechtenstein court concluding that an English judgment was a sufficient reason for giving otherwise protected information, or getting a Liechtenstein judgment based on the English judgment. It would then, he said, be for the Applicants "to pursue

those if objection was taken by [1291 Private Office] having analysed the documents they, in fact, have". He said that an English court order would be advantageous in order to provide the foundation for whatever action could be taken in Liechtenstein. There were sufficient prospects of getting meaningful relief to make it an appropriate exercise of the court's discretion. He also submitted that there were procedures in Liechtenstein for obtaining a judgment which gave effect to rights established by an overseas judgment. This might not be regarded in Liechtenstein as enforcement, but that was a matter of terminology. It was, from the perspective of English law, enforcement or the equivalent thereof.

The expert evidence

72. In his first report, dated 5 June 2024, Dr Nesensohn expressed the view that 1291 Private Office would contravene Liechtenstein law by complying with the draft NP Order. He said that this would be so if 1291 Private Office is legally and/or contractually bound to secrecy and confidentiality vis-à-vis its clients and/or the persons affected by the disclosure of information under the draft NP Order did not consent to the disclosure of their data. In relation to Article 124, he said as follows:

> "Business and trade secrets refer to company-related business or technical facts in which the owner has a legitimate interest in maintaining secrecy. No secrets are obvious facts and facts that are not generally known but are easily accessible to interested parties (e.g. through literature or internet research). The disclosure of illegal business and trade secrets (e.g. a plan to build a bomb) can also be a criminal offence. Trade secrets generally include a company's strategy, purchasing conditions, sales structures, customer lists, data of customers, suppliers, employees etc, clients' correspondence, customer turnover and the like. Even the disclosure of data on a small number of customers, potential customers or the disclosure of an individual customer can constitute a criminal offence.
>
> Given the broad meaning of trade and business secrets and considering the business of 1291 Private Office Ltd., it would be reasonable to assume that the documentation requested by the (draft) Norwich Pharmacal Order concerns business- and trade secrets."

73. He also addressed Article 26 DSG. He said that in the absence of any enforcement treaty between the UK and Liechtenstein, English court orders are not enforceable in Liechtenstein, even if properly served. Accordingly, the draft NP Order (if ordered by the English court) could not be understood as a legal obligation according to Article 26 to disclose data.

74. Pursuant to Article 42, the wilful disclosure of secret personal data to another person without authorisation was punishable with up to "6 months" imprisonment or a fine of up to 360 daily rates. Article 42 DSG sanctioned the violation of data protection in professional activities, even if there is no actual professional secret within the meaning of Article 121 StGB. It appeared to be common ground between the experts that Articles 26 and 42 were not confined to professional secrets. Dr Raich cited a legal authority which stated that the relevant provisions were "not to be understood as professional secrecy but serves to protect the person concerned as the master of his or her personal data".

75. Since it was reasonable to assume that the information and documentation requested by the draft NP Order was, to a large extent, personal and/or even sensitive data within the meaning of GDPR, 1291 Private Office would contravene Liechtenstein law (both criminal and data protection) by complying with the draft NP Order.

76. His conclusions were as follows:

> "37. In conclusion, without the consent of the data owner or an order of the Liechtenstein Court releasing the information would be in contravention of the Liechtenstein Data Protection Act.
>
> 38. Since there is no enforcement treaty between Liechtenstein and England the Norwich Pharmacal Order is not enforceable in Liechtenstein and the Liechtenstein courts will not order to enforce the Norwich Pharmacal Order in Liechtenstein."

77. Mr Raich responded to that report on 19 June 2024.

78. In relation to Article 124 StGB, he said that it can be assumed that this covered disclosure of business secrets in the context of foreign court proceedings. He referred to an Austrian decision, which holds that this applies to all foreign states (including those in the EU), and this was illustrative of "how rigorously the offence is interpreted". Austria is the "country of reception of the StGB" (in other words, the StGB is based on Austrian law). Under Austrian law against unfair competition, a business secret would exist if it had commercial value; i.e. concrete market value or indirectly strengthening the company's competitive position. He said that in the present case, it could not be assumed that these criteria are met.

79. In paragraphs 44 and 45 of his report, Mr Raich fairly acknowledged the possibility that the orders sought by the NP Order would involve business secrets covered by Article 124:

> "[44] According to prevailing opinion, "business secrets" are understood to be facts and findings that are only known to a certain and limited number of persons and are not or only with difficulty accessible to others and, according to the intention of the authorised party, should

> not go beyond this circle of insiders, and which concern company-related commercial relationships. This may include, for example, price calculations customer base, conditions, business letters on pricing, purchasing conditions, sample collections, delivery offers, special recipes or customer lists (insofar as they contain more than just names, addresses and telephone numbers).
>
> [45] Due to this broad definition and the limited publicity or accessibility, it can certainly be argued that the information concerned is (at least partially) classified as a business secret. Notwithstanding such classification, the review of the documents under the Norwich Pharmacal disclosure would be necessary. While the definition of "business secret" is broad under Liechtenstein law, it is not possible to state whether it is a business secret without review of the documents concerned."

80. He then concluded as follows:

> "It cannot be excluded that criminal liability may arise from the disclosure of a business or trade secret and as an English court judgment or court order is not directly enforceable in Liechtenstein, it cannot be assumed that the addressees of an NP order in Liechtenstein would readily comply with it and may expose themselves to a possible penalty."

81. In relation to Article 26 DSG, Mr Raich accepted that, in relation to the information sought in the draft NP Order, the names of the persons sought to be identified was personal data in accordance with the DSG. He said as follows:

> "Although it is quite clear that some of the requested information will be personal data in accordance with the DSG (in particular, names of the persons sought to be identified), however, it is by no means clear that all the Information sought would be personal data (a number of the items listed in the Draft Order are explanations, for example, detailing searches undertaken) - a case-by-case review of the documents and information to be provided would be necessary to form a definitive view."

82. The significance of this point, as Mr Friedman submitted, is that the key information which is sought by the NP Order is the name or names of the individuals who were behind the enquiries which were made by Mr Muggli in November 2021. Unless that information is forthcoming, the NP Order would not achieve any useful purpose. Thus, the provision of information as to searches carried out would in itself, and without identification of the individuals, be of no value. However, as Mr Raich fairly acknowledges, the names of the

persons sought to be identified are protected data covered by Articles 26 and 42.

83. Mr Raich then said, in paragraph 52, as follows:

> "In any event, a court or administrative authority is entitled to request the disclosure of personal data. In principle, a court judgment or an instruction could therefore also constitute a "legally permissible reason". I am not aware of any case law in which the Liechtenstein court has considered whether a foreign court order such as that sought from the English court here, would constitute such a "legally permissible reason" but it is certainly arguable that it would."

84. This question had previously been addressed by Dr Nesensohn, and his answer was categoric:

> "In the absence of any enforcement treaty between the UK and Liechtenstein, English court orders are not enforceable in Liechtenstein, even if properly served. Therefore the (draft) Norwich Pharmacal Order cannot be understood as a legal obligation according to Art 26 DSG to disclose data".

85. The issue was then debated by the experts thereafter in their reports, as discussed below. I note at this stage, however, that Mr Raich's view is put no higher than to say that it is arguable that compliance with a court judgment would be a legally permissible reason, but that there is no authority to support it. The corollary of that is that it is also arguable that compliance with the English court order would not be a legally permissible reason, and that there is no authority that would provide any comfort to 1291 Private Office were they to provide protected information, such as the identity of the individuals, in reliance on the NP Order. In my view, even if the legal position is not as clearcut as stated by Dr Nesensohn, it is apparent from the views of Mr Raich that 1291 Private Office could not safely act on the NP Order, by providing the identity of the individuals, without breaching the DSG and thereby violating Liechtenstein law.

86. In his first report, Mr Raich then addressed in Section E3) a further question as to the enforceability of the NP Order in Liechtenstein. The question posed was:

> "Would the Norwich Pharmacal Order be enforceable in Liechtenstein, and/or is there a process under Liechtenstein law which the Applicants might use to give effect to the Norwich Pharmacal Order".

87. Mr Raich then explained that Liechtenstein is not a contracting state to the Lugano Convention or any other multilateral agreement on the recognition or enforcement of foreign judgments, and that there is also no applicable bilateral treaty. He then explained that the "foreign title" can serve as a basis for the

enforcement of rights. Proceedings can be started whose subject is the "substantive legal treatment of the claim (from the foreign title)". He explained the Liechtenstein procedures in relation to such a claim. The procedures result in the Claimant and Defendant facing "each other here in a battle over substantive law".

88. Having described these procedures, Mr Raich states:

> "It is important to note that under Liechtenstein law, it is conceivable in certain cases that someone may be obliged by a court to hand over certain information or documents. I am only aware of previous cases in which this process has been successful on the basis of statutory or contractual rights. I am not aware of any previous case in which a party has sought to claim information or documents through this process on the basis of an English Norwich Pharmacal Order, I can see that the position would be arguable but as it has not previously been tested by the Liechtenstein courts I cannot say with any certainty that such a claim would succeed."

89. Dr Nesensohn responded to Mr Raich in a report dated 24 June 2024 (i.e. shortly before the hearing before Calver J).

90. In relation to the StGB (the Criminal Code), Dr Nesensohn agreed with Mr Raich that the definition of business and trade secrets was broad, and this confirmed Dr Nesensohn's view that a breach of the duty of confidentiality would be a criminal offence. He said that the draft NP Order sought information on the customer base and internal procedures of 1291 Private Office. This was the "core" of its business activities and "it is therefore more than likely that they qualify as business and trade secrets".

91. In relation to the DSG, he said a court judgment could constitute a legally permissible reason to disclose personal data without violating the DSG, but this was only if 1291 Private Office was ordered by a Liechtenstein court to do so. English court decisions are not enforceable in Liechtenstein, and could not therefore have any legal effect. A foreign decision which is not enforceable in Liechtenstein did not qualify as a legally permissible reason.

92. In relation to Mr Raich's discussion in Section E3 of his report, concerning Liechtenstein procedures for giving effect to a foreign title, Dr Nesensohn explained that this was not concerned with enforcing an English court decision in Liechtenstein. UK court decisions are not enforceable in Liechtenstein. The procedures described by Mr Raich were concerned with "obtaining a new title in Liechtenstein", and had nothing to do with the question whether UK court decisions are enforceable in Liechtenstein or not.

93. Mr Raich responded on 13 August 2024 (shortly before the hearing before me). He addressed the issue of transfer of data under the GDPR, and reiterated his view that it is certainly arguable that a foreign court order could constitute a legally permissible reason under the DSG. He then analysed the GDPR, which

is applicable in Liechtenstein as a member of the European Economic Area. He said that there was a cogent argument that transfers for the purpose of establishing, exercising or defending legal rights (see Article 49 (1) (e) GDPR) would be permissible where the transfer is to a country which has an "adequacy" decision. The UK has such an adequacy decision, since the European Commission has declared the data protection regime of the UK to be equivalent and adequate to that of the EU. Accordingly, whilst the matter had not been tested in the Liechtenstein courts, Mr Raich's view was that a UK court order requiring disclosure of data required to establish a legal claim would be a legally permissible reason for disclosure of personal data under Liechtenstein law. This applies "all the more if the NPO is declared enforceable in Liechtenstein by a Liechtenstein court in the relevant proceedings": i.e. the type of proceedings that Mr Raich had previously discussed in Section E3 of his first report.

94. Dr Nesensohn produced a rapid response to this report on 18 August 2024, focusing on the position in relation to the DSG and GDPR. He referred to the "Report and Motion of the Liechtenstein Government" in relation to the DSG, which stated that only a legal or contractual obligation could constitute a "legally permissible means". In his view, a foreign court decision which is not enforceable does not constitute a legal obligation within Liechtenstein, and cannot constitute a legally permissible means according to Article 26 DSG. He said:

> "If that was the case, Liechtenstein data protection would be non-existing, since every foreign authority could order, however unenforceable in Liechtenstein, anything and data could be released without any protection of the Liechtenstein GDPR. This is obviously not the approach of a sovereign country".

95. Dr Nesensohn also argued that Article 48 is the relevant provision of the GDPR governing a case such as the present, which concerns an unenforceable order of a foreign court. This provides:

> "**Transfers or disclosures not authorised by Union law**
>
> Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State, without prejudice to other grounds for transfer pursuant to this Chapter."

96. He says that since there is no enforcement treaty between the UK and Liechtenstein, disclosure of data on the basis of a non-enforceable decision is not permitted under Article 48 GDPR. The unauthorised transfer would be punishable by a fine of up to EUR 20,000,000 or up to 4% of annual turnover.

Discussion

97. The "Overall Justice Condition" requires the court to be satisfied that requiring disclosure from the respondent is an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction. The most recent and authoritative review of the potentially relevant factors is the judgment of Lord Kerr of Tonaghmore JSC in *Rugby Football Union v Consolidated Information Services Ltd* [2012] UKSC 55, paragraphs [14] – [17]. Amongst the (non-exclusive list of) matters identified as relevant factors for consideration are: (v) the degree of confidentiality of the information sought and (ix) the rights and freedoms under the EU data protection regime of the individuals whose identity is to be disclosed. Where, as here, the party against whom an NP order is sought is an overseas company, it is clearly relevant to take into account any potential breaches of the criminal law in the country where the company is resident or operates.

98. I consider that, for the following reasons, it would be inappropriate to make any order, because compliance with the order would potentially expose 1291 Private Office to criminal liability for contravening Liechtenstein law, specifically Article 124 StGB and Article 26 DSG. It is not necessary for me to try to decide what the outcome would be of any criminal proceedings in Liechtenstein which raised the issues which have been debated between the experts. It is sufficient, in my view, to conclude (as I do) that there is, on the basis of the Liechtenstein law evidence before me, a strong case for saying that either the StGB or Article 26, or both, would be contravened if there were to be compliance by 1291 Private Office with the proposed NP Order. Dr Nesensohn's reports on these issues (and indeed on all issues addressed) are thorough and detailed, and there is nothing which he says on these issues which is obviously flawed, let alone so obviously flawed that it could be disregarded. Indeed, in so far as contrary points are advanced by Mr Raich, they are couched in terms of a point being arguable, thereby acknowledging that there is also an opposing argument which cannot be disregarded. Furthermore, in advancing those points, Mr Raich fairly acknowledges the absence of any prior decisions in Liechtenstein law which supports his position. His contrary arguments are, therefore, untested. It follows that 1291 Private Office could not, in my view, safely proceed to comply with the proposed NP Order on the basis of the points made by Mr Raich.

99. As far as concerns Article 124 StGB, it is common ground that the definition of trade and business secrets is broad (or as Dr Nesensohn describes it, very broad). There is clearly a substantial argument that the identity of the client of a financial services firm is a business secret within that broad definition. Mr Raich advances counter-arguments on that point. I am in no position to decide how a Liechtenstein court would resolve the argument in the event that there were criminal proceedings which raised the point. I do not, however, have any basis for saying, with any degree of confidence, that Mr Raich's argument would prevail.

100. In relation to the DSG, it is common ground that the key information sought by the NP Order, namely the identity of the client, is within the purview of Article

26 and is therefore potentially protected. The only question, therefore, is whether compliance with an English court order would provide a valid reason for disclosing the data. Dr Nesensohn says no. Mr Raich says that the point, although untested, is arguable. On this issue I again consider that there are substantial arguments which support Dr Nesensohn's position. These have been well-articulated by Dr Nesensohn and have been summarised above. Indeed, I would tend to think that, on the present material, Dr Nesensohn's argument has much more force than the contrary points advanced by Mr Raich.

101. My reading of the expert evidence is that an English court order is not enforceable in Liechtenstein, at least in the way that enforcement would ordinarily be understood. There is the possibility of the procedures identified by Mr Raich in Section E3 of his report being implemented, so as to obtain (as Dr Nesensohn described it) a legal title in Liechtenstein. Mr Raich's relatively brief description of the procedures indicates that they are not swift or straightforward. Unless and until they were to be operated, with a successful outcome in terms of obtaining a new title in Liechtenstein, I cannot see that a party in the position of 1291 Private Office could safely provide information pursuant to the NP Order, relying simply on the fact that the English court has made the NP Order. In circumstances where the English court's order is not in itself enforceable, and therefore in itself does not create any rights which would be recognised in Liechtenstein, it is not easy to see that the order would provide a basis for the disclosure of data which would otherwise be prohibited by the DSG. It also seems to me that this conclusion, reflecting the position taken by Dr Nesensohn, is reinforced by Article 48 GDPR to which he referred.

102. The Applicants submitted that the potential criminal consequences of complying with the NP Order were sufficiently catered for by paragraph 4: "Nothing in this order authorises or requires a Respondent to do anything which is contrary to the law of the country where the Respondent is incorporated". I agree that this would provide a degree of protection for 1291 Private Office. However, I do not consider that this really answers the question of whether it is appropriate to make the NP Order in the first place. It seems to me that where there is, as here, strong evidence that compliance with the proposed order will in fact contravene the criminal law of the country where 1291 Private Office is incorporated and operates, the English court should be most reluctant to grant the order which is sought. There is also force in Mr Friedman's point that it would be difficult to see what the NP Order would achieve, in circumstances where it is plain that 1291 Private Office would seek to rely on paragraph 4, and where such reliance could not reasonably be criticised in circumstances where there is legal advice (in the form of Dr Nesensohn's clear reports and conclusions) that compliance with the NP Order would contravene Liechtenstein law.

103. It is important to recognise, in the present context, that I am not dealing with an application for disclosure against an existing party to English litigation, and where a substantive claim is being made. In such circumstances, the court will consider matters such as whether there is a real risk of prosecution for the alleged criminal contravention. The decision of Henshaw J in *The Public Institution for Social Security v Muna Al-Rajaan Al Wazzan* [2023] EWHC 1065

paragraphs [43] – [51] contains a comprehensive summary of the applicable legal principles when a party contends that it should not be required to comply with a disclosure order because to do so would potentially involve an offence under the applicable criminal law of another country.

104. Here, however, I am dealing with a company, 1291 Private Office which is alleged to have become "mixed up" in the torts of other parties, and where no substantive claim is being made. I am also dealing with a party which is incorporated and resident in an overseas jurisdiction and where there is substantial evidence that compliance with the proposed order would in fact contravene the criminal law of that jurisdiction. In many if not most NP cases which come before the English courts, the third party (usually a UK bank or financial institution) will take a neutral position, and the order which the English court then makes provides protection for the third party when it provides information which might otherwise be regarded as confidential. The English court order is therefore a very real protection for that third party. The position in the present case is very different: the English court order is not entitled to recognition or enforcement in the relevant overseas jurisdiction, and it does not obviously provide any protection to the third party, still less protection equivalent to that provided in a typical NP application involving a UK bank or financial institution.

105. Against this background, where there is substantial evidence that compliance with the order will contravene Liechtenstein law, I do not consider it appropriate in the interests of justice to make a NP Order against 1291 Private Office. If there is to be any order for the production of the information sought by the Applicants from 1291 Private Office, such orders should be made, if at all, by a Liechtenstein court. It is common ground that compliance with a Liechtenstein court order would provide a valid reason for the disclosure of data which would otherwise be a contravention of the DSG. If such an order were to be sought, a Liechtenstein court would also readily be able to assess whether potential breach of the StGB would prevent such an order being made. In my view, these are all matters for a Liechtenstein court, should the Applicants choose to pursue, in some form, their present application there. It may be that, in practical terms, there is no procedure for making such an application, at least without the benefit of an English court order. However, I do not consider that this difficulty, if it exists, is a reason for making the proposed NP Order.

106. In the course of his submissions, Mr Morgan referred to the evidence of Mr Raich in Section E3 of his first report concerning the procedures which exist in Liechtenstein concerning how "foreign title can serve as a basis for the enforcement of rights". It will be recalled that his conclusion in paragraph 58, as set out above, is that:

> "I am only aware of previous cases in which this process has been successful on the basis of statutory or contractual rights. I am not aware of any previous case in which a party has sought to claim information or documents through this process on the basis of an English Norwich Pharmacal Order, I can see that the position would be arguable but as it has not previously

> been tested by the Liechtenstein courts I cannot say with any certainty that such a claim would succeed."

107. The present case, where the Applicants seek the equitable NP remedy, is clearly not concerned with statutory or contractual rights. Mr Raich also fairly accepts that there is no precedent in Liechtenstein for the procedure being used to give effect to an English NP Order. Mr Morgan sought to persuade me that it was appropriate to grant the NP Order, so that the Applicants would then be in a position to go to Liechtenstein and use the procedures described by Mr Raich, which were (in Mr Morgan's submission) equivalent or akin to enforcement. I was not persuaded that this provides a justification for the Order sought. The Applicants' difficulty is that they are seeking NP relief from a Liechtenstein third party in circumstances where the proposed NP order, if complied with, would potentially contravene Liechtenstein law and where it is not readily enforceable in Liechtenstein and where there is no precedent for any similar order having ever been enforced in Liechtenstein. The Norwich Pharmacal jurisdiction was, as it seems to me, designed to provide a swift remedy to a party who needed to identify wrongdoers, and which would then enable proceedings to be commenced or perhaps amended against them. It is in my view a very long way from those origins, and indeed the way in which the jurisdiction has developed, for the English court to be asked to make an order which cannot have immediate effect (because of the possible contravention of criminal law overseas), but which would provide the basis for an unprecedented and therefore somewhat speculative application in an overseas jurisdiction. There was in my view force in Mr Friedman's point that 1291 Private Office, as a third party which is not alleged to have been a wrongdoer, should not be subject to speculative and unprecedented litigation in Liechtenstein whose foundation is an order such as that proposed by the Applicants here.

108. This consideration also answers the point, which was considered in the course of argument, as to whether it would be appropriate to make an order which had protections additional to paragraph 4. I raised the possibility of making an order (without a penal notice) which would be not be immediately enforceable, but would only become enforceable if a Liechtenstein court were either to enforce my order or (as Mr Morgan suggested in argument) to make an equivalent or similar order. I have considered whether, in that respect, an analogy might exist with the standard form Commercial Court worldwide freezing injunction. This contains a standard paragraph concerning "Persons outside England and Wales". It provides that the order affects certain persons in a country or state outside the jurisdiction of the English court, including "any other person, only to the extent that this order is declared enforceable by or is enforced by a Court in that country or state".

109. However, I have concluded that there is no relevant analogy here, and that the form of order under discussion would not be appropriate. It seems to me that, ultimately, the role of the English court on an application of the present kind, and indeed generally, is to decide whether or not to make an order which is to bind a party. Here, because of the possible contraventions of Liechtenstein law, it is not appropriate to make an immediately binding order. Whilst it is true that the court might make a conditional order, so that a party is only bound when

some other event happens, this would be unusual. In the present case, the relevant event would be the decision of a Liechtenstein court. I can see that this might be a permissible approach if it were possible (to adapt the language of the standard form worldwide freezing order) for a Liechtenstein court to declare the NP Order enforceable or to decide to enforce the NP Order. However, on the expert evidence before me, that is not an available procedure. Such procedures as might exist, as described in Section E3 of Mr Raich's report, have never previously been used in this context. I am not persuaded that there would be a good reason for making what would seem to me to be a very unusual order.

110. In summary, therefore, the position is as follows. The Applicants have demonstrated that the first three conditions for the grant of a NP order have been satisfied. There is a good arguable case that a form of legally recognised wrong has been committed against them by a person. There is also a good arguable case that 1291 Private Office has been mixed up in so as to have facilitated the wrongdoing. I also consider that 1291 Private Office is likely to be able to provide information, if not documents, necessary to enable the wrongdoer to be pursued. But for the Liechtenstein law point discussed above, this would be an appropriate case to require disclosure in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction. However, the fact that there is a strong case that the provision of the critical information, as to the identity of the wrongdoer, would contravene Liechtenstein law, coupled with the fact that the proposed NP Order is not readily enforceable in Liechtenstein, is in my view a decisive reason why it is not in the interests of justice to make the order against 1291 Private Office.

E: Procedural arguments

111. Since the application against 1291 Private Office fails for the reasons set out above, I do not consider it necessary to address the various procedural arguments advanced by that company in great detail. I will, however, express as briefly as possible, my conclusions on each of the points raised.

E1: No originating process

112. 1291 Private Office submits that an application for NP relief may be made by Claim Form where an application is made prior to the issue of the intended substantive proceedings. It can also be made by application notice under Part 23, but only where there are proceedings already in existence and the respondent to the NP application has been joined as a party to the existing proceedings. In support of the latter proposition, they refer to the decision of Master Matthews in *Towergate Underwriting Group Ltd v Albaco Insurance Brokers Ltd* [2015] EWHC 2874 (Ch). They submit that the NP Application here was issued by Part 23 application notice only, without joining 1291 Private Office as a party to the Claim. In consequence, no originating process has been served on 1291 Private Office. 1291 submits that this was impermissible.

113. I disagree. In *Gorbachev v Guriev* [2022] EWCA Civ 120 para [32], the court was concerned with CPR 31.17 which permits a party to apply for third party

disclosure from non-parties. This type of application is, clearly, very closely analogous to anNP Application, and indeed there is no reason why applications for NP relief and relief under CPR 31.17 should not be made at the same time. The effect of the CPR is that applications under CPR 31.17 are made by application notice. The same is true in relation to third party disclosure applications against non-parties under CPR 31.16. At paragraph [31] – [36], the Court of Appeal approved my analysis (at first instance) of certain procedural points taken by the respondent to that application, including that "there are circumstances in which proceedings in court may be originated by an application". I had referred to the lengthy discussion of this point in paragraph 23.0.2 of the White Book and other matters: see *Gorbachev v Guriev* [2022] 1907 (Comm) paras [46] – [48]. Accordingly, there is in my view no difficulty in regarding a Part 23 application as a form of originating process, and I reject the argument that no originating process has been served.

114. The next question is whether this was the wrong form of originating process, because it was only appropriate to make the NP Application against 1291 Private Office either by issuing a separate claim form, or by joining it as a party to the existing proceedings. I accept of course that it would be permissible for a NP applicant to take either of these courses, even within the context of an existing action. It would not, in my view, be particularly helpful to issue a new claim form, with the possible consequence that those involved in the existing action would not know about the application. However, the fact that it is permissible for a NP applicant to do this does not mean that it was wrong for the Applicants in the present case to issue a Part 23 application. There was, after all, an existing action. Applications in the course of an existing action are usually made by application notice under Part 23. The court's procedures in relation to Part 23 applications give parties a full opportunity to respond to the applications being made, including to set aside any order which has been made without prior notice. Unlike *Towergate*, this is not a case where there has been no originating process at all. In his judgment, Master Matthews was particularly focused on CPR 7.2, which provides that proceedings are started when the court issues a claim form at the request of the claimant. That of course happened in the present case, well before the NP applications were made.

115. I do not read Master Matthews' decision as dealing with the case where, as here, there is an existing claim, and an application is made in the context of that claim. Indeed, in paragraphs [15], [25] and [26] of his judgment, Master Matthews contrasts the two cases where the claim has started, and the claim has not started. At paragraph [15], he referred to the appropriateness of using Part 23 when the applications are taking place within existing claims. At paragraph [25], he says in terms:

> "If the claim had already been started, Part 23 would be the means by which an application in the claim would be made".

116. In my view, this difference in approach, between cases where there is an existing claim, and cases which have yet to be started, is reflected in the current version of the Chancery Guide:

> "14.81 Applications for disclosure pursuant to Norwich Pharmacal v Customs and Excise Commissioners [1974] AC 133, [1973] 2 All ER 943, HL should be made by Part 8 claim form unless made within existing proceedings when an application can be made under Part 23. An application under Part 23 is otherwise likely to be rejected."

117. I see nothing wrong with that statement in the Chancery Guide as to the procedures to be followed. Indeed, I note that it represents a change from the 2022 version, which did not have the qualification "unless made within existing proceedings".

118. I was referred by Mr Friedman, in 1291 Private Office's skeleton argument and submissions, to some other authorities. I do not consider it necessary to discuss them. None of the judgments to which I was referred was addressing, in terms, the issue which has arisen here.

119. It also seems to me that there is no good reason why there should be a significant difference between the procedures for an application under CPR 31.17, when an application is made in the context of existing proceedings, and a NP application against a third party in the context of existing proceedings.

120. I therefore reject the argument of 1291 Private Office that the Applicants failed to follow the correct procedure. If I had concluded that there was any substance to that point, I would have needed to consider whether to exercise the court's powers under CPR 3.10. But in the light of my conclusion, I do not need to address that issue.

121. Considerable reliance was placed by Mr Friedman on the fact that Foxton J, when he made his directions at the same time as his Order, contemplated that there would be an "AOS" or Acknowledgment of Service. I do not consider that this affects the above analysis. As I pointed out in the course of argument, Foxton J is the judge in charge of the Commercial Court, and he has to deal with an enormous number of applications on paper in addition to his normal sitting duties. I doubt whether he gave the present issue, discussed above, any thought at all: the point had not been argued. Furthermore, there was nothing in the papers submitted to Foxton J which suggested that the Applicants would be issuing a Claim Form, which then required an acknowledgment of service. On the contrary, the Order itself makes it clear that it was the Application Notice that was to be served out of the jurisdiction, and that permission for alternative service was granted in respect of the Application Notice. I note too that 1291 Private Office does not challenge paragraph 1 of Foxton J's Order, and that therefore the permission to serve the Application Notice out of the jurisdiction still stands.

122. Accordingly, I reject the argument that the Applicants failed to follow the correct procedure. In so far as this point was also taken by way of a non-disclosure argument, it has no substance, and certainly does not improve the case of 1291 Private Office. The order sought by the Applicants made it clear that they intended to serve the Application Notice out of the jurisdiction. The

judge was not misled. Nor was it necessary to tell the judge that this was the wrong procedure to use, because in my view it was the correct procedure.

E2: Alternative service: Paragraph 2 (a) of Foxton J's order

123. CPR 6.40 provides as follows so far as relevant:

> *"Where service is to be effected on a party out of the United Kingdom*
>
> **(3)** Where a party wishes to serve a claim form or other document on a party out of the United Kingdom, it may be served—
>
> **(a)** by any method provided for by—
>
> **(i)** [Omitted]
>
> **(ii)** rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities); or
>
> **(iii)** rule 6.44 (service of claim form or other document on a State);
>
> **(b)** by any method permitted by a Civil Procedure Convention or Treaty; or
>
> **(c)** by any other method permitted by the law of the country in which it is to be served.
>
> **(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the claim form or other document is to be served**.
>
> (Emphasis added)."

124. The commentary in the 2024 edition of the White Book (paragraph 6.40.4) provides:

> "The only bar to the exercise of the court's discretion to make such order [for alternative service] is that, by r.6.40(4), nothing in a court order must authorise any person to do anything which is contrary to the law of the country where the claim form is to be served. Thus, the proposed method of service may not be permitted by the law of that country; the bar applies only where such method is positively contrary to the law of that country. The evidence required would therefore seem to be that the proposed method of service (or, in retrospective

> cases, the method that has been used): (1) is not permitted under Pt 6; and (2) will not be or was not contrary to the law of the country where the claim form or other document is to be served, pursuant to r.6.40(4)."

125. The burden of proof is on the claimant to establish that service would not contravene the relevant foreign law and the relevant standard of proof is on the balance of probabilities (see *Von Pezold v Border Timbers Ltd [2021]* 2 All E.R. (Comm) 762 at [26] and [30], per Julia Dias QC sitting as a Deputy High Court Judge).

126. 1291 Private Office Ltd submits, in reliance on Dr Nesensohn's 2nd report, that the alternative service which Foxton J ordered under paragraph 2 (a), on BWB Legal, was contrary to Liechtenstein law. Dr Nesensohn accepted that this point would not apply to the alternative service ordered in paragraph 2 (c).

127. In his second report, Dr Nesensohn explained that, if paragraph 2(a) of the Order has the effect of formally serving 1291 Private Office with legal documents relating to UK proceedings (which it clearly does), this is illegal in Liechtenstein because it is contrary to Article 2 of the State Protection Act. The reason isthat the Applicants would be considered under Liechtenstein law to be performing an act for the UK court (indirectly as an entrusted body of the UK court or its extended arm), without authorisation from the Liechtenstein court, and in respect of an act which is the responsibility of the Liechtenstein court. In his third report, Dr Nesensohn drew attention to a 2017 decision of the Swiss Federal Criminal Court, based on the near identical wording of Article 271 of the Swiss Criminal Code. This reached the conclusion for which Dr Nesensohn contended. Mr Friedman was also able to invoke an English decision to the same effect, when Swiss law was considered in some detail: *The Sky One* [1988] 1 Lloyds Rep 238.

128. In my view, these submissions were unanswerable, and Mr Morgan in his oral submissions did not in fact address any argument on this point. His concern when addressing it was to deal with 1291 Private Office's wider case that the setting aside of paragraph 2 (a) of the Order should also have the effect, because of non-disclosure, of setting aside paragraph 2 (c) as well. I will return to that argument below in the context of non-disclosure. For present purposes, it suffices to say that paragraph 2 (a) of the Order must be set aside.

129. Accordingly, accepting Dr Nesensohn's opinion, paragraph 2(a) is positively contrary to Liechtenstein law in that it is illegal. The method of service obtained by the Applicants in this regard does therefore contravene CPR 6.40(4) and paragraph 2(a) of the Service Order ought to be set aside and not re-granted.

E3: Alternative service on 1291 Private Office via 1291 UK

130. Paragraph 2 (c) of the Order permitted alternative service on 1291 Private Office by post to 1291 UK's registered address at 73, Cornhill, London EC3V 3QQ.

131. Pursuant to CPR 6.15(1), 6.27 and 6.37(5)(b), the Court may make an order permitting service out of the jurisdiction by an alternative method or at an alternative place "*where it appears to the court that there is a good reason to authorise*" such alternative service.

132. The Supreme Court in *Abela v Baadarani* [2013] UKSC 44 held: (1) that whether there is good reason to treat a method of service not permitted by Pt 6 as good service under r.6.15(1) and (2) is essentially a matter of fact. (2) The contrast with r.6.16 under which the court can only dispense with service of the claim form "in exceptional circumstances" shows that it is not right to add a gloss to the test by holding that there will only be good reason in exceptional circumstances. (3) That in these cases it should not be necessary for the court to spend undue time analysing decisions of judges in previous cases which have depended on their own facts. (4) The mere fact that the defendant has learned, by the method used, of the existence and content of the claim form cannot without more constitute a good reason to make an order under r.6.15(2), but the wording of the rule shows that it is a critical factor. (5) In this context the most important purpose of service is to ensure that the contents of the document are communicated to the defendant.

133. The White Book commentary at 6.15.3 provides that the decision in *Abela*:

> "… would suggest that it should not now be the practice to make orders for what is commonly referred to as "deemed or substituted service" prospectively under r.6.15(1) unless there is a high degree of likelihood that the claim form or document (r.6.27) will come to the intended recipient's notice. "

Good reason for alternative service?

134. The principal argument of 1291 Private Office was that there was no good reason for alternative service. Permission for alternative service was sought on the basis that there was urgency to the NP Application, and that it was estimated that regular service in Liechtenstein would take at least 7 months. 1291 Private Office submitted that there was no urgency, and if there was any urgency that was the fault of the Applicants who should have made the application earlier.

135. In support of the application to Foxton J, in paragraph 73 of their skeleton argument (supported by Mr Bushell's evidence), the Applicants advanced 5 reasons as to why the application was urgent:

> "(1) There is a risk that relevant documents have been destroyed or will shortly be destroyed: the letter of 15 December 2023 alluded to 'breaking off' contact with companies who send 'individual enquiries' as part of the reason why Mr Muggli was not able to confirm the source of the Enquiry. There thus appears to be a risk that documents from such individual enquiries are in fact destroyed or may be scheduled to be destroyed. It is

crucial that Norwich Pharmacal relief is obtained before any (further) document destruction occurs. By way of full and frank disclosure, 1291 Private Office has said that they are "*not in the business of destroying documents*". It is unclear what is meant by this statement and whether there is a routine document destruction policy, as part of normal housekeeping measures (see Bushell 2, paragraph 146.7).

(2) The information sought may depend on the recollections of individuals: if certain documents have in fact been destroyed, the information sought may only be available from the recollections of individuals such as Mr Muggli and other employees of the Respondents. A delay of at least 13 months may risk the recollections of such individuals as to the identity of the ultimate wrongdoers being weakened.

(3) The sooner the wrongdoing is unmasked, the better in the interests of justice: the sooner the Applicants are able to discover the identities of the ultimate wrongdoers, the more likely it is that they will be able to take steps to vindicate their rights. Once the identity of the wrongdoers is unmasked, the Applicants will be able to add them to the underlying proceedings, launch interim protective measures and amend their claims so as to better protect their legal rights in the underlying case of the unlawful means conspiracies.

(4) The English Court must be apprised of the ultimate wrongdoing in advance of jurisdictional challenges from the Defendants: as noted above at 68, certain Defendants have launched jurisdictional challenges. Moreover, the Twentieth Defendant, Transneft, recently launched an anti-suit injunction in Russia to attempt to preclude the jurisdiction of the English Court. The Applicants were successful in securing an anti-anti suit injunction before Mr Justice Foxton on 21 February 2024. In circumstances where the Defendants are attempting to oust the jurisdiction of the English Court, it is imperative that the English Court is apprised of the full circumstances of the wrongdoing, including the identity of the persons who attempted to arrange the transfer of the US$ 20 million.

(5) The First Applicant's position in Russia is increasingly parlous: Mr Magomedov has been imprisoned in Russia (on what the Applicants say are false charges) since 2019. Earlier this year, he was moved from Lefortovo prison to a penal colony in Kirov, approximately 900 kilometres east of Moscow. It has

> been increasingly difficult for Mr Magomedov's lawyers to gain access to him for the purposes of obtaining instructions. Any information as to the ultimate wrongdoers will require instructions from Mr Magomedov and so it is crucial that this information is obtained before his position becomes even more precarious."

136. I consider that the fourth reason, taken on its own, is sufficient to provide a good reason to say that the case was urgent. As already indicated, it cannot be said that the present NP Application, in seeking to identify the wrongdoers, was somehow being made for an improper purpose. In view of the forthcoming challenges, where various Defendants are seeking to oust the jurisdiction of the court (with strike out and reverse summary judgment applications being made as well), it is in my view proper for the Applicants to seek information as to the identity of the wrongdoer, and to do so in advance of the determination of those applications. Given that this is a proper purpose of the application for NP relief, I consider that there was a sufficient case of urgency.

137. To my mind this is reinforced by the other reasons relied upon. It is not necessary to consider them individually or whether, standing alone, each would be sufficient to provide good reason for alternative service.

138. It also seems to me that the urgency has, in reality, been recognised by other judges who have considered this matter. Foxton J, albeit on a without notice application, was persuaded by the reasons for urgency given in Mr Bushell's witness statement and the supporting skeleton argument. The reasons for urgency were there fully addressed. Mr Bushell also specifically drew attention to the fact that the Respondents may say that the Application was not urgent, and that the Applicants had known of the enquiry by Mr Muggli for some time, and also that the source of the enquiry was unknown. He explained that the Applicants were not, until recently, in a position to put the unredacted e-mail evidence before the court due to safety concerns on the part of Mr Bedjaoui.

139. Subsequently, when the matter came before Bright J in early June, he gave directions leading to an early 1-day hearing. Bright J therefore considered that an expedited hearing was appropriate. When Calver J vacated the hearing in June, because the time estimate was (very clearly in my view) insufficient, he then ordered that the case should come on in August. It is in fact rather unusual for a heavy application of the present kind to be listed for an August hearing. That would not have been done unless there was obvious urgency to the application, which in my view there was.

140. Mr Friedman argues that the pursuit of a disclosure process as against a third party cannot be said to be appropriate prior to a jurisdiction application. He relied upon Lord Briggs in *Lungowe v Vedanta* [2020] AC 1045 at [43]:

> "In the context of a jurisdiction challenge the court will, typically, have only the claimant's pleadings. Proportionality effectively prohibits cross-examination and neither party will have had the benefit of disclosure

> of the opposing party's documents, albeit that in exceptional circumstances a direction for limited specific disclosure may be given".

141. He adds that such disclosure should be given only "very rarely, and will require the clearest possible demonstration from the party seeking discovery that it is necessary for the fair disposal of the application": *Rome v Punjab National Bank (No.1)* [1989] 2 All E.R. 136 at 141j; cited with approval in *Lungowe.*

142. These cases do not concern NP orders, and I was not referred to any case which suggests that it is inappropriate to seek NP relief in the context of proceedings which have been commenced, but which are potentially the subject of dismissal, for one reason or another, because of issues as to who (if at all) were wrongdoers. It is unsurprising that there is no such case: each case must depend on its own facts, and it must be remembered that the NP remedy is a flexible equitable remedy. Furthermore, the authorities referred to do not, even in the context of jurisdiction applications between the immediate parties, preclude disclosure orders being made. They can be made: they are unusual, but it depends on the facts.

143. Nor, in my view, is there any substance in the argument that the Applicants urgency is "entirely of the Applicants' own making". I do not accept that the Applicants have delayed since 2021 before making the NP Application, on the basis that Mr Bushell first learned of the relevant e-mail enquiry in late 2021. The Applicants could not in my view have made a sensible NP application against 1291 Private Office, or indeed any of the other respondents, until they were in a position to show the court the relevant e-mails. They were fully entitled to respect Mr Bedjaoui's unwillingness to allow them to do that. The difficulties of making the application without the full text of the e-mails is, in my view, illustrated by the problems which the Applicants encountered before Butcher J in the context of "good arguable case" arguments. It would also, in my view, have been difficult to make any persuasive application, in a conspiracy case based on inference, prior to the Applicants articulating their case in a written pleading. It should not be forgotten that these proceedings were only started in 2023, with lengthy Particulars of Claim (signed by 3 KCs and 2 juniors) served in August 2023.

144. Once Mr Bedjaoui allowed the e-mails to be unredacted, the Applicants moved with reasonable speed, given the complexity of the present application and the need for careful preparation. It should also be borne in mind that a significant driver in the urgency is clearly not of the Applicants' making: they are responding to complex applications which have been made by various Defendants, and it is these applications which are coming up for hearing in September.

145. In any event, an argument that a party could have moved sooner is only one factor. It does not mean that there was in fact no urgency, given the circumstances at the time at which they did move. I note that a similar argument based on alleged delay was rejected both by me and the Court of Appeal in *Gorbachev v Guriev*.

Likely to come to the attention of the First Respondent?

146. A separate point advanced by 1291 Private Office is that there was no "high degree of likelihood" that service on 1291 UK was likely to come to the attention of 1291 Private Office.

147. In the skeleton argument in support of the application to Foxton J, the Applicants addressed the question of the potential argument that 1291 UK was not mixed up in the wrongdoing. They said as follows in paragraph 32:

> "32. By way of full and frank disclosure, it may be said that 1291 UK is not mixed up in the wrongdoing. However, the structure of the 1291 Group, the location of its documents, and the manner in which the Enquiry came in to the 1291 Group are unknown to the Applicants. The 1291 entities do appear, however, to be closely connected and centralised in several respects:
>
> 32.1 The email domain of Mr Muggli and Mr Peenz is "@1291group.com", and their email signatures refer to the 1291 Group as a whole.
>
> 32.2 The entities share a website (www.1291group.com), and are referred to as 'units' of the Group, rather than separate entities (albeit 1291 UK is an English registered company with company number 14416326).
>
> 32.3 The Group website sets out the details of the executive management of the Group as a whole. This comprises five individuals, including Patrick Knecht, the Group Chief Operating Officer, Daniel Koller as the Group's Head of Legal & Compliance. Mr Knecht and Mr Koller (both Swiss nationals) are each directors of 1291 UK. The Group website indicates that Mr Knecht and Mr Koller each physically work from the same Lichtenstein office as Mr Muggli, albeit according to Companies House records Mr Knecht is resident in Switzerland with Mr Koller resident in Liechtenstein."

148. In addressing the question of alternative service, the Applicants said in paragraph 75 (which also referred back to paragraph 32):

> "Furthermore, the Applicants have already been corresponding with the First Respondent's lawyers, BWB Legal, and with Mr Peenz of the Second Respondent, who are each aware of the requests for information and documents that have been raised by the Applicants, as well as the Applicants' intention to initiate legal proceedings if they were not able to provide the requested information by correspondence. In his last

> email, Mr Ralph Wanger of BWB Legal requested that any future communication be channelled exclusively through him. As such, service on the First Respondent by email to Mr Wanger of BWB Legal is likely to bring the Applications to the First Respondent's attention. Further, Seladore Legal received correspondence from a Dubai-based law firm called Global Advocates on behalf of 1291 Dubai on 13 February and 18 March 2024. Service by email on 1291 Dubai's lawyers, Global Advocates, is thus likely to come to the Second Respondent's attention. For the reasons at ¶32 above, service by post to the address of 1291 UK is also likely to come to the attention of the First and Second Respondents and the Applicants therefore also seek permission to serve by those means."

149. 1291 Private Office submitted that, as a matter of common sense, simply because companies may form part of the same corporate group does not mean that there is a high degree of likelihood that service of documents on one company will bring the documents to the attention of the other. It was therefore necessary for the Applicants to show something more. I agree with that broad proposition.

150. They go on to submit that it is clear on the evidence that the companies operate independently. I agree that there is, now, evidence that the companies operate independently. However, it is also clear from the website pages which were in evidence, and which were in evidence before Foxton J, that the businesses of "1291" operate as a "group". Mr Sola says in his evidence that the "1291 companies share a brand, but they are independent and separate in all other respects, including ownership structure and regulation". The branding logo is "1291 Group". The evidence contains a press release dated 6 October 2022 which says that the "Zurich-based 1291 Group has opened its 14th unit in Dubai". The press release refers to the 1291 Group having been founded in 2000, and "aims to further drive its global growth". A recent print-out from the website (dated 18 June 2024) describes 1291 Group as being "more than one of the World's leading advisors for Wealth Protection Solutions". It says that: "Within our 1291 family you are connected to an international group of top professional experts in the field of Private Wealth Solutions". A map shows "1291 worldwide", with various offices including in London, Dubai, Zurich and Geneva. 1291 Private Office was specifically referred to in a list of "1291 Group Units".

151. In terms of the individuals who are at the top of the group, the website print-out before Foxton J identified 5 senior individuals: Marc-André Sola, the founder of the group; Patrick Knecht, described as the Chief Operating Officer; Daniel Koller, described as "Head of Legal and Compliance", who is a Doctor of Laws; and two other individuals who have not featured in the argument.

152. I fully accept Mr Friedman's point that the existence of a worldwide group, which is very common in international financial services business organisations, does not mean that a party can obtain an order for alternative service anywhere. The question here is whether there is a high degree of likelihood that service on

the specific UK company, 1291 UK, will bring the documents to the attention of 1291 Private Office. I consider that there is, and that Foxton J's order for alternative service was justified. The factual position (as explained in Mr Gregory's evidence) is that the UK company had 4 directors. Two of those directors were very senior individuals within the 1291 group, according to the website information. Mr Knecht was the Chief Operating Officer, and Mr Koller was the Head of Legal and Compliance. According to the evidence, they both worked in the same Liechtenstein office as Mr Muggli himself. It seems to me to be highly likely that service of the application would come to the attention of both of those individuals, given their directorship of 1291 UK and the senior positions that they held in the 1291 Group. It may be that Mr Koller's position was not (as 1291 Private Office has pointed out) head of legal of that particular Liechtenstein company, and that he did not hold any sort of executive position within 1291 Private Office. However, he clearly did hold an overall position, within the group, as head of legal and compliance, even if his contract of employment was not with that particular company. Since the documents would highly likely come to the attention of one or other, or both, of these senior individuals in Liechtenstein, and they worked in the same office as Mr Muggli, it is thereby highly probable that they would come to the attention of Mr Muggli and indeed any other relevant individuals in the Liechtenstein office.

153. This conclusion is reinforced by fact that the documents were not served in a vacuum. I accept that there had been no prior correspondence with 1291 UK itself. However, there had (as paragraph 75 of the Applicants' March skeleton indicates) been prior correspondence about the substance of the matters raised by the application, namely the email exchanges involving Mr Muggli. It is a reasonable inference, given the nature of the correspondence, and that 1291 Private Office had engaged local lawyers, that Mr Koller at least would have been aware of the context of the papers that were served.

154. Mr Friedman made the point that notice of the application did not in fact come to 1291 Private Office's attention via 1291 UK. This was not a point which was made in the evidence served by 1291 Private Office (although it was a point made by of 1291 Dubai in correspondence). Mr Gregory, who did serve evidence on behalf of 1291 UK, did not explain what he had in fact done with the documents which were served, and to whom he passed them. It may well be, given that the application was also served on BWB Legal, that that was the first route by which 1291 Private Office learned of the application. But there is no evidence as to whether or not they also learned of it, perhaps later, via the 1291 UK route. At all events, whether or not service via the 1291 UK route actually worked is not the critical point. The question for consideration is the degree of probability of communication via this route to 1291 Private Office. I am satisfied that there was a sufficient degree of probability to justify Foxton J's order.

155. Accordingly, and subject to the arguments about non-disclosure, I do not set aside paragraph 2 (c) of his Order.

F: Non-disclosure

F1: Legal principles

156. In the recent decision in *Mex Group Worldwide Ltd* v *Stewart Owen Ford and others* [2024] EWCA Civ 959, Males LJ said this at paragraph [112]:

> "I agree in particular with what Lord Justice Coulson has said at [126] to [128] below about the way the failure to disclose issue was presented by the respondents, both in the court below and in this court. I sought in *National Bank Trust v Yurov* [2016] EWHC 1913 (Comm) at [14] and [15] to encourage a degree of restraint and a sense of proportion on the part of those seeking to set aside without notice orders on this ground, but it appears that the message has not got through. In this case we have been prepared to separate the wheat from the chaff, but I would suggest a different approach for the future. In future, if the court is presented with a long shopping list of alleged failures of disclosure, with no attempt made to identify the relatively few points which really matter, it should simply decline to consider the issue at all."

157. This is a case where I was presented, when reading into the case, with a very long shopping list of alleged non-disclosures, with no attempt at all to separate the wheat from the chaff. It was only on the first morning of the hearing that Mr Friedman (who was instructed subsequent ot the adjournment of the hearing by Calver J) indicated that he had pared down the shopping list to 4 points out of an original shopping list of 8 or 9. That original shopping list contained some points of some complexity (ultimately not pursued) concerning the facts: alleged failures in respect of the way in which the evidence of Mr Kuzovkov was presented, the circumstances in which information was received from Mr Bedjaoui, and alleged inconsistencies in evidence between Mr Bushell's 2nd witness statement and earlier evidence given by him. The original list also contained a point which was, in my view, footling: that there was non-disclosure by Mr Bushell of the source of his information and belief as to the time estimate for service in Liechtenstein – in circumstances where, as far as I could see, there was no dispute as to the accuracy of the time estimates given.

158. In a case of this complexity, heard during the vacation with four separate parties, it is in my view incumbent on parties to pare down a long shopping list well in advance of the hearing, not least so that the judge does not have to spend considerable time trying to understand points which are then not pursued.

159. Whilst I will not simply (as Males LJ suggested) decline to consider the points at all, it seems to me (based on Males LJ's approach) that it is legitimate to take the approach of 1291 Private Office (i.e. its failure to pare down its points until the last possible moment) to non-disclosure into account when deciding whether

or not to set aside the Order. I also consider, for reasons already given, that the setting aside of Foxton J's order for alternative service for non-disclosure is undesirable, in circumstances where the substance of the application has been argued out, and where I have decided that the application should be dismissed.

160. In these circumstances, I will deal with the allegations very briefly. In so doing, I bear in mind the principles set out in paragraphs [119] – [121] of the judgment of Coulson LJ in that case. In particular I bear in mind the following passages from the cases quoted:

> "[119] …
>
> vi)Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect;"
>
> "[120] …
>
> "30. Although this was said in the context of an application for a freezing order, the principles are of general application. I would draw particular attention, as relevant in the present case, to the fact that the overriding consideration when deciding whether to continue an injunction or grant a fresh injunction despite a failure of disclosure is the interests of justice; and to the need to maintain a due sense of proportion in complex cases. This latter point was made by Mr Justice Toulson in *Crown Resources AG v Vinogradsky* (15 June 2001) and was adopted by the Court of Appeal in *Kazakhstan Kagazy Plc v Arip* [2014] EWCA Civ 381, [2014] 1 CLC 451 at [36]:
>
> '… where facts are material in the broad sense in which that expression is used, there are degrees of relevance and it is important to preserve a due sense of proportion. The overriding objectives apply here as in any matter in which the Court is required to exercise its discretion. …
>
> I would add that the more complex the case, the more fertile is the ground for raising arguments about non-disclosure and the more important it is, in my view, that the judge should not lose sight of the wood for the trees. …

> In applying the broad test of materiality, sensible limits have to be drawn. Otherwise there would be no limit to the points of prejudice which could be advanced under the guise of discretion.'
>
> 31. A further point which merits emphasis is that even when there has been a failure of full and frank disclosure, the interests of justice may sometimes require that a without notice order be continued and that a failure of disclosure be marked in some other way, for example by a suitable costs order. A court needs to consider the range of options available to it in such an event.""

161. Coulson LJ's conclusion was as follows:

> "In essence, if a subsequent court considers that an *ex parte* order has or may have been obtained in circumstances where important information should have been but was not disclosed to the judge, it may well set that order aside, but the failures must be material and any assessment of the alleged failures must be proportionate. Ultimately, in considering whether to discharge the order and/or to renew it, the court will always be guided by the interests of justice.

162. I turn now to the surviving arguments.

163. *Failure to explain the distinction between R1 and R3 and wrongly stating that R3 had instructed BWB, R1's lawyers.* It was in my view clear from the order sought, and the skeleton argument of the Applicants and Mr Bushell's statement as a whole, that there were different companies involved. That was why there were different provisions, in the Order, in relation to service. There was also indeed a connection between the various companies as part of the 1291 group, as discussed in the context of alternative service above. An isolated error that was made, suggesting that 1291 UK had instructed BWB, does not justify setting aside the Order. Indeed, 1291 UK as an English company accepts that it was validly served.

164. *Lack of evidence of Liechtenstein law in relation to whether alternative service contravened local law*. I accept that this should have been addressed by the Applicants. Mr Morgan explained in his submissions that it was simply a point that Mr Bushell missed. The error arose, he told me, from the fact that Mr Bushell had been in correspondence with BWB Legal, and they had asked for future correspondence to be with them. Although this was not in evidence, I have some sympathy with Mr Bushell, who was having to deal with a welter of non-disclosure points before late paring down both by 1291 Private Office and 1291 Dubai. It was not suggested that there was a deliberate non-disclosure here.

165. Whilst this can be regarded as a material non-disclosure, I do not consider that it justifies setting aside the Order for alternative service as a whole. Paragraph

2 (a) has been set aside, and the non-disclosure is material to the alternative service on BWB Legal. It was not, in my view, material to the alternative service on 1291 UK which, for reasons set out above, was separately justified.

166. Furthermore, it is relevant in this context that Dr Nesensohn's winning point on this issue was not in fact identified by him in his first report. It was only made in his second report. In retrospect, perhaps, it now looks as though it was a point which should have been spotted. However, the likelihood is that if Mr Bushell had addressed this issue, and sought Liechtenstein law advice, he would have received positive advice along the lines of that given by Mr Raich in his first report, responding to Dr Nesensohn's first report: i.e. that service was not contrary to Liechtenstein law. Dr Nesensohn had himself, as indicated above, missed the ultimately successful point.

167. Mr Friedman submitted that Foxton J would have drawn comfort from the fact that paragraph 2 (a) was being ordered. I do not accept that Foxton J's conclusion as to service on 1291 UK was somehow infected by his decision to order alternative service on BWB Legal. They were separate bases, and arguments, for alternative service. Furthermore, in so far as it is said that the judge drew comfort from the fact that BWB Legal were to be served, the Applicants could have provided equivalent comfort even if they had spotted the Liechtenstein law point. They could simply have told the judge that although they could not formally serve BWB Legal, they did intend to notify them of the application, in accordance with their prior request concerning correspondence.

168. *Urgency*. I have already addressed this in detail. There was in my view no material non-disclosure. There was a sufficient case of urgency, and the witness statement of Mr Bushell fairly identified the possible argument against it and explained why that argument should be rejected.

169. *Part 23 application*. I have already addressed this. In my view, the argument of 1291 Private Office is incorrect. I do not consider that non-disclosure of a point that is incorrect is of any relevance. Even if it had been correct, I would not be persuaded that this is a non-disclosure point. It was clear from the draft Order that the Applicants were intending to serve the Application Notice, not a claim form.

170. Accordingly, none of the points raised as non-disclosure by 1291 Private Office would justify the setting aside of the Order for alternative service.

171. Mr Friedman also sought to rely on separate points raised by 1291 Dubai in relation to their application. I address those points, albeit briefly, later in this judgment. In my view, however, If 1291 Private Office cannot make good its case for setting aside the order on the basis of the points which affect the aspects of the Order which they challenge, and which affect them, I cannot see that their position is improved by looking at the points raised by another party in a different position. Nor do I think that there is any substance in Mr Friedman's point that Bright J held that there was non-disclosure by the Claimants in an anti-suit-injunction context, because the Applicants are serial offenders: see [2024] EWHC 1205 (Comm). That judgment was given on 17 May 2024, subsequent to the application to Foxton J. It is on entirely different facts, and

Bright J's ultimate decision was that the non-disclosure relied upon did not justify setting aside the relevant injunction.

172. I therefore reject the case based on non-disclosure.

G: 1291 Dubai and 1291 UK

173. As indicated above, at the conclusion of Mr Morgan's argument, I said that I had not been persuaded that either 1291 Dubai or 1291 UK had been mixed up the wrongdoing; that as far as concerns 1291 Dubai there was no serious issue to be tried; and that as far as concerns 1291 UK there was no basis for making a Norwich Pharmacal order. These are the reasons for those conclusions.

G1: 1291 Dubai

174. The "mixed-up" condition, as summarised by Saini J, is that the "respondent to the application must be mixed up in so as to have facilitated the wrongdoing".

175. As set out in the context of the discussion of the Arguable Wrong condition concerning 1291 Private Office, the relevant wrongdoing in the present case is the alleged illicit payment, or attempted illicit payment, as part of an overall conspiracy. As apparent from paragraph 119 (3) of the Particulars of Claim (set out above), the allegation of the receipt of illicit payment was put to Mr Kuzovkov in a letter from the Applicants' solicitors dated 4 May 2022. It is obvious from that paragraph, and indeed the quoted extract as a whole, that the Claimants were alleging that a bribe had by that stage been paid to Mr Kuzovkov as part of his involvement in the overall conspiracy alleged.

176. Furthermore, the basis of the present application is to discover who was behind the "enquiry" which was made by Mr Muggli in November 2021 which, on the Applicants' case, was an attempt to facilitate the payment to Mr Kuzovkov at that time. Thus, paragraph 2 of the Applicants' June 2024 skeleton argument says as follows:

> "Norwich Pharmacal relief is sought to ascertain the identity of the person or persons who contacted the "1291 Group" (whether Mr Oliver Muggli of the First Respondent or anyone else) and sought to arrange the transfer of US$ 20 million to a company said to be ultimately beneficially owned by the Thirteenth Defendant, Mr Konstantin Kuzovkov. The Applicants say that this US$ 20 million was a bribe for Mr Kuzovkov's involvement in a conspiracy to seize the Applicants' assets. The identity of the ultimate wrongdoers who sought to arrange the payment of this US$ 20 million to Mr Kuzovkov's company is crucial to the Applicants' ability to seek legal redress and bring proceedings against the wrongdoers".

177. Similarly, the Application Notice summarises the Applicants' case as follows:

> "In summary, the Claimants seek orders that each of the Respondents provide ("the NP Application"):
>
> (i) An affidavit which explains certain matters, relating to an "Enquiry" sent by Mr Oliver Muggli of the First Respondent to a Mr Reda Bedjaoui on 25 November 2021, by which Mr Muggli sought Mr Bedjaoui's assistance in arranging the transfer of US$ 20 million to a company incorporated in Belize ("Rebetson"), of which Mr Muggli identified the 13th Defendant (Mr Kuzovkov) as being the beneficial owner".

178. 1291 Dubai submits that there is an insuperable difficulty which faces any argument that that company was mixed up so to have facilitated the wrongdoing. The evidence of Mr Marc-Andre Sola, the Senior Executive Officer of 1291 Dubai, is that the company was only incorporated in the DIFC in June 2022. That evidence, which was not the subject of any challenge, was supported by incorporation documents that Mr Sola exhibited to his witness statement. 1291 Dubai therefore submits that there is no sustainable case that the company was mixed up in the wrongdoing which led to the enquiry made by Mr Muggli in November 2021 concerning (allegedly) the bribe which was to be paid to Mr Kuzovkov. The company had not been incorporated at that point in time. Indeed, it was not incorporated until after the Claimants in these proceedings had put the case, in correspondence to Mr Kuzovkov, that he had been the recipient of the bribe.

179. I agree that this is an insuperable difficulty, and none of the various arguments advanced by the Applicants has persuaded me that it can be overcome. Those arguments have somewhat shifted as the application has progressed, but the principal points advanced at different stages have been as follows.

180. First, there are many aspects of the evidence of Mr Bushell which seek, in substance, to disregard to separate corporate existence of the three Respondents to the application, and which elides them into the "1291 Group". I do not consider that this is permissible. Each of the Respondents is a separate company, and a successful NP application can only be advanced if all of the necessary conditions for relief are made good in relation to that company. It seems that the Applicants had recognised this at least by the time of skeleton argument submitted in June 2024. It is fair to say that Mr Morgan, in his oral submissions, did not base any substantial argument on the proposition that the separate corporate existence of the various companies in the 1291 group could in some way be disregarded or blurred. I agree with Ms den Besten's submission that such blurring is inappropriate.

181. Secondly, the Applicants rely heavily on the involvement of Mr Jacque Peenz. He describes himself in his LinkedIn entry (downloaded in March 2024) as "Partner at 1291 Group/ Director of 1291 Group DMCC". His e-mail address is peenz@1291group.com. His "experience" includes "Partner 1291 Group; October 2019 – present - 4 years 6 months; Dubai, United Arab Emirates". It is therefore apparent that Mr Peenz has been engaged by a company within the overall 1291 group prior to the incorporation of 1291 Dubai. The evidence in

Mr Bushell's exhibit includes a press release and publicity pictures dating from October/ November 2019 (i.e. around the time that Mr Peenz joined). This announced the opening by 1291 Private Office (i.e. the first Respondent) of an office in Dubai, and a successful dinner to mark the occasion.

182. The Applicants' skeleton argument submitted that the fact that 1291 Dubai was not incorporated at the date of the enquiry by Mr Muggli was irrelevant "because the Applicants expressly do not rely on receipt of the Enquiry in relation to 1291 Dubai". I did not myself consider that this was at all clear from the materials which were considered by Foxton J in the context of the service out application. Be that as it may, the key point on which the Applicants do rely is explained as follows:

> "Rather, the point relied upon is that 1291 Dubai's employee, Mr Peenz, is the registered contact for Rebetson. In any event, the fact that it was not incorporated at the time does not mean that it does not have any relevant documents or information".

183. The Applicants then submit that it is an overly technical point for 1291 Dubai to rely on the absence of an allegation that Mr Peenz is an owner or controller of 1291 Dubai, or that he is the controlling mind of 1291 Dubai, such that any knowledge he may have is attributable to 1291 Dubai. They say that Mr Peenz is an employee of 1291 Dubai, and that the company can make enquiries of him "and does not deny that it has access to documents created by him while acting on behalf of 1291 Group".

184. Once 1291 Dubai had raised the point (in Mr Sola's witness statement) as to the date of incorporation of that company, the absence of any involvement in the enquiry, and that Mr Peenz was not employed by 1291 Dubai at the alleged time of the enquiry, Mr Bushell responded as follows in paragraph 130.1 of his 6th witness statement:

> "Although 1291 Dubai was not incorporated in late 2021, Mr Peenz's details continue to appear on the Belize Companies Registry entry, whilst Mr Peenz also remains an employee of 1291 Dubai. However, 1291 Dubai has been unable to confirm whether Mr Peenz, an employee of 1291 Dubai, has been asked about why his name, his @1291group.com email address email address and his UAE telephone number appear on the registry entry for Rebetson".

185. I do not consider that this focus on the position of Mr Peenz, including his e-mail address or the fact that he could be asked questions by 1291 Dubai, provides any evidence which supports a case that 1291 Dubai was mixed up so as to have facilitated the alleged wrongdoing. This is not an application which is being made against Mr Peenz personally, in which case his association with Rebetson at the time of the November 2021 enquiry might perhaps provide the foundation for a case that he was mixed up in the alleged wrongdoing at the time of Mr Muggli's enquiry. This is an application against 1291 Dubai, which did not exist at that time.

186. Furthermore, Mr Sola has also provided evidence that Rebetson "is not nor has it ever been a client of [1291 Dubai], and that "[1291 Dubai] does not possess any information about Mr Peenz's alleged dealings with Rebetson". Given the date of the company's incorporation, and that the critical events concerning Mr Muggli's enquiry occurred prior to that time, there is no reason to doubt the credibility of Mr Sola's evidence. Whilst this evidence is, perhaps, primarily relevant in relation to the question of whether the "possession condition" is satisfied, it also serves to reinforce the case that there is nothing which suggests that the company was mixed up in the alleged wrongdoing.

187. It is true that Mr Peenz was working in Dubai, engaged by a 1291 group company, at the time of the November 2021 enquiry, and indeed that he had a 1291group.com e-mail address. However, this does not assist any argument as to the involvement of 1291 Dubai. The evidence indicates that, in November 2021, the office in Dubai was an office of 1291 Private Office. Accordingly, Mr Peenz's involvement at that time (if any – as to which, see below) is consistent with my earlier conclusion that there is a good arguable case 1291 Private Office was mixed up in the alleged wrongdoing. It also reinforces the conclusion that the correct 1291 company, for the purposes of a NP application, is 1291 Private Office.

188. In relation to the question of whether Mr Peenz did have any involvement in November 2021, or any material connection with Rebetson, 1291 Dubai belatedly sought to rely upon a short witness statement of Mr Peenz himself. This was served only on the night before the August hearing was due to commence. No witness statement was served which explained the very late service of this evidence. The Applicants' case had, from the outset of the application for permission to serve out, relied upon the position and involvement of Mr Peenz. In the responsive evidence contained in Mr Bushell's 6th witness statement, and again in their skeleton argument for the (vacated) June hearing, Mr Peenz's position and involvement were at the forefront of the Applicants' case. 1291 Dubai therefore had full opportunity, for many months before 19 August 2024, to serve evidence from Mr Peenz. I see no good reason to allow such evidence, to which the Applicants had no opportunity to respond, to be served at the last minute. I bear in mind that no reason has been identified for the delay in serving this evidence. To allow this evidence to be admitted would also be entirely contrary to the principles set out in CPR 3.9 which, although not directly applicable (because Mr Morgan accepted that the application to adduce Mr Peenz's evidence did not involve an application for relief against sanctions), are relevant to the exercise of the court's discretion to admit late evidence. In reaching my conclusions, I therefore pay no regard to Mr Peenz's late evidence.

189. Nor is it any answer to say that questions could be asked by 1291 Dubai of its current employee in order to obtain information about what had transpired in the past. The ability to obtain information, even if it existed, would not establish the "mixed up" condition. Mr Morgan rightly accepted in argument that the ability to get evidence from someone does not bring a case within Norwich Pharmacal principles. As the Court of Appeal said in *Axa Equity & Law Life*

Assurance Society plc v National Westminster Bank plc [1998] CLC 1177 para 20, referring to Lord Reid in the *Norwich Pharmacal* decision itself:

> "Having described the 'mere witness' rule and concluded that it was inapplicable because there could be no trial unless the identity of the alleged wrongdoers was disclosed, Lord Reid pointed out that it did not follow that discovery might be ordered against anyone who could give information as to the identity of a wrongdoer. He continued ([1974] AC 133 at p 174E):
>
> > "It [discovery] is not available against a person who has no other connection with the wrong than that he was a spectator or has some document relating to it in his possession …" "

Hence, Lord Reid explained the relevant principle as follows:

> "They [sc. the authorities] seem to me to point to a very reasonable principle that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did. It may be that if this causes him expense the person seeking the information ought to reimburse him. But justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration."

190. Furthermore, there is nothing which suggests that Mr Peenz would be obliged to provide, to 1291 Dubai, information concerning matters which occurred when he was employed by 1291 Private Office. Mr Sola has explained that the 1291 companies share a brand, but are independent and separate in all other respects including ownership structure and regulation. He also says that the 1291 entities operate individually, and each 1291 company is assigned its own individual server portal to store their documents on. He says that it is important to keep the portals separate from a regulatory point of view, since each 1291 company is subject to different regulatory regimes in their respective jurisdictions. Employees of 1291 Dubai do not have access to documents held by either 1291 Private Office or 1291 UK. None of this evidence is effectively contradicted by the Applicants' evidence. Indeed, Mr Bushell's second witness statement accepts that the structure of the 1291 Group and the location of its documents are unknown to the Applicants.

191. Thirdly, and perhaps recognising the difficulties in the two arguments addressed above, Mr Morgan developed an argument along the following lines. He said

that it was artificial to distinguish between the bribe itself and conduct designed subsequent to the event to conceal it. Mr Peenz was the registered contact for Rebetson in November 2021, and he has remained on the Belize register since that time. He submitted that being the registered contact for the company which is the recipient of the bribe is sufficient to be mixed up in the wrongdoing. It was not known precisely when the bribe was received. It could have been after 1291 Dubai was incorporated, and therefore when Mr Peenz was employed by that company. Equally, it could have been received before he was so employed. Mr Peenz's registration may have helped to maintain Rebetson, and thereby facilitate retention of the bribe. He accepted that this was to some extent speculation, but it was "information that we are not aware of but nevertheless is a realistic possibility". He accepted that the Particulars of Claim, signed with a statement of truth, pleaded that Mr Kuzovkov had been challenged about the bribe paid in May 2022, before 1291 Dubai was incorporated. However, at that stage "we still did not know, and let's say it had been paid before but it was sitting in an account in Rebetson which was assisted by virtue of it being maintained at the registry". In those circumstances, the key point was the registration in respect of Rebetson. Mr Peenz has remained registered as the contact for Rebetson. If Rebetson received the bribe, that was in connection with the wrongdoing. If registration is helping to maintain it, or assisting in relation to the bribe, then it was artificial to draw a distinction between those events and what happened in relation to the bribe. All of this meant that 1291 Dubai was not an onlooker. It had employed someone had done that and had a continuing involvement in relation to the bribe company.

192. I do not accept that this line of argument gives rise to a serious issue to be tried on the question of whether 1291 Dubai was mixed up in the wrongdoing alleged. The reality in my view is that the wrongdoing relied upon – the alleged illicit payment, or attempted illicit payment, as part of an overall conspiracy – predates the incorporation of 1291 Dubai. The attempt to make the payment, which forms the basis of the Applicants' case as to the involvement of 1291 Private Office, occurred in November 2021. There is nothing in the evidence which suggests any involvement in the attempted payment by any 1291 company, and in particular by 1291 Dubai, in June 2022 or at any subsequent point. The suggestion that something happened at that stage, which facilitated the wrongdoing, is entirely speculative and without any evidential support. Equally speculative and without evidential support is the suggestion that it was the maintenance of Rebetson on the Belize registry, subsequent to June 2022, which somehow facilitated the wrongdoing. Furthermore, the Claimants' pleaded case in the main proceedings clearly proceeds on the basis that any bribe had been paid by May 2022, which was when the allegation was put to Mr Kuzovkov. That reflects the fact that there is no obvious reason, or any basis in the evidence, for supposing that the money which was ripe for payment in November 2021 would only have been paid many months later; particularly bearing in mind that, on the Claimants' case, Mr Kuzovkov had by that time already performed the actions which had earned him the alleged bribe.

193. Even assuming (contrary to my above conclusions) that the maintenance of Rebetson on the Belize register after the incorporation of 1291 Dubai was of any causative relevance, I did consider that that was any evidence of a material

link to 1291 Dubai in that respect. Mr Peenz's involvement with Rebetson stemmed from his time as an employee of 1291 Private Office. Although he thereafter became an employee of 1291 Dubai, Mr Sola's evidence is that Rebetson is not and never has been a client of 1291 Dubai. Given that the company existed prior to the incorporation of 1291 Dubai, that evidence is not surprising. There is nothing in the evidence which suggests that 1291 Dubai has had any involvement in maintaining Rebetson on the Belize registry.

194. It is also fair to say, in my view, that this third line of argument, focusing on alleged events after November 2021, is not articulated – at least with any clarity – in the evidence of Mr Bushell or in the two skeleton arguments (for the service out application, and then for the June 2024 hearing) served on behalf of the Applicants. Whilst the ingenuity of Mr Morgan is to be admired, it is in my view ultimately a line of argument which is artificial and is unsupported by any evidence.

195. In view of these conclusions, it is unnecessary to address 1291 Dubai's various arguments based on material non-disclosure. As with 1291 Private Office, a very large number of points were originally advanced, and many were then effectively abandoned on the first day of the hearing. The surviving points included a number (such as urgency) which were materially identical to those which I have considered and rejected in the context of the arguments of 1291 Private Office.

196. This left 3 separate points which concerned: (i) the Applicants' failure to identify that 1291 Dubai was a DIFC company, not simply a Dubai company; (ii) the Applicant's failure to identify to the court that 1291 Dubai did not exist at the time of the alleged wrongdoing; and (iii) that there was no evidence about service in the DIFC and whether alternative service was contrary to law.

197. None of these points would have led me to conclude that Foxton J's order should be set aside for material non-disclosure. Amongst the reasons for this conclusion are: (i) there was clearly no deliberate non-disclosure by the Applicants; (ii) there was in my view no significant point, material to Foxton J's decision to grant the Order, arising from the fact that 1291 Dubai was a DIFC company, rather than simply a Dubai company; (iii) in the correspondence from 1291 Dubai's legal representatives prior to the application to Foxton J, those legal advisers had not identified any point based on the date of incorporation of the company – it is therefore not surprising that the Applicants did not themselves spot that point or address it; (iv) there was no evidence that alternative service was in fact contrary to law.

G3: 1291 UK

198. Mr Morgan frankly accepted that the application against 1291 UK was at the edges, at best, of Norwich Pharmacal relief. In relation to that company, the Applicants did not only face a difficulty of late incorporation: the evidence of Mr David Gregory, a director of 1291 UK, was that the company was not incorporated until October 2022. There were other difficulties as well. Mr Gregory's evidence was that the company was dormant and had never in fact

done any business. It was incorporated purely for the purpose of receiving an insurance broker licence in the UK from the Financial Conduct Authority. However, it made two unsuccessful applications, and therefore never achieved the purpose for which it was incorporated. In relation to 1291 UK, there was nothing equivalent to the connections arising from Mr Peenz and Rebetson and upon which the Applicants were able to rely in relation to 1291 Dubai. There was, therefore, no evidence of any connection between any of the 4 directors of 1291 UK and Rebetson. The Applicants were therefore unable to submit (as they were able to submit albeit unsuccessfully in relation to 1291 Dubai) that 1291 UK had in some way facilitated the wrongdoing because Rebetson remained on the Belize register subsequent to the October 2022 incorporation of 1291 UK.

199. Mr Gregory gave evidence that 1291 UK had no information and no relevant documentation in relation to the identity of the source of the November 2021 enquiry; that it had no relevant documentation to search; that it had no clients, and never had any clients; that it had no knowledge as to who the beneficial owner of Rebetson was at any time; that it had no ability to make enquiries as to who the ultimate beneficial owner was; and that it had no information as to the identity of the source from which Mr Muggli received a certified copy of Mr Kuzovkov's passport and a copy of his cv. In view of the October 2022 incorporation of the company, and the description by Mr Gregory of its intended business and lack of actual business, this evidence was unsurprising and entirely credible. It reflected the fact that 1291 UK had not been mixed up in the alleged wrongdoing.

200. The Applicants' case against 1291 UK was based on the position of one of the directors of that company, Mr Daniel Koller. Mr Koller was described on the 1291 group's website as the 1291 Group's "Head of Legal & Compliance". In their June 2024 skeleton argument, the Applicants submitted that it was inherently likely that Mr Koller has relevant information and/or access to documents, both because he was likely to have discussed correspondence from Seladore with Mr Muggli and/or Mr Peenz, and because, as the Group's Head of Legal, he must have access to documents from across the 1291 group.

201. In his oral submissions, Mr Morgan relied upon the following propositions: (1) it can be inferred that there would have been discussions in December 2023 about providing a letter to assist Mr Kuzovkov with his defence; (2) those discussions involved Mr Koller; (3) Mr Koller effectively had authority and was acting on behalf of 1291 UK; and (4) that is sufficient to come within the "mixed up" test. He submitted that Mr Koller's remit as the 1291 group's Head of Legal and Compliance must extend to the affairs of 1291 UK.

202. In my view, however, there is no evidential basis for an argument that 1291 UK became mixed up in the tortious acts of others so as to facilitate their wrongdoing. Again, the fact that 1291 UK was not incorporated until nearly a year after the November 2021 enquiry is an insuperable obstacle to the case advanced.

203. I reject the argument based on the inference as Mr Koller's involvement. I am prepared to assume for present purposes that it may be the case that Mr Koller became aware, as the 1291 Group's Head of Legal & Compliance, of aspects of the current litigation and may have discussed them with individuals within the group. For example, it may be that Mr Muggli would have discussed with Mr Koller whether and how to respond to Mr Kuzovkov's request for assistance. It may be that others may have sought his advice in relation to the questions being asked by Seladore in the run-up to the making of the present application. However, I do not accept that such involvement would mean that Mr Koller was thereby mixed up in the alleged wrongdoing (which had occurred some two years earlier) so have facilitated it. He would simply be a person to whom information, long after the event, was provided in order to seek legal advice or assistance.

204. Furthermore, even if this conclusion were wrong, I would not accept that any involvement of Mr Koller would have any connection at all with 1291 UK, which was a dormant company entirely unconnected with any of the matters related to the alleged wrongdoing. Although Mr Koller was a director of 1291 UK, he clearly had a far wider remit than his role as a director of a dormant company. Assuming, for example, that Mr Muggli did come to him for advice in late 2023 in relation to Mr Kuzovkov's request for assistance, the resulting advice would have been given by Mr Koller as part of his remit to provide advice to 1291 Private Office. Indeed, as Mr Bushell points out, both Mr Muggli and Mr Koller work in Liechtenstein at the same office. The request and resulting advice would have no connection at all with the business of 1291 UK, and there is no reason to attribute to 1291 UK any knowledge of the information allegedly imparted by Mr Muggli to Mr Koller. There would therefore be no basis for alleging that 1291 UK had become mixed up in any alleged wrongdoing.

205. Since I reject the case against 1291 UK for these relatively simple reasons, it is unnecessary to address in detail the other arguments which were advanced by Mr McLeod in his skeleton argument.

CONCLUSION

206. The applications against the three Respondents are therefore dismissed.