Neutral Citation Number: [2020] EWHC 2599 (Ch)
Claim No: HC-2015-001647

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

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

Date: 2 October 2020

Before :

LORD JUSTICE NUGEE

- -

Between :

KEA INVESTMENTS LTD	**Claimant**
- and -	
ERIC JOHN WATSON & Ors	**Defendants**

- -
- -

Elizabeth Jones QC, Justin Higgo QC, Gareth Tilley and **Zahler Bryan**
(instructed by **Farrer & Co LLP**) for **Kea Investments Ltd**

Thomas Grant QC and Andrew McLeod (instructed by **Ashfords**) for **Mr Watson**

Hearing dates: 22, 24, 27, 28, 29, 30 April, 1, 4, 5, 6,
7, 11, 12, 13, 14, 15 and 18 May 2020

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Approved Judgment

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

Covid-19 Protocol: this judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be at 10 am on Friday 2 October April 2020.

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LORD JUSTICE NUGEE

Lord Justice Nugee:

Introduction

1. By application notice dated 7 June 2019 the Claimant, Kea Investments Ltd (**"Kea"**), applies to commit the 1st Defendant, Mr Eric Watson (**"Mr Watson"**) for a number of alleged acts of contempt in failing to comply with Orders of the Court.

2. I attach as an appendix a Schedule giving the particulars of contempt alleged, in the amended form for which I gave permission during the hearing, consisting of 5 counts, split into a number of sub-counts. In the event not all the counts and sub-counts were proceeded with. Those that remain in issue are the following: Counts 1(a) to (e), Counts 3(c)(i) and (d) to (f) and Count 4, making 10 sub-counts in all. I have shaded in grey those that were not proceeded with. I should record that Ms Jones made it clear in closing submissions that she is not asking for them to be adjourned – they are being dropped altogether.

3. Even so, despite the application notice having originally given an estimate of 5 days, the hearing in fact lasted 17 days, not least because of a desire on the part of Kea's legal team to lay out thoroughly and carefully the material on which they rely to prove the contempts, not only for my benefit but for that of Mr Watson and his legal team, and equally a desire to ensure that Mr Thomas Grant QC, who appeared for Mr Watson, should have every opportunity to say what he wanted to say on Mr Watson's behalf. I am very grateful to the parties and their respective lawyers for their co-operation in enabling the hearing to take place despite the inevitable restrictions caused by the Covid-19 pandemic, which meant that the hearing had to take place as a fully remote one. Despite the occasional technical glitch, this worked well and I am satisfied that the hearing was both fair and thorough, and that the parties have not been materially disadvantaged by the hearing taking place in this way.

Background

4. I can conveniently take the background from another judgment delivered by me earlier this year in this action: *Kea Investments Ltd v Watson* [2020] EWHC 472 (Ch) at [2]-[4] as follows:

> "2. … In April 2015, Sir Owen Glenn and Kea brought proceedings for fraud and breach of fiduciary duty against the 1st Defendant, Mr Eric Watson (**"Mr Watson"**), and others. The proceedings were tried by me and after a lengthy trial, I handed down judgment on 31 July 2018 (**"the Main Judgment"**) in Kea's favour, holding (among other things) that investments totalling £129m which Kea had made into a joint venture called Project Spartan had been procured by deceit on the part of Mr Watson and breach of fiduciary duty: see *Glenn v Watson* [2018] EWHC 2016 (Ch). I held that Kea was entitled to set the joint venture agreements aside and recover the monies paid over to the joint venture vehicle, together with interest, and that insofar as the joint venture vehicle was unable to pay, Kea was entitled to equitable compensation for the shortfall from Mr Watson. Kea was also entitled to trace into, and elect whether to claim, assets acquired by Mr Watson with some £12m of its money which had found its way into the hands of a company associated with Mr Watson.
>
> 3. After further argument on 10 and 13 September 2018 the Main Judgment was

> given effect to by an Order made by me and sealed on 14 September 2018. This did not quantify precisely the amount of equitable compensation that Mr Watson was liable to pay Kea, as that depended on the extent to which Kea was able to find, and elected to claim, traceable assets, but it set a maximum figure for equitable compensation of about £43.5m, and ordered Mr Watson to make an interim payment of slightly over £25m, together with over £3.8m on account of costs. Mr Watson did not appeal the findings in the Main Judgment or the Order of 14 September 2018, save in respect of the interest rate used in the calculation of the quantum of equitable compensation, which I had set at 6.5% pa and which he appealed with my permission. The appeal was dismissed by the Court of Appeal in October 2019: see *Watson v Kea Investments Ltd* [2019] EWCA Civ 1759. That means that there is no longer any doubt that Mr Watson is liable, at the very least, for the two sums which I ordered him to pay.
>
> 4. Mr Watson has not voluntarily paid a penny of either sum. Kea has managed to identify, and compel payment from, various assets, and has thereby obtained comparatively small sums towards the judgment debt but is still owed the vast majority of it, and has found it difficult to locate, let alone execute against, any substantial assets. This is particularly frustrating for Kea as Mr Watson formerly allowed himself to be represented as one of New Zealand's wealthiest men, but now claims to be impecunious. I am not directly concerned on the present applications with whether he is right about that, but it is clear that Kea and its legal team do not believe him, and there have been numerous post-judgment applications, all heard by me, in which Kea has sought to pursue its rights as judgment creditor against Mr Watson and in which Mr Watson has claimed not to have any assets."

5. The counts that remain in issue are all concerned with attempts by Kea to obtain information from Mr Watson about various assets. As appears from the Schedule, Count 1 is based on a pre-trial Order dated 28 April 2016 (**"the April Order"**) in which Kea was seeking information about a sum of over £12m (**"the Munil Money"**) to which Kea asserted a tracing claim; Counts 3 and 5 are based on post-trial orders (i) made on 10 and 13 September and sealed on 14 September 2018 (**"the September Order"**) and (ii) made on 12 November 2018 (**"the November Order"**) respectively, in which Kea was seeking information about Mr Watson's own assets.

6. In essence Kea's case is that Mr Watson has been deliberately reticent in providing information about the Munil Money and his own assets as part of a strategy to frustrate Kea's attempts at recovering assets to which it has a proprietary claim and enforcing its judgment. Ms Jones QC, who appeared for Kea, set out in some detail Kea's position to the effect that this strategy has served Mr Watson well and made life more difficult for Kea: it is not necessary to go into the details but in summary Kea says that if it had had the information it should have done, it would have been able much more easily to decide whether to elect for tracing claims or personal claims (in relation to the Munil Money); secure assets and recover from them; and decide whether to join other parties and pursue claims against them.

The contempt jurisdiction

7. Ms Jones began her submissions with some observations on the law and practice in relation to contempt. Although much of this was not in dispute, this was a helpful exercise and I will set out the points she made.

8. The power of the Court to commit for contempt those who disobey its orders is an

essential part of the machinery of the administration of justice: see *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411 (***"Ablyazov (CA)"***) per Rix LJ at [188]:

> "The authorities demonstrate that it is vital for the court, in the interests of justice, to have effective powers, and effective sanctions. Without these, it would be possible for a defendant (or, in a different situation, a claimant) to flout the orders of the court, which are the court's considered means by which to keep the scales of justice for the parties even. If once it became known that the court was unable or unwilling to maintain the effectiveness of its orders, then it would lose all control over litigation of this kind, with terrible consequences for the administration of justice. Those wrongly accused of fraud would be relieved of a certain amount of inconvenience, but fraudsters would rejoice and hitch a free ride to interminable litigation on the back of ill-gotten gains."

9. One of Mr Grant's submissions was that the committal application in the present case was not being pursued for good and proper reasons but was part of a personal vendetta by Sir Owen against Mr Watson, and as such an abuse of process that should be struck out. He did not however suggest that it would be possible to stop the application *in limine*, accepting that it would be necessary to hear the application fully before considering this point. I will therefore come back to it at the end after considering the substantive matters.

10. The procedural framework for committal applications is found in CPR Part 81. I was referred to the following rules:

(1) CPR r 81.3(b) defines "committal application" as any application for an order committing a person to prison.

(2) CPR r 81.4(1) provides:

> "If a person
>
> (a) required by a judgment or order to do an act does not do it within the time fixed for a judgment or order …
>
> then, subject to the Debtors Acts 1869 and 1878 and to the provisions of these Rules, the judgment or order may be enforced by an order for committal."

(3) CPR r 81.5 provides as follows:

> "(1) Unless the court dispenses with service under rule 81.8, a judgment or order may not be enforced under rule 81.4 unless a copy of it has been served on the person required to do or not to do the act in question, and in the case of a judgment or order requiring a person to do an act–
>
> (a) the copy has been served before the end of the time fixed for doing the act …
>
> …
>
> (3) Copies of the judgment or order … must be served in accordance with rule 81.6 or rule 81.7, or in accordance with an order for alternative service made under rule 81.8(2)(b).

(4) CPR r 81.6 provides as follows:

> "Subject to rules 81.7 and 81.8, copies of judgments or orders … must be served personally."

CPR r 81.7 has no application as it is concerned with service where undertakings have been given.

(5) CPR r 81.8 concerns dispensation with personal service. CPR r 81.8(1) applies to orders requiring a person not to do an act, and so has no application. CPR r 81.1(2) provides as follows:

> "In the case of any judgment or order the court may–
>
> (a) dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or
>
> (b) make an order in respect of service by an alternative method or at an alternative place."

(6) CPR r 81.9(1) provides as follows:

> "Subject to paragraph (2), a judgment or order to do or not to do an act may not be enforced under rule 81.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not to do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets."

(7) CPR r 81.10 provides as follows:

> "(1) A committal application is made by an application notice under Part 23 in the proceedings in which the judgment or order was made or the undertaking given.
>
> …
>
> (3) The application notice must–
>
> (a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
>
> (b) be supported by one or more affidavits containing all the evidence relied upon.
>
> (4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.
>
> (5) The court may–
>
> (a) dispense with service under paragraph (4) if it considers it just to do so; or
>
> (b) make an order in respect of service by an alternative method or at an alternative place."

(8) CPR r 81.28 provides as follows:

> "(1) Unless the court hearing the committal application or application for sequestration otherwise permits, the applicant may not rely on–
>
> (a) any grounds other than–
>
> (i) those set out in the claim form or application notice …
>
> (b) any evidence unless it has been served in accordance with the relevant Section of this Part or the Practice Direction supplementing this Part.
>
> (2) At the hearing, the respondent is entitled–
>
> (a) to give oral evidence, whether or not the respondent has filed or served written evidence, and, if doing so, may be cross-examined …

(9) Practice Direction 81 contains provisions supplementing CPR Part 81. Paragraph 9 provides:

> "In all cases the Convention rights of those involved should particularly be borne in mind. It should be noted that the standard of proof, having regard to the possibility that a person may be sent to prison, is that the allegation is proved beyond reasonable doubt."

(10) Paragraph 13.2(4) provides:

> "the application notice must contain a prominent notice stating the possible consequences of the court making a committal order and of the respondent not attending the hearing …"

Annex 3 to the Practice Direction contains a form of notice which may be used.

(11) Paragraph 16.2 of PD81 provides as follows:

> "The court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect."

11. It can be seen that among the requirements of CPR Part 81 are the requirement that the order which is sought to be enforced (i) is served personally on the respondent (CPR r 81.5(1) and (3) and r 81.6) and (ii) contains a penal notice (CPR r 81.9(1)). These requirements were satisfied in the case of the November Order but not in the case of the April Order or September Order. Nor was any direction made in either order under CPR r 81.8(2) dispensing with service or providing for service by alternative means. That means, as Ms Jones accepts, that the application for committal in respect of those orders can only proceed if the Court is persuaded that it is appropriate to exercise its powers under PD 81 para 16.2 to waive both the failure to serve personally and the lack of a penal notice.

12. Evidence in support of the application was duly given by affidavit (the 11th affidavit, dated 7 June 2019, of Mr Toby Graham, a partner at Farrer & Co (**"Farrers"**), Kea's solicitors, who has had conduct of this matter on behalf of Kea and Sir Owen

throughout). Mr Watson also served an affidavit, his 8th, dated 23 March 2020, in opposition to the application. Both attended (remotely) and were cross-examined. In addition Kea served evidence by way of reply (Mr Graham's 17th affidavit, dated 8 April 2020, supplemented by his 18th, dated 14 April 2020, to correct some errors and omissions). Mr Grant made an application on Day 2 to prevent reliance on Mr Graham's 17th affidavit. He accepted that I had previously given directions for Kea to serve any reply evidence on which it relied (repeated in a number of iterations, the latest of which was in an Order dated 26 February 2020); and that this amounted to an exercise of the Court's power under CPR r 81.28(1) to "otherwise permit", but submitted that that was confined to reply evidence strictly so-called, and that, for a number of reasons, Mr Graham's 17th affidavit went beyond that permission and should not be admitted. I ruled against that submission in a short judgment which I gave on Day 3.

13. It is well established that the burden of proof lies on the applicant and that the standard of proof is the criminal standard (now specifically referred to in PD 81 para 9 as set out above). In *JSC Mezhdunarodniy Promyshelnniy Bank v Pugachev* [2016] EWHC 192 (Ch) (***"Pugachev"***) Rose J summarised the principles at [41] as follows:

> "i) the burden of proving the contempt that it alleges lies on the Bank. Insofar as Mr Pugachev raises a positive defence he carries an evidential burden which he must discharge before the burden is returned to the Bank.
>
> ii) the criminal standard of proof applies, so that the Bank's case must be proved beyond reasonable doubt – or so that the court is sure. In case the meaning of this formulation were unclear, Phipson on Evidence (17th edition, 2009 at paragraph 6.51) cites the Privy Council in *Walters v. R* [1969] 2 A.C. 26 as indicating that "[a] reasonable doubt is that quality or kind of doubt which when you are dealing with matters of importance in your own affairs you allow to influence you one way or another".
>
> iii) The court needs to exercise care when it is asked to draw inferences in order to prove contempt. The law in this respect is summarised in a passage in the judgment of Teare J in *JSC BTA Bank v. Ablyazov* [2012] EWHC 237 (Comm). Circumstantial evidence can be relied on to establish guilt. It is however important to examine the evidence with care to see whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the Bank's case. If, after considering the evidence, the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with a finding of contempt, the claimants fail. Where a contempt application is brought on the basis of almost entirely secondary evidence, the court should be particularly careful to ensure that any conclusion that a respondent is guilty is based upon cogent and reliable evidence from which a single inference of guilt, and only that inference, can be drawn."

14. Rose J continued at [42]:

> "In the remainder of this judgment, where I make findings of fact or state that I have concluded that an allegation has been proved, I make such findings and arrive at such conclusions on the basis of the criminal standard of proof."

Unless stated otherwise, the same applies to my findings of fact (and for example my conclusions that I am "satisfied" of some factual matter) in the present judgment.

15. Ms Jones drew my attention to some other points relevant to the proof of contempt mentioned in the authorities. First, where a number of contempts are charged, it is appropriate to have regard to the overall picture: see *Gulf Azov Shipping Co Ltd v Chief Idisi* [2001] EWCA Civ 21 (***"Gulf Azov"***) per Lord Phillips MR at [16]-[18], especially at [18] where he said:

> "It is not right to consider individual heads of contempt in isolation. They are details on a broad canvas. An important question when that canvas is considered is whether it portrays the picture of a Defendant seeking to comply with the orders of the Court or a Defendant bent on flouting them. It is right that the individual details of the canvas should be informed by the overall picture. But, having said that, each head of contempt that has been held proved must be established beyond reasonable doubt."

16. Second, although each essential element of a charge of contempt must be proved to the criminal standard, it is not necessary that every fact relied on in support of the charge must itself be proved beyond reasonable doubt: see *Ablyazov (CA)* per Rix LJ at [51]-[52] where he said:

> "51. The error of law alleged is that the judge failed to apply the correct criminal standard of proof because he sometimes adopted the language of a civil trial, saying that something was "improbable", or "likely", or words to that effect. It is true that the judge so expressed himself on occasions. However, the judge overwhelmingly used the language of the criminal standard (of being sure, or of rejecting the possibility that something may be as suggested), and he uniformly did so when reaching his conclusions on any essential plank of the bank's case. Examples of that are so numerous as to be unnecessary to exemplify. Moreover, it is not true that every single aspect of a criminal case has to be proved to the criminal standard, although of course the elements of the offence must be.
>
> 52. It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: *R v. Hillier* (2007) 233 ALR 63 (HCA), cited in *Archbold 2012* at para 10-3. Or, as Lord Simon of Glaisdale put it in *R v. Kilbourne* [1973] AC 729 at 758, "Circumstantial evidence…works by cumulatively, in geometrical progression, eliminating other possibilities". The matter is well put in *Shepherd v. The Queen* (1990) 170 CLR 573 (HCA) at 579/580 (but also passim):
>
> > "…the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact – every piece of evidence – relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately." "

17. Third, as to proof by inference and circumstantial evidence, see *Masri v*

Consolidated Contractors International Company SAL [2011] EWHC 1024 (Comm) (***"Masri"***) per Christopher Clarke J at [145]-[146]:

> "**Inferences**
>
> 145. In reaching its conclusions it is open to the court to draw inferences from primary facts which it finds established by evidence. A court may not, however, infer the existence of some fact which constitutes an essential element of the case unless the inference is compelling i.e. such that no reasonable man would fail to draw it: *Kwan Ping Bong v R* [1979] AC 609.
>
> **Circumstantial evidence**
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> 146. Where the evidence relied on is entirely circumstantial the court must be satisfied that the facts are inconsistent with any conclusion other than that the contempt in question has been committed: *Hodge's Case* [1838] 2 Lewin 227; and that there are *"no other co-existing circumstances which would weaken or destroy the inference"* of guilt: *Teper v The Queen* [1952] AC 480, 489. See also *R v Blom* [1939] AD 188, 202 (Bloemfontein Court of Appeal); *Martin v Osborne* [1936] 55 CLR 367 , 375. It is not, however, necessary for the court to be sure on every item of evidence which it takes into account in concluding that a contempt has been established. It must, however, be sure of any intermediate fact which is either an essential element of, or a necessary step on the way towards, such a conclusion: *Shepherd v The Queen* 170 CLR 573 (High Court of Australia).
>
> **Adverse inferences**
>
> Mr James Lewis QC on behalf of the judgment debtors accepted that, although (i) an application for contempt is criminal in character, (ii) an alleged contemnor may claim a right to silence, and (iii) the provisions of sections 34 and 39 of the Criminal Justice Act 2003 do not apply, it was open to the Court to draw adverse inferences against the judgment debtors to the extent that it would be open it to do so in comparable circumstances in a criminal case. Thus it may be legitimate to take into account against the judgement debtors the fact (if it be such) that, when charged with contempt, as they have been in these proceedings, they have given no evidence or explanation of something of which they would have had knowledge and of which they could be expected to give evidence if it was true."

18. Fourth, in an appropriate case the Court can have regard to the cumulative effect of purported explanations given by the alleged contemnor which together can lead to the conclusion that the evidence is deceitful: see *Ablyazov (CA)* per Rix LJ at [96], [100]. At [96] he said:

> "96. I would end this section of my judgment by saying this. It is noticeable from the facts of this case, both as found by the judge, but also in the nature of the structure of the arguments as they have developed, how time and time again, as some aspect of Mr Ablyazov's conduct has come under question, so the evidence deployed has become remarkable for the way in which it has taken tortuous turnings which have asked the court to suspend its belief in reality in favour of reduplicating unrealities…."

Then after summarising the explanations given in that case, he continued at [100]:

> "100. As this series of coincidences, misfortunes, errors, misunderstandings and inexplicable developments multiply, the court is entitled to stand back and ask

> whether there is in truth a defence or defences as alleged, even if no burden rests on Mr Ablyazov, and the burden remains on the bank, or whether there is at any rate the realistic possibility of such, or on the other hand whether the court is being deceived. The trial judge decided that it was being deceived by witnesses without credibility. It is not for this court to say that he was wrong without strong grounds for doing so, grounds which have simply not been formulated."

19. As to the elements of contempt that need to be proved, see *Masri* per Christopher Clarke J at [150]:

> "In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach: *Marketmaker Technology (Beijing) Co Ltd v Obair Group International Corporation & Ors* [2009] EWHC 1445 (QB)."

Does the application notice need to allege contumacy?

20. None of the above was in dispute. But the next point was. Mr Grant submitted that if the applicant wishes to allege that the breaches were contumacious, that must be alleged in the Particulars of Contempt contained in or annexed to the application notice.

21. I do not accept this submission. CPR r 81.10(3)(a) provides that the application notice must set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt (paragraph 10(7) above). Mr Grant cited authority illustrating the stringency with which this requirement (which pre-dates the CPR) is applied, as follows:

    (1) In *Chiltern District Council v Keane* [1985] 1 WLR 619 (***"Keane"***), Sir John Donaldson MR said at 622A-D:

> "The notice of motion was personally served on Mr Keane, but it only stated the grounds of the application to commit in general terms. It recited the undertaking and the injunction, and then alleged that there had been a breach. This, on the authorities, is not sufficient. It has been said in many cases that what is required is that the person alleged to be in contempt shall know, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes a contempt of court.
>
> The particular undertakings and injunctions in this case cover a wide range of activities. Mr Keane was entitled to know whether it was said by the council that he was in breach of every single requirement of those orders or only some, and if so which, of them and the notice failed to give him that information.
>
> Every notice of application for commit must be looked at against its own background. The test, as I have said, is: does it give the person alleged to be in contempt enough information to enable him to meet the charge? If, for example, a defendant is subject to an injunction to leave a stated house not later than a particular time on a particular day, then it would be sufficient to say that he had failed to comply with that order, because it only permits of one breach, namely failure to leave the house by the time stated. But where the order is not in such a simple form and it is possible

> for the defendant to be in doubt as to what breach is alleged, then the notice is defective."

It would appear that in that case the notice of motion had done no more than assert that there had been a breach. It is scarcely surprising that the Court of Appeal considered that that did not give Mr Keane enough information to know what it was he was accused of having done or not done.

(2) In *Belgolaise SA v Purchandani* (24 June 1998 unrepd) the defendant had been subject to a *Mareva* injunction and had been cross-examined on his assets. A motion to commit him was brought relying on two contempts. The first was that he had failed to disclose to the plaintiff's solicitors all his assets as required by the disclosure provisions of the *Mareva* injunction. Colman J, having cited *Keane*, held that this was insufficient as it gave no particulars whatever of the assets which the defendant failed to disclose. The second alleged breach was failing or refusing to answer properly or at all certain of the questions put to him in cross-examination, and in particular those relating to certain matters. Colman J held that this was not sufficiently particularised either, saying (at page 8 of the transcript I have):

> "Secondly, I am not satisfied that the notice of motion sufficiently particularised the second head of contempt. An allegation that, in the course of a long cross-examination in which many questions were asked on each subject, the defendant has failed or refused to answer 'properly or at all certain questions put' to him, in particular those relating to a list of subjects, is not sufficient. The defendant is left in doubt which of the questions and answers are relied upon and as to those questions which he has answered, which he has not answered properly and in what respect. When a person's liberty is at risk he is entitled to know the precise basis for the alleged contempt."

Again it is not difficult to understand the basis of this decision given the form of the allegations in that case.

(3) In *Harmsworth v Harmsworth* [1987] 1 WLR 1676 (***"Harmsworth"***) a wife applied to commit her husband for breaches of an order restraining him from molesting or communicating with her save through her solicitors. The notice to show cause why a committal order should not be made alleged a series of breaches in somewhat unspecific terms, such as "constantly telephoning the wife at work and threatening her life … following her on numerous occasions." Nicholls LJ, having referred to *Keane*, said at 1683A-D:

> "So the test is, does the notice give the person alleged to be in contempt enough information to enable him to meet the charge? In satisfying this test it is clear that in a suitable case if lengthy particulars are needed, they may be included in a schedule or other addendum either at the foot of the notice or attached to the notice so as to form part of the notice rather than being set out in the body of the notice itself. But a reference in the notice to a wholly separate document for particulars that ought to be in the notice seems to me to be a quite different matter. I do not see how such a reference can cure what otherwise would be a deficiency in the notice. As I read the Rules and as I understand the decision in *Chiltern District Council v. Keane*, the Rules require that the notice itself must contain certain basic information. That information is required to be available to the respondent to the application from within the four corners of the notice

> itself. From the notice itself the person alleged to be in contempt should know with sufficient particularity what are the breaches alleged. A fortiori, in my view, where the document referred to is an affidavit, which does not set out particulars in an itemised form, but which leaves the respondent to the committal application to extract and cull for himself from an historical narrative in the affidavit relevant dates and times and so forth, and to work out for himself the precise number of breaches being alleged and the occasions on which they took place."

He went on to say however that in applying the test the contents of the notice are to be read fairly and sensibly as they would be read by a reasonable person in the position of the alleged contemnor, and on the facts he held that the notice was sufficiently particularised.

(4) In *Group Seven Ltd v Allied Investment Corp Ltd* [2013] EWHC 1509 (Ch) at [45] Hildyard J, having referred to *Harmsworth* for the principle, said that his conclusion in that case (which was to allow a particular argument to be run):

> "is not to be taken as any dilution for the future of the rule that a committal application must give fair and clear notice of the breach alleged and the basis of the allegation"

I do not however think this takes matters any further.

22. Mr Grant also referred to the principle that the Court is required to confine itself strictly to the contempts alleged in the application notice, and must not deviate from those unless the applicant is permitted to amend the notice: see *Inplayer Ltd v Thorogood* [2014] EWCA Civ 1511 (***"Inplayer"***). There an application to commit had been adjourned to come on with the trial of the action itself. In her reserved judgment Rose J therefore dealt with both the substantive issues and the committal application: she rejected all the allegations of contempt that had been advanced by the claimants in their application, but went on to consider two further instances of contempt which she found proved (see at [28]), granting the claimants retrospective permission to amend their committal application (see at [29]). Jackson LJ said at [39]:

> "I am afraid this will not do. A judge hearing a committal application should confine himself or herself to the contempts which are alleged in the application notice. If the judge considers that other alleged contempts require consideration, the correct course is to invite amendment of the application notice and then provide any necessary adjournment so that the respondent can prepare to deal with those new matters."

The principle is reflected in CPR r 81.28(1) which provides that unless the Court otherwise permits the applicant may not rely on any grounds other than those set out in the application notice (paragraph 10(8) above). See also *Hewlett Packard Enterprise Co v Sage* [2017] EWCA Civ 973 (***"Hewlett Packard"***) at [35] where Henderson LJ, having cited what Jackson LJ said in *Inplayer*, continued:

> "I would respectfully repeat and endorse that guidance. I would also add that it is in my view a salutary discipline for any judge who is delivering or writing a judgment on a committal application to set out each relevant ground of committal before proceeding to consider whether it is made out on the evidence to the criminal standard of proof."

23. There is in the light of the authorities no doubt that the principle is that the application notice should be sufficiently particularised to satisfy the requirement that (in the words of Sir John Donaldson MR in *Keane*):

> "the person alleged to be in contempt shall know, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes a contempt of court."

None of the authorities cited to me however indicate that this requirement makes it necessary for the application notice to specify that the respondent is alleged to have acted contumaciously.

24. Ms Jones said that this was unnecessary. As well as pointing out that this had not been in issue in any of the authorities relied on by Mr Grant, she showed me the particulars of contempt alleged in some of the cases, such as the decision of Rose J in *Pugachev*, and that of Teare J in *JSC BTA Bank v Ablyazov* [2012] EWHC 237 (Comm) (***"Ablyazov (HC)"***), in neither of which was there any specific allegation that the respondent had acted contumaciously and in neither of which was it suggested that this was a defect, let alone a fatal one.

25. I have already indicated that I prefer Ms Jones' submission and I will try and set out why. The essential requirement is that the respondent should know what he is alleged to have done or not done which constitutes a contempt. That to my mind focuses on the acts or omissions which are said to constitute a breach of the order (the *actus reus* in the traditional language of the criminal law), rather than the mental element required (the *mens rea*).

26. But quite apart from this it is common ground that it is not necessary to prove contumacy in order to establish contempt. What needs to be proved is as set out in *Masri* (paragraph 19 above), that is, as well as the acts or omissions which constitute the breach, knowledge on the part of the respondent of (i) the order and (ii) the facts which make the conduct a breach. But as Mr Grant himself pointed out, it is not necessary to prove that the respondent made a deliberate and wilful decision to breach the court order, or even to show that he knew that his conduct was a breach: see *Sectorguard plc v Dienne plc* [2009] EWHC 2693 (Ch) (***"Sectorguard"***) per Briggs J at [32]-[33]:

> "The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order: see *Adam Phones v. Goldschmidt* [1999] 4 All ER 486 at 492j to 494j."

27. I accept that the wilfulness of the breach is, as Mr Grant went on to say, vitally relevant to the question of whether to make an order for committal, and to sentence generally. A non-contumacious breach will rarely merit a sentence of imprisonment: see *Gulf Azov* per Lord Phillips MR at [72]. But this does not affect the fact that contumaciousness is not something that needs to be proved to establish a contempt: see *re M* [1994] 1 AC 377 at 426-7 where Lord Woolf endorsed a dictum of Lord Oliver in *A-G v Times Newspapers* [1992] 1 AC 191 at 217-8 that:

> "One particular form of contempt by a party to proceedings is that constituted by an intentional act which is in breach of the order of a competent court. Where this occurs as a result of the act of a party who is bound by the order or of others acting

> at his direction or on his instigation, it constitutes a civil contempt by him which is punishable by the court at the instance of the party for whose benefit the order was made and which can be waived by him. The intention with which the act was done will, of course, be of the highest relevance in the determination of the penalty (if any) to be imposed by the court, but the liability here is a strict one in the sense that all that requires to be proved is service of the order and the subsequent doing by the party bound of that which is prohibited."

28. If an applicant for committal does not need to prove that the respondent was acting contumaciously in order to make good his allegation of contempt, it seems to me to follow that he does not need to allege it in his application notice. Mr Grant says that contumacy is vital to the assessment of the gravity of the breach, and so it no doubt is, but that does not to my mind make it a requirement that it be specifically alleged in the application notice, given that what the principle in *Keane* requires is that the respondent should know what it is that he is said to have done, or omitted to do, that makes his conduct a breach. I therefore reject Mr Grant's submission that the application notice is defective in this respect.

29. A number of other objections were taken by Mr Grant, but it is more convenient to consider those subsequently. I will next consider the background to Count 1.

The Munil Money

30. The details of Kea's claim to the Munil Money are given in the Main Judgment (and references in this section in square brackets are to paragraphs of that judgment). As there appears Munil Development Inc, the 6th Defendant (**"Munil"**) was a Panamanian corporation (but administered from Switzerland) owned by the Samos Trust, one of many trusts associated with Mr Watson [320]. On 24 July 2012 Mr Dickson signed the July agreements on behalf of Kea [349]. These included a Shareholders' Agreement, under which it was agreed that Spartan's business would include certain key transactions [351]; the effect of this was that if, as in due course happened, the M&G acquisition went ahead, Spartan would acquire Newco (later identified as Rygen Holding Ltd (**"Rygen"**)) for a sum equal to £45m less the net sale proceeds received from M&G [352(4)]; and Kea would lend Spartan 50% of this amount by way of the Third Kea Loan [352(5)]. Since it was expected that the net sale proceeds would be about £20m, it was anticipated that the Third Kea Loan would be about £12.5m, and in September 2012 Mr Dickson caused Kea to transfer to Fladgates £16m, which included £12.5m as the anticipated amount of the Third Kea Loan [456]-[457]. In February 2013 he executed the Third Kea Loan Agreement in the sum of £12.5m, thereby releasing that money to Spartan [488]. The precise sum needed was later quantified at £12,143,133 [505]; and on 24 April 2013 Spartan agreed to acquire the shares in Rygen (half of which was held by a nominee for Munil) for twice this sum (£24,286,266) [512]. In this way £12,143,133 of Kea's money was used to fund Spartan's acquisition of Rygen from Munil [513]. This is the Munil Money referred to in Count 1. In the Main Judgment I held that the July agreements were voidable on various grounds, notably deceit, and that Kea was entitled to avoid them [448]. On this basis Kea asserted an entitlement to trace into any assets acquired by use of the Munil Money [531], [538(2)]. Kea's right to trace into the Munil Money and assets acquired with it was not within the scope of the trial or dealt with in the Main Judgment [532]-[534]; it was however subsequently agreed without having to be argued (see below).

The April Order

31. From an early stage in the dispute Kea had sought information as to what had happened to the Munil Money. On 26 January 2015 (by which time certain proceedings were already on foot between the parties in relation to Spartan) Farrers wrote a letter before action (to Bristows LLP, the solicitors then acting for Novatrust Ltd) threatening the current proceedings, which in due course were issued on 29 April 2015 in the shape of a Part 7 claim by Sir Owen and Kea against Mr Watson and others, this being the action which came to trial and in which the Main Judgment was given and the present application to commit is brought. In that letter Farrers said that there had been serious wrongdoing by Mr Watson and others and that Kea elected to set aside all the agreements in relation to Spartan, and specifically asked for a detailed account of what had happened to the funds paid out of Spartan, including the Munil Money, and where that money then was. After a chaser on 26 February 2015 (in which Farrers made the point that the eventual destination of the funds obtained from Kea through Spartan was obviously relevant to the question who were the proper parties to the proposed action), Bristows replied on 13 March 2015 on behalf of both Mr Watson and Novatrust, confirming that Munil was a Watson-related entity and had received £12,143,133 but giving no information as to what had happened to the money. Farrers chased again on 7 April and 9 June 2015, in the latter letter saying that their clients were anxious to make their proprietary claim to the funds but were unable to do so because they did not know their whereabouts, and specifically asking for where they were and how they had got there from Munil so that any relevant parties might be joined.

32. Mr Watson then changed his solicitors to Oury Clark, and Farrers wrote to them seeking similar information in June, July (twice) and in August, without any relevant response, followed on 16 September 2015 by a Request for Further Information of Mr Watson's Defence (which had been served on 31 July 2015), which included at request 118 a request that Mr Watson state what had happened to the £12,143,133 paid to Munil since that payment was made; the response was that the Claimants were not entitled.

33. Mr Grant's written submissions asserted that this was an understandable and defensible response given the then state of the pleadings, and in particular that Kea had not then pleaded in terms a proprietary claim to the Munil Money. I do not think it is now of any great significance, but for what it is worth, I think he is mistaken about this. It is true that as originally issued Munil was not joined as a defendant, and that it was not until Munil had been joined and the Particulars of Claim re-amended in November 2016 that Kea pleaded an express claim that it was entitled to trace into, and made a proprietary claim to, such part of the Munil Money, and any traceable product of the Munil Money, as was in the hands of Munil, but even in their original form as served in April 2015 the Particulars of Claim alleged that (i) Spartan had at all times held the moneys paid to it by Kea (including the £12.5m which funded the payment to Munil) on trust for Kea; (ii) that if any part of those sums had been paid out of Spartan and come into the hands of Mr Watson, Kea was entitled to trace into and make a proprietary claim to the sums in his hands; (iii) that Munil was a Panamanian company whose ultimate beneficial owner was Mr Watson or entities associated with him; (iv) that Mr Watson had made profits, in breach of his fiduciary duty, through Munil which he nominated to receive those profits; and (v) that the profits made by Mr Watson through Munil were held on constructive trust for Sir Owen or Kea. And the relief sought by Sir Owen and Kea

against Mr Watson included at (1) an account of profits made by him in breach of fiduciary duty (whether directly or by arranging for such profit to be taken by other entities) and at (4) an account of sums received by Mr Watson that were traceable to the sums paid by Kea to Spartan, together in each case (at (3) and (5)) with an order that he hold such money and/or assets on trust for Sir Owen or Kea. That seems to me to be sufficient to assert a proprietary claim entitling the Claimants to information as to what had happened to the Munil Money. But since the information was later agreed to be given (see below) I do not see that this is now important.

34. After further fruitless correspondence, the Claimants issued an application on 3 March 2016 for, among other things, an order that the Defendants provide documents and information where requests had not been answered, including request 118. The supporting 4th witness statement of Mr Graham made it clear that the claim to information was advanced not only under CPR Part 18 but under the Court's equitable jurisdiction to assist in recovering a fund to which the Claimants asserted a proprietary claim.

35. The application came on for hearing, along with a large number of other matters, some of them very contentious, at the first case management conference (**"CMC"**) which was held over 3 days from 26 to 28 April 2016 (before me, the proceedings being by then fully docketed to me). But this particular application was not in the event argued as the parties reached a compromise on it, and this was reflected in the Order made by me to give effect to the CMC dated 28 April 2016 (namely the April Order).

36. Paragraph 8 of the April Order ordered as follows:

> "Mr Watson do file and serve the additional information requested in items 82-4 [etc…] of the Schedule to the Fourth Statement of Toby Graham dated 3 March 2016, and do use his best endeavours to file and serve the additional information requested in item 118 thereof, by 4.00pm on 26 May 2016."

37. That cross-referred to a schedule to Mr Graham's 4th witness statement where the requests under item 118 read as follows:

> "Please state what has happened to the £12,143,133 which was paid to Munil since that payment was made.
>
> In particular, please:
>
> - state on what date or dates and by what means Munil received the sum of £12,143,133 ("**the Munil Money**"), identifying each transaction by date and amount;
>
> - identify each payment and each other transaction carried out by Munil using all or any part of the Munil Money, stating the date, amount, nature and purpose of the payment or transaction;
>
> - identify all assets now held by Munil which (directly or indirectly) represent, or have been acquired in whole or in part through the use of, all or any part of the Munil Money;
>
> - state whether Mr Watson or any Watson Associate has at any time received all or any part of (i) the Munil Money, or (ii) any asset which (directly or indirectly) represents, or was acquired in whole or in part through the use of,

all or any part of the Munil Money, and identify each such receipt stating its date and amount and the nature and purpose of the transaction pursuant to which it was received;

- identify all assets now held by Mr Watson or any Watson Associate which (directly or indirectly) represent, or have been acquired in whole or in part through the use of, all or any part of the Munil Money; and

- to the extent not covered by the above, identify the present whereabouts of the Munil Money and its traceable proceeds insofar as known to Mr Watson."

"Watson Associate" was defined in the schedule in extensive terms to include:

" - Novatrust, whether or not acting as trustee of a trust;

- any other current or former member of the Stonehage group of companies, whether or not acting as trustee of a trust;

- Mr Leahy;

- Nucopia;

- Cullen Investments Limited;

- any other current or former member of the Cullen group of companies;

- Mr Gibson;

- any entity or individual with whom Mr Watson has or had an agreement or understanding, formal or informal;

- any current or former family member or personal friend of Mr Watson;

- any person or entity whom Mr Watson wished to benefit;

- any trust of which Mr Watson and/or any one or more of the above are or were beneficiaries or discretionary objects; and

- any company or other entity currently or formerly owned in whole or in part, legally or beneficially, directly or indirectly, by Mr Watson and/or any one or more of the above."

38. As already referred to, the April Order does not have a penal notice on its face, and was not personally served on Mr Watson. In fact a sealed copy was not served until the afternoon of 23 May 2016.

Count 1 – general

39. Count 1 alleges a contempt by Mr Watson in failing to comply with paragraph 8 of the April Order in respect of request 118. In the light of what Henderson LJ said in *Hewlett Packard* (paragraph 22 above) I set out here the general part of Count 1:

"Eric John Watson in breach of paragraph 8 of the order dated 28 April 2016 failed to use his best endeavours to file and serve by 4pm on 26 May 2016 the additional information requested in item 118 of the Schedule to the Fourth Statement of Toby Graham dated 3 March 2016 **("Item 118"),** in particular by failing to provide each

> and every piece of the following information relating to the tracing of the sum of £12,143,133 to which Kea has a proprietary claim **("the Munil Money"),** which would have been available to Mr Watson using his best endeavours and which fell within the terms of Item 118: …"

This is followed by the various specific items of information which make up the sub-counts (a) to (e): see the Schedule below.

Best endeavours

40. A number of points were taken by Mr Grant on Count 1 as a whole. The first concerned the nature of an obligation to use best endeavours. Save for one point however, I did not however discern any difference of substance between the parties on this. Both counsel accepted that an obligation to use best endeavours can in principle be an enforceable obligation: see *Jet2.com Ltd v Blackpool Airport Ltd* [2012] EWCA Civ 417 (***"Jet2.com"***) per Moore-Bick LJ at [18]:

> "In general an obligation to use best endeavours, or all reasonable endeavours, is not in itself regarded as too uncertain to be enforceable, provided that the object of the endeavours can be ascertained with sufficient certainty."

Both counsel referred me to *Barclay v Tuck* [2018] EWHC 1125 (QB) at [102] where Spencer J accepted that "best efforts" meant the same as "best endeavours" and that "best endeavours" meant the same as "all reasonable endeavours" (referring to *Rhodia International Holdings Ltd v Huntsman International LLC* [2007] EWHC 292 (Comm) at [33] and *Jet2.com* at [48]). Both counsel accepted that, as Spencer J there said, the obligation is not an absolute obligation. That is indeed not only the natural meaning of an obligation in this form, but is particularly evident in the present case where paragraph 8 of the April Order (see paragraph 36 above) is worded so as to draw an explicit contrast between Mr Watson's obligation in relation to all the other requests (where the order was simply that he "do file and serve" the additional information requested), and his obligation in respect of request 118 (where the order took the form of a best endeavours obligation). The explanation for that was doubtless that Mr Watson's position at the CMC, as set out in the 4th witness statement of Mr Charles Pugh of Oury Clark, was that he was not an officer of Munil or in control of Munil or its documents, and that although he had direct knowledge of a number of transactions, he was unable to set out every transaction Munil might have undertaken, and unable to give disclosure of relevant documents.

41. Mr Grant accepted that Mr Watson was obliged to take such steps as were reasonable to provide the information so far as he was aware of the information. The one point on which counsel differed was whether Mr Watson was obliged to take reasonable steps to obtain the information from others if he did not have it himself, Mr Grant's position being that the objective was not to *obtain* the information, but to *provide* it (by filing and serving it) and that strictly he did not even have to ask Munil for information. He referred to *Dubai Bank Ltd v Galadari* (unrepd, 6 Oct 1992) where the Court of Appeal held that the Court's power to order discovery did not extend to requiring a defendant to use all lawful means to obtain possession of documents from a third party so that discovery could then be ordered.

42. Given the way in which Kea puts its case (which is that in respect of the information specified in the 5 sub-counts to Count 1 Mr Watson did not need to ask Munil for information as he was personally involved in each transaction and all he had to do

was obtain details from those working for him), I doubt this point needs resolving, but insofar as it does, I do not accept that the obligation was as limited as Mr Grant suggests. If you are asked for some information and you do not know the answer, the way to answer the question is to ask someone who does know. If you are ordered to take all reasonable steps (or use best endeavours) to answer the question, that to my mind plainly requires you to take all reasonable steps to find out the answer. The obligation to use best endeavours to provide information in my judgment therefore required Mr Watson to take all reasonable steps to find out, if he did not already know. If therefore it had truly been the case that Mr Watson did not know, or have readily available the means of knowing, what Munil had done with the money, the order in my view required him to ask Munil, and take all other such steps as were reasonable to discover, what had been done with it. I do not think *Dubai Bank Ltd v Galadari*, which was concerned with the limits of the Court's jurisdiction in ordering discovery, precludes this conclusion. The order here made, in terms consented to, was an order for the provision of further information even if in practice it required Mr Watson to obtain information from others, and even if that information would almost certainly have to be in documentary form.

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

Is the April order sufficiently clear?

44. The next point to consider is one that Mr Grant took on the form of order. He said that it was not clear on the face of the April Order, and without reference to any extraneous document, precisely what Mr Watson's obligation was; to discover what he had to do, he had to look not at a document annexed to the order, but at a schedule to a witness statement. That is undoubtedly so. Mr Grant said that this was insufficient to found a committal application.

45. In support of this submission, he relied on the following:

(1) In *Rudkin-Jones v Trustee of the Property of the Bankrupt* (1965) 109 Sol Jo 334 (***"Rudkin-Jones"***), Lord Upjohn (sitting in the Court of Appeal) is reported as having said that:

> "he must protest as strongly as he could against the making of an injunction in the present form, which meant that the person enjoined had to look at another document to see what it was that he was enjoined from doing. It could not be too clearly understood that a person should have to look at and to look only at the order to see what it was that he was enjoined from doing, although in fact nothing turned on it here."

Unfortunately the case is only very briefly reported and it is not easy to see what the difficulty was. A trustee in bankruptcy had issued a notice of motion seeking an injunction restraining the bankrupt's wife "herself, her servants or agents from disposing of, encumbering or otherwise dealing with [inter alia] the proceeds of sale of [a farm]…" The County Court Judge had granted an injunction in terms of the notice of motion, although no formal order was drawn up for some months, and the bankrupt was committed for being privy to a breach of the injunction by helping himself to £300, and being given by his wife another £800, from cash in a bag which was part of the proceeds of sale of the farm in question. If the order had set out in terms the same words as in the notice of motion, they seem clear enough and not require reference to anything else, so I suspect Ms Jones is right when she suggests that the problem was that the order simply said that an injunction was granted "in terms of the notice of motion" or the like. Lord Upjohn undoubtedly thought that inappropriate, but it is noticeable that he said that nothing turned on it, no doubt because the husband well knew there was an injunction against his wife; and also that he upheld the decision of the Judge that the husband's conduct was a flagrant and defiant contempt of court, and, although reducing the length of the term, upheld the imposition of a custodial sentence on him. The other two members of the Court (Davies and Salmon LJJ) agreed. This therefore is no authority that an order in the form in that case, whatever that was, cannot found an application for committal.

(2) In *The Commissioner of Water Resources v Federated Engine Drivers' and Firemen's Association of Australasia Queensland Branch* [1988] 2 Qd R 385 (***"Commissioner of Water Resources"***), the Commissioner had contracted with a company for the construction of a dam and had obtained an injunction restraining certain employees of the company from procuring a breach of that contract by refusing to work at the construction site. The respondent employees had failed to turn up for work, and on the Commissioner applying to have them fined for failing to comply with the order, McPherson J dismissed the application. He said (at 390) that the form of the injunction:

> "infringed the requirement that the persons to whom the court's order is directed must be left in no doubt as to what it is they must do, or abstain from doing, in order to comply with the order."

He pointed out that since the injunction restrained the respondents from procuring a breach of the construction contract between the Commissioner and the company, in order to comply with the injunction they would have to refer to the terms of that contract (which was not in their possession) and no doubt also take legal advice so as to determine whether by refusing to work they were procuring a breach of that contract. He continued:

> "That is quite contrary to another well settled rule governing injunctions, which is that the order should be so expressed that the person to whom it is directed should be able by reading it and without more, at once to know what it is that he must do, or refrain from doing, in order to comply with its terms."

In the event counsel for the Commissioner accepted that he could not even prove a breach of the construction contract, let alone that the respondent employees had procured one.

(3) In *Harris v Harris* [2001] 2 FLR 895, Munby J at [288] made the point that no order will be enforced by committal unless it is expressed in clear, certain and unambiguous language: so far as this is possible, the person affected should know with complete precision what it is that he is required to do or abstain from doing. He continued at [289]:

> "A related principle is that an order should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation."

In the case before him Mr Harris had been the subject of numerous orders granting injunctive relief, many of which had amended previous orders, so that he had to look at 6 different orders to work out the terms of the injunction he was subject to. Munby J described that as wholly unacceptable and said that an injunction should be set out complete in a single document. That does not however appear to have deterred him from finding Mr Harris guilty of numerous contempts of court – the precise position is not entirely clear as he dealt with the contempts in a separate judgment, but there is certainly no suggestion that the form of the order meant that he could not be committed.

(4) In yet another *Ablyazov* case, *JSC BTA Bank v Ablyazov* [2015] UKSC 64 (***"Ablyazov (SC)"***), Lord Clarke said at [19] that he agreed that orders "of this kind" (that is freezing orders) should be restrictively construed, approving a statement by Beatson LJ that because of the penal consequences of breaching a freezing order and the need of the defendant to know where they stand, such orders should be clear and unequivocal, and should be strictly construed.

(5) In *Teighmore Ltd v Bone* [2019] EWHC 2962 (QB) Murray J at [17] said that he bore in mind that the sanction of committing a person to prison can only be justified where the terms of the order allegedly breached are unambiguous and the breach clear beyond question. In that case however there does not seem to have been any dispute over the clarity of the order, which restrained persons unknown from entering or remaining on any part of the Shard without the licence or consent of Teighmore Ltd, the leasehold owner of the Shard; nor indeed over the breach, which was admitted.

46. For present purposes I do not derive any assistance from either of the latter two cases. *Ablyazov (SC)* appears to lay down a principle of construction for freezing orders, which the April Order was not; in any event, it is a manifestation of the requirement that injunctions should be clear so that the person restrained knows what he has to do, or to not do, and what Murray J said in *Teighmore Ltd v Bone* is to the same effect. That is a rather different point from the principle relied on by Mr Grant that the person restrained should only have to look at the order and not cross-refer to other documents. And in the present case I do not think there was any lack of clarity or ambiguity in what the April Order required Mr Watson to do. It is not irrelevant, as Ms Jones pointed out, that this part of the April Order was agreed by way of compromise, and was negotiated and consented to; there was no difficulty in identifying what the schedule to Mr Graham's 4th witness statement was, or what it provided; and in the event (see below) Mr Watson's answer to the requests in paragraph 8 was given in the form of a formal Response settled by counsel which in the conventional way (and as required by Practice Direction 18 para 2.3(1)(c))

repeated the text of each request, including that of request 118. I do not think there was anything unclear or ambiguous about this order, or that left Mr Watson or his legal team in any real doubt or uncertainty as to what needed to be done to comply with it.

47. So that leaves the question whether the mere fact that the order cross-referred to another document, not annexed to the order itself, means that no application to commit can be based upon it. In the light of the authorities drawn to my attention by Mr Grant, I accept that it would have been the better practice to annex the relevant parts of the schedule to the order so that Mr Watson need only look at the one document. But in my judgment the failure to do this does not mean that no application to commit can be brought. As I have pointed out above, Lord Upjohn in *Rudkin-Jones* did not let the deficiencies in the order in that case, whatever they were, stand in the way of upholding the husband's committal. And although it is not difficult to see why Munby J in *Harris v Harris* thought it unacceptable for Mr Harris (who was acting in person) to have to hunt through a series of orders to work out what restrictions he was subject to, it does not appear that he regarded it as impossible to commit him for breaches of the injunction. In the present case Mr Watson and his legal team did not have to try and piece together from disparate documents what had to be done: all they had to do, as they had agreed to do, was identify the schedule concerned, which it is not suggested occasioned them any difficulty in practice at all.

48. That leaves *Commissioner for Water Resources*. That seems to me a much more extreme case where the employees concerned did not even have the construction contract in their possession, and even if they had, it would probably not tell them, at any rate without legal advice, whether failing to turn up for work would procure a breach of it. I have no difficulty in accepting that it would be very difficult to commit for breach of an order in that form, although in fact McPherson J dismissed the application for lack of proof.

49. Having considered all the authorities referred to by Mr Grant, I do not uphold this objection. However much it would have been better practice to annex the relevant parts of the schedule to the order, I am satisfied that the failure to do so has caused no difficulty, and no injustice to Mr Watson, and to refuse the application to commit on this ground would be a disproportionate and unjustified response to what is in the circumstances of this case at best a technical, not a substantive, objection.

Other preliminary matters

50. There are some other preliminary matters that can be dealt with comparatively shortly.

51. First, Mr Grant referred to the principle that the application notice must set out the alleged breaches with sufficient particularity. I have already referred to this principle and the cases relied on in support (paragraph 21 above). He drew a contrast with *Barclay v Tuck* where the alleged breaches were carefully set out in the schedule to the application notice in the form of specific steps that Mr Tuck could and should have taken but did not.

52. If that was intended to suggest that Count 1 was insufficiently particularised because it did not set out specific steps that Mr Watson could and should have taken, I do not accept the submission. In relation to each of the sub-counts Kea identifies the

information which it says was available to Mr Watson but was not disclosed. I think that was sufficient to indicate to Mr Watson, with sufficient particularity to enable him to defend himself, what he is said to have done or omitted to do which constitutes a contempt of court. In *Harmsworth* Nicholls LJ, having said that the contents of the notice are to be read fairly and sensibly as they would be read by a reasonable person in the position of the alleged contemnor, said at 1683F:

> "Would such a person, having regard to the background against which the committal application is launched, be in any doubt as to the substance of the breaches alleged?

In the present case I do not think that a reasonable person in the position of Mr Watson would be in any doubt as to the substance of the breaches alleged in Count 1, nor is there any suggestion in Mr Watson's 8th affidavit that he had any difficulty in understanding what was alleged against him.

53. Mr Grant also referred to the fact that committal is not the usual response to a failure to comply with disclosure obligations. He accepted that there were cases such as *Pugachev* where respondents had been committed for failing to comply with orders for disclosure, but said that that was in the context of disclosure orders ancillary to freezing injunctions, which was not the case here, and that the repeated references in the cases to how serious such breaches can be was not appropriate to the present case. He pointed out that whereas under the RSC there was an express provision that a party who failed to comply with an order for discovery or production of documents was liable to committal, that had not been reproduced in the CPR, and referred to *Matthews & Malek, Disclosure* (5th edn, 2017) at §17-33 where the authors say that contempt applications for breaches of a disclosure order will rarely be appropriate or necessary.

54. It is worth however setting out the relevant paragraph in full, as follows:

> "Ordinarily, the appropriate sanction for a failure to comply with a disclosure order will be to strike out a statement of case together with an adverse costs order. Hence contempt applications will rarely be appropriate or necessary. However, in certain cases a contempt application may be the appropriate route. These may include cases where a party has failed to provide information in response to an order in aid of a freezing injunction, search order or tracing relief, or where there has been a deliberate destruction of documents."

Read as a whole, this passage does not to my mind suggest that breaches of disclosure orders and orders to provide information are not punishable as contempts, or that there is anything wrong with an applicant pursuing an application for committal; rather the point the authors are making are that other sanctions, in particular the power to strike out a claim or defence, may make it unnecessary. It is noticeable that the present case, although not a case of a freezing or search order, is a case where information was sought in aid of tracing relief, and the need for a claimant who is asserting a proprietary claim to obtain information as to what has become of what he claims to be his money, is just as strong as the need of a claimant to police a freezing injunction (where of course he usually has no proprietary claim to the assets).

55. Indeed in *Bird v Hadkinson* [2000] C. P. Rep 21, cited in a footnote to this passage, Neuberger J held that a respondent who had been ordered to say what had happened to certain funds and failed to do so accurately was in contempt, and although that

was in the context of a *Mareva* injunction, I do not see that there is any difference in principle between that and what is alleged in the present case. At p 8 of the transcript Neuberger J said:

> "It was said by Mr Marks that this contempt application was inappropriate because it was being used to frighten the respondent into giving further information. I do not regard that as a fair criticism. It seems to me that if one has the benefit, as the applicant did, of an order requiring disclosure, and one has reasons, justified as it turns out, to believe that it has not been complied with, then the obvious course is to apply for committal, or for other relief, appropriate for contempt. An order the court makes on a contempt motion is normally not primarily to punish a contemnor, but to ensure compliance with the order, as far as the court can. It seems to me that is what the applicant was seeking to do in the present case."

As can be seen, far from endorsing the suggestion that there might be anything unusual or inappropriate in applying for committal for failure to comply with an order requiring disclosure, Neuberger J regarded it as the obvious course. Without going that far, I certainly do not think that there is any basis on this ground for preventing Kea from pursuing the application.

56. Mr Grant also made reference to the fact that the question whether Kea could assert a tracing claim to the Munil Money was hotly contested, with Mr Watson contending as one of his defences that Kea could not trace through Munil as the latter was a *bona fide* purchaser for value without notice. I doubt that reference was intended to suggest that it gave Mr Watson a valid reason not to provide the information, but if it was, I do not accept the suggestion. The wording of request 118 was framed by reference to what had happened to the Munil Money, and it required answering whether or not Kea's tracing claim was a good one. In fact, although the question of whether Kea could trace through Munil was not argued at trial or decided in the Main Judgment (see at [531]-[534]), the point was not in the event pursued by either Munil or Mr Watson. At the consequentials hearing on 10 and 13 September 2018 Munil submitted to judgment in respect of the proprietary claims against it, and Mr Watson consented to orders entitling Kea to claim any assets held by him which were derived from the Munil Money, as duly reflected in the September Order.

57. Mr Grant also took points on delay in bringing the application, and the fact that Kea has subsequently obtained further orders covering the same ground, but I do not propose to address these points here.

Count 1(a) – the Swedish property

58. As originally formulated Count 1(a) alleged that among the pieces of information that Mr Watson failed to provide was:

> "that Mr Watson had raised (or had agreed and was about to raise) a mortgage over a property in Sweden that had been purchased with traceable proceeds of the Munil Money, the proceeds of which in the sum of SEK6m Mr Watson paid to himself to his account ending 501 with JP Morgan (Suisse) SA"

That formulation gave rise to some difficulty and led to Ms Jones applying for permission to amend this count, which I granted. I explain this in more detail below, but as reformulated the count now reads:

> "that Mr Watson had purchased a property in Sweden at Sotenas Smogenon, Brunnsgaten 25, 456 51 Smogen with the traceable proceeds of the Munil Money and that Mr Watson and Ms Lisa Henrekson each held a 50% interest in that property [and when he subsequently provided that information failed to disclose that he had raised a mortgage over the said property in Sweden that had been purchased with traceable proceeds of the Munil Money, the proceeds of which in the sum of SEK6m Mr Watson had paid to himself to his account ending 501 with JP Morgan (Suisse) SA]".

59. Mr Watson's answer to request 118 was given in the form of a Response settled by counsel (Ms Hannah Brown) and supported by a statement of truth signed by Mr Watson personally which was served on 2 June 2016. So far as relevant it read as follows:

> "Mr Watson has responded to this request in Mr Pugh's Fourth Witness Statement with the documents at CAP4 (pages 12-69). As to the additional matters identified in paragraph 146 of the Claimants' Skeleton Argument dated 22nd April 2016, Mr Watson refers to a letter dated 27 May 2016 from Munil to Oury Clark Solicitors annexed hereto at Schedule 1 and further states as follows:
>
> 1. The sum of £12,143,126.14 was received by Munil by transfer from Fladgate LLP on 26 April 2013…
>
> 2. To the best of Mr Watson's knowledge, based on his own knowledge and on information provided to him by Munil, Munil has made the following payments using the said sum of £12,143,126.14:
>
> a) Loans in the total sum of US$9,614,307 were made to Mr Watson pursuant to the terms of a Loan Agreement dated 27 August 2013 as amended by an Amendment Agreement dated 18 May 2016:
>
> The loan amounts were transferred in cash and in securities to Mr Watson's account at JP Morgan, Geneva as follows (all sums in US$):
>
> a. $3 million cash;
>
> b. 34,000 Bank of America Corp shares valued at $495,380
>
> [paras c. to i. listed various other parcels of shares with their values]
>
> j. $700,000 cash transferred on 19th May 2016
>
> Of the shares acquired as aforesaid, all have been sold except for the shares in Swisher Hygiene Inc… Annexed here at Schedule 2 is a table providing detail of the share trades, and use of the monies loaned from Munil.
>
> …"

60. The letter at Schedule 1 to the Response from Munil to Oury Clark dated 27 May 2016 contained certain annexes including an annexe numbered 12 containing an amended schedule of payments by Munil to Mr Watson (and payments from him to Munil). This confirmed the payment to him of $3m (in 3 payments of $1m each) in October 2013, as well as the transfer of shares to the value of some $5.9m, repayments by Mr Watson between March and August 2014 in the total sum of $1.24m, and the further advance of $700,000 in May 2016, leaving a balance

outstanding of some $8.37m. (All these amounts are in US$ and save where otherwise stated I will use $ in this judgment to refer to US$). Schedule 2 to the Response included a table showing in summary form what had happened to the money received by Mr Watson. One column was headed "507 - USD". This is a reference to an account held by Mr Watson at JP Morgan in Geneva, whose number ended in 507; he had at least one other account, the 501 account. Each account consisted of sub-accounts denominated in different currencies so this column refers to the dollar sub-account of account 507, which I will refer to as the **"507 (USD)"** account. The column shows receipt of the $3m cash and shares to the value of some $5.9m, and various other transactions such as transfers to other accounts, the purchase of other shares and repayment to Munil. It would appear from the figures given that the 507 (USD) sub-account previously had a nil balance so that all the monies in it derived from the Munil Money. The last line in the table, dated 8 January 2015, showed a debit against the 507 (USD) account of $969,675.93 with the description "Purchase of Swedish property", leaving a credit balance of $3,518,503.52 in the 507 (USD) account, and a corresponding credit entry in a column headed "Swedish property". The natural interpretation of this entry is that Mr Watson had used $969,675.93 of the Munil Money to buy a Swedish property. No other details of the property were given in the Response.

61. On 16 June 2016 Farrers wrote to Oury Clark with further questions arising out of the Response. They asked Oury Clark to confirm (or correct) their understanding as to the traceable proceeds of the Munil Money, including $969,675.93 in a Swedish property and asked Oury Clark to provide its address, information about its title, the names of the legal and beneficial owners, and confirmation whether that sum represented the whole of the purchase price and, if not, where the balance came from. They also referred to the Claimants' proprietary claim and asked for an undertaking that a restriction or its equivalent be placed on the property to prevent its being sold or encumbered without notice to the Claimants.

62. After a chasing letter Oury Clark replied on 6 July 2016 that Mr Watson was content to provide an undertaking not to remove or dissipate, without giving Farrers 14 days' notice in writing, among other things:

> "…
>
> (c) His interest in the property at Sotenäs Smögenon, 51-9 Brunnsgatan 25, 4565 Smögen, Sweden.
>
> which represent the proceeds of loans made to [Mr Watson] by [Munil] out of the sum of £12,143,133 paid by Fladgates to Munil on 26th April 2013."

That therefore revealed the address of the property (for the first time) to Farrers.

63. Farrers replied on 11 July 2016 asking among other things for the information in relation to the Swedish property sought in their letter of 16 June 2016 (other than the address which had been provided). On 20 July 2016 Oury Clark responded. So far as relevant to the Swedish property they said:

> "2(e) The address of the property is Sotenas Smogenon, 51:9, Brunnsgatan 25, 456 51 Smogen. The legal and beneficial owners are Eric Watson and Lisa Henrekson (50/50) and a copy of the title is attached.
>
> (iv) The sum of $969,673.03 did not represent the whole of the purchase price. A

copy of the completion statement has been requested."

Ms Henrekson is, or was at the time, Mr Watson's domestic partner.

64. Annexed to the letter was a 3-page document in Swedish. There was no translation. Although it is possible to identify the address of the property, and the names and London address of Mr Watson and Ms Henrekson, it is not easy for a non-Swedish speaker to glean much information from it. A translation has now been obtained which shows that it contains information about the title to the property, confirming that Mr Watson acquired the property on 9 January 2015 for 8.45m Swedish Krona (SEK) and that he and Ms Henrekson were each ½ owners (Ms Henrekson having acquired her half share by "free acquisition" on 30 March 2016). It also contains a list of mortgages dating back to 1912. The most recent entry in the list is dated 22 June 2016 and is for a sum of SEK 2,538,900, a figure that is wholly unexplained in the evidence, although there is also a total amount given of SEK 6,125,000.

65. The evidence now available reveals the following:

(1) Correspondence between Ms Edyta Wynberg of SEB (a Swedish Bank) and Mr Jakub Czarnecki (one of Mr Watson's team) about a possible mortgage of the Swedish property had started by at least 22 April 2016 when SEB sent Mr Czarnecki a mortgage application form.

(2) On 16 May Mr Czarnecki sent Ms Wynberg the signed mortgage application. On 19 May she asked him how much Mr Watson and Ms Henrekson wished to borrow, to which he replied "The maximum available". She asked him the purpose of the loan, to which he rather uninformatively answered "It will be the release of equity".

(3) On 26 May Ms Wynberg told Mr Czarnecki that the mortgage had been approved at 70% of market value. On 31 May Mr Czarnecki sent her a valuation and she replied that the loan amount would then be SEK 6,125,000.

(4) On 3 June Ms Wynberg sent Mr Czarnecki the documents for Mr Watson and Ms Henrekson to sign. Mr Czarnecki returned them to her duly signed on 8 June. Copies of the documents, such as a promissory note, the mortgage conditions, a new joint account opening form, and a deeds registration form, all bearing Mr Watson's signature, are in evidence. Among other documents were certificates of marital status for Mr Watson and Ms Henrekson, which were each signed on 6 June, so it is a reasonable assumption that the documents were all signed then, but the precise date does not matter.

(5) On 13 June Ms Wynberg confirmed that the money (SEK 6,068,815 net) was already in the account (a new joint account opened for the purpose).

(6) On 17 June Mr Watson's 501 account at JP Morgan was credited with SEK 6m, equivalent to US$719,208.84. There is no reason to doubt that this was the bulk of the money from the mortgage – the contrary is not suggested.

66. To summarise the effect of the above evidence:

(1) As at 28 April 2016 when the April Order was made, no mortgage of the Swedish property had been agreed, but Mr Watson had started the process of

applying for one.

(2) As at 26 May when the information was due under paragraph 8 of the April Order, the bank had approved the mortgage in principle but the valuation, and hence the loan amount, had not yet been ascertained.

(3) As at 2 June when the formal Response was served, the loan amount had been agreed but the formal documentation had not been signed (or even sent to Mr Watson).

(4) As at 6 July when Oury Clark provided the address of the property (and at 20 July when they provided further details) the mortgage had been completed and the monies received by Mr Watson in his JP Morgan bank account.

67. Mr Watson's answer to this count in his affidavit is that the initial purchase of the Swedish property was funded from his 501 (SEK) account at JP Morgan which was overdrawn at the time, and that although part of the money derived from the Munil Money was subsequently paid against the overdraft he believed that that the tracing exercise did not extend to funding the Swedish property as the right to trace would be lost where money was paid into an overdrawn bank account. He says that this understanding was based on legal advice given to him – he does not say by whom.

68. The underlying factual basis for this can be seen from the statements for Mr Watson's bank accounts at JP Morgan. They show the following:

(1) On 1 January 2015 Mr Watson's 501 (SEK) account had a nil balance, but his 507 (USD) account had a credit balance of over $2.3m. As already stated, all the money in the 507 (USD) account had come from the Munil Money (paragraph 60 above).

(2) On 7 January SEK 7,733,941.11 (the equivalent of $969,675.93) was debited from the 501 (SEK) account so that the account was overdrawn by that amount.

(3) On 8 January $962,891.07 was debited from the 507 (USD) account and exchanged for SEK 7,733,941.11 which was credited to the 507 (SEK) account.

(4) On 9 January the same sum of SEK 7,733,941.11 was transferred from the 507 (SEK) account to the 501 (SEK) account, thereby restoring the balance in the latter account to nil.

As can be seen the effect of this is that the money used to purchase the Swedish property was paid out from his 501 account on 7 January 2015 but not replenished from the money derived from the Munil Money in his 507 account until 2 days later.

69. Mr Watson accepts that it was later explained to him after trial by Grosvenor Law, who were then acting for him, that the advice that the right to trace was lost, because of this gap of two days between the money being paid out from the 501 account and the 501 account being replenished from the 507 account, was wrong. Indeed the whole question of "backward" or "reverse" tracing, as it is sometimes called, was comprehensively examined by the Privy Council in August 2015 in *Federal Republic of Brazil v Durant International Corpn* [2015] UKPC 35 (***"Brazil v***

Durant") and it can now be regarded as settled law that so long as the later credit is linked to the earlier debit there is no impediment to tracing. On the facts there is not the slightest doubt that the payment from the 501 account of SEK 7,733,941.11 on 7 January for the purchase of the property was all part of the same transaction as the payment of precisely the same sum from the 507 account to the 501 account two days later, and the contrary is not suggested.

70. Kea's case as opened to me by Ms Jones was that Mr Watson's explanation for not disclosing the mortgage should be rejected as a lie by Mr Watson. But Mr Grant submitted that regardless of that point, Kea had provided no explanation how paragraph 8 of the April Order required Mr Watson to provide information about a mortgage that had yet to be formally agreed, let alone executed, either at the date of the April Order or when Mr Watson provided his Response.

71. Ms Jones, while describing this as a technical point, recognised that there was indeed a potential difficulty with the wording of the count as originally formulated. The difficulty arises out of a decision by Sir James Munby P in an application to commit the respondent mother for breach of an order in matrimonial proceedings, namely *re Jones* [2013] EWHC 2579 (Ch), which was cited by Mr Grant in another context but which Ms Jones very properly brought to my attention in this context. In *re Jones* the respondent mother had been ordered to deliver up the children, or cause them to be delivered up, into the care of the father "at Cardiff Railway Station no later than 4pm on 12 October 2012." The children were not delivered at Cardiff Railway Station either by the time specified or at all. The Solicitor General applied to commit the mother on two bases: (i) her failure to deliver the children by 4 pm on 12 October, and (ii) what was alleged to be her continuing breach thereafter which was said to have continued until 17 October 2012 when she and the children were found by the police. Sir James Munby dismissed the latter basis in characteristically trenchant terms. At [20] he said:

> "20. There is, in my judgment, simply no basis in law upon which the Solicitor General can found an allegation of contempt for anything done or omitted to be done by the mother at any time after 4pm on 12 October 2012. Paragraph 2(b) of the order was quite specific. It required the mother to do something by 4pm on 12 October 2012. It did not, as a matter of express language, require her to do anything at any time thereafter, nor did it spell out what was to be done if, for any reason, there had not been compliance by the specified time. In these circumstances there can be no question of any further breach, as alleged in the Solicitor General's notice of application, by the mother's failure to deliver up the children after 4pm on 12 October 2012 or, as alleged in the application, any continuing breach thereafter until 17 October 2012 when she and the children were found.
>
> 21. A mandatory order is not enforceable by committal unless it specifies the time for compliance: *Temporal v Temporal* [1990] 2 FLR 98. If it is desired to make such an order enforceable in respect of some omission after the specified time, the order must go on to specify another, later, time by which compliance is required. Hence the form of 'four day order' hallowed by long usage in the Chancery Division, requiring the act to be done "by [a specified date] or thereafter within four days after service of the order". This is an application of the wider principle that in relation to committal "it is impossible to read implied terms into an order of the court": *Deodat v Deodat* (unreported, 9 June 1978: Court of Appeal Transcript No 78 484) per Megaw LJ."

At [23] he added this:

> "23. I do not want to be misunderstood. If someone has been found to be in breach of a mandatory order by failing to do the prescribed act by the specified time, then it is perfectly appropriate to talk of the contemnor as remaining in breach thereafter until such time as the breach has been remedied. But that pre-supposes that there has in fact been a breach and is relevant only to the question of whether, while he remains in breach, the contemnor should be allowed to purge his contempt. It does not justify the making of a (further) committal order on the basis of a further breach, because there has in such a case been no further breach. When a mandatory order is not complied with there is but a single breach: *Kumari v Jalal* [1997] 1 WLR 97. If in such circumstances it is desired to make a further committal order – for example if the sentence for the original breach has expired without compliance on the part of the contemnor – then it is necessary first to make another order specifying another date for compliance, followed, in the event of non-compliance, by an application for committal for breach not of the original but of the further order: see *Re W (Abduction: Committal)* [2011] EWCA Civ 1196, [2012] 2 FLR 133."

72. Ms Jones did not suggest that what Sir James Munby said in *re Jones* was wrong. At first blush it comes as something of a surprise because it is an everyday experience to regard, and refer to, a person who does not comply with an order as being in continuing breach (as Sir James Munby says at [23]), and it is therefore easy to slip into the assumption that a person who is in continuing breach is also committing a continuing contempt. Ms Jones said, and I agree, that it is common for lawyers and judges to refer to continuing contempts; an example can in fact be found in one of the cases cited to me, *Tankaria v Morgan* [2005] EWHC 3282 (Ch) in which Laddie J referred at [29] to the case of "a continuing or growing contempt" which seems an entirely understandable way of looking at it. But the logic of Sir James Munby's decision is impeccable, and I have no hesitation in accepting it, and in accepting that it is in fact heretical to think that a person who has continued not to comply with a mandatory order after the deadline imposed by the order is committing a continuing contempt. A contempt in failing to do an act by a particular deadline is committed, if at all, when the deadline is not met, and failing to do the act thereafter is not strictly a further or continuing contempt.

73. Translated to the present case, it means that since Mr Watson was ordered to provide information by 4 pm on 26 May 2016, he was either in breach in failing to provide the information by that deadline or he was not. He could not be charged with failing to provide information thereafter.

74. As a matter of fact it is not disputed that he did not provide any information by that deadline, as the Response was not served until 2 June, that is 7 days late. The technical position seems to me to be this. He was indeed in breach of the Order on 26 May in failing to provide the information by the deadline, and even if he duly provided all the information that he should have done on 2 June, that would not take away the fact of the breach on 26 May. But, as recognised by Sir James Munby in *re Jones* at [23], belated compliance with the Order would be very relevant to the purging of any contempt, and if the only respect in which he had defaulted was providing the information 7 days late, that would be a breach of the most minimal kind and it would be very unlikely that anyone would try to commit him for it, or that the Court would entertain such an application if they did.

75. Nevertheless, what that means, it seems to me, is that the Court must focus on the information that should have been provided on 26 May 2016. As originally formulated, the information that Mr Watson was accused of failing to provide was that he "had raised (or had agreed and was about to raise) a mortgage over a property in Sweden". That puts it in two ways but to my mind neither way is sustainable. Mr Watson could not be guilty of failing to provide the information that he *had* raised a mortgage on 26 May 2016, for the simple reason that he had not. Nor could he be guilty of failing to provide the information that he had agreed and was *about to* raise a mortgage, for two reasons. First, as at 26 May 2016 the mortgage had not been agreed in any meaningful sense: SEB had approved the mortgage in principle but not even the amount of the loan was then known; far less had Mr Watson and Ms Henrekson agreed to the terms and conditions. And second, even if the mortgage had been agreed, request 118 would not require that fact to be disclosed. I have set out request 118 above (paragraph 37 above) but repeat it here for convenience, with letters added:

> "Please state what has happened to the £12,143,133 which was paid to Munil since that payment was made.
>
> In particular, please:
>
> - [A] state on what date or dates and by what means Munil received the sum of £12,143,133 ("**the Munil Money**"), identifying each transaction by date and amount;
>
> - [B] identify each payment and each other transaction carried out by Munil using all or any part of the Munil Money, stating the date, amount, nature and purpose of the payment or transaction;
>
> - [C] identify all assets now held by Munil which (directly or indirectly) represent, or have been acquired in whole or in part through the use of, all or any part of the Munil Money;
>
> - [D] state whether Mr Watson or any Watson Associate has at any time received all or any part of (i) the Munil Money, or (ii) any asset which (directly or indirectly) represents, or was acquired in whole or in part through the use of, all or any part of the Munil Money, and identify each such receipt stating its date and amount and the nature and purpose of the transaction pursuant to which it was received;
>
> - [E] identify all assets now held by Mr Watson or any Watson Associate which (directly or indirectly) represent, or have been acquired in whole or in part through the use of, all or any part of the Munil Money; and
>
> - [F] to the extent not covered by the above, identify the present whereabouts of the Munil Money and its traceable proceeds insofar as known to Mr Watson."

76. None of these require disclosure of the fact that a mortgage has been agreed and is about to be entered into. [A], [B] and [C] concern receipt by Munil, transactions carried out by Munil, and assets held by Munil. [D] requires Mr Watson to say whether he or any Watson Associate *has* received money or assets; [E] requires him to identify assets *now held*; and [F] requires him to identify the *present whereabouts* of the Munil Money and its traceable proceeds. None of these apply to money to be raised on a mortgage which has not yet been entered into. In those circumstances the fact that Kea would obviously be interested to know that Mr Watson was about

to extract as much cash as he could from the Swedish property, and would, had it known of it, have sought to stop him, is neither here nor there.

77. Recognising the problem, Ms Jones suggested on Day 3 that she could amend Count 1(a); I required her to formulate an amendment and make a formal application. That having been done, I heard the application to amend (and to make certain other minor corrections to the Particulars of Contempt, none of which was opposed) on Day 7, and gave judgment on Day 8 permitting the amendment in the form in which it appears in the Schedule. In making the application to amend, Ms Jones confirmed that she was not trying to introduce a new contempt or rely on any different evidence; she was simply trying to meet what she described as a technical point. She admitted that she had found it difficult to draft the charge in a fair and proper way so as both to refer to what was the actual breach and also to inform Mr Watson of what the real complaint was (which was why she had added the part in square brackets).

78. In effect her case was that there was undeniably a breach on 26 May as no information at all was provided. That would have been a purely technical breach if, when information was subsequently provided, it was complete. But in the present case, Mr Watson did not provide anything on 2 June except the fact that he had spent over $900,000 on the purchase of a Swedish property; he did not provide the address until 6 July and other details until 20 July. By then the mortgage had been taken out and most of the proceeds paid into Mr Watson's own bank account, but none of that was revealed.

79. I understand why Kea and its legal team has found this episode so frustrating: having initially thought that they had been given information about a substantial asset into which they could trace, and that they had been given protection in the form of Mr Watson's undertaking (in Oury Clark's letter of 2 July 2016) not to dispose of his interest without giving them notice, it later transpired, but not until after judgment, that at the very time Mr Watson was being asked to provide this information, he was arranging to take as much money as he could out of the property and so reduce the value of the interest that he was offering not to dispose of. Indeed, although this does not form any part of the alleged contempt, it would appear that despite having bought the property in January 2015 it was only on 30 March 2016 that he had given Ms Henrekson a half-share in it, and the combined effect of that and a 70% mortgage would have reduced his interest in the property to some 15% of its value. It is difficult to avoid the conclusion that he was doing that deliberately to run down assets in his name which could easily be made the subject of injunctive relief; and the fact that he revealed none of this only makes it worse.

80. Nevertheless, I have come to the conclusion that Mr Grant is right that the failure to disclose the mortgage is not something that can be properly charged to Mr Watson as a breach of paragraph 8 of the April Order. The fact remains that what he was obliged to do was to disclose information on 26 May 2016 about what had happened to the Munil Money. That did not oblige him to disclose the mortgage for reasons already given. He failed to disclose anything on 26 May. That was a breach, but in itself a trivial breach as he did send a formal Response on 2 June. That did not disclose the mortgage either, but again he was not obliged to disclose the mortgage as it had still not been taken out. The fact that Farrers understandably continued to press in correspondence for further information, which came in in piecemeal fashion on 6 July and 20 July, did not to my mind impose on Mr Watson an obligation to

disclose a transaction which had taken place *after* the deadline. That would be, as Mr Grant said, to construct out of the Order a sort of rolling obligation to ensure that any information given after the deadline was not only accurate but complete and up to date. There is nothing in the wording of the April Order to impose such an obligation expressly, and for reasons set out in the authorities, no basis for implying such an obligation. So the simple fact remains that if one asks whether it was a breach of the April Order not to disclose the mortgage, the answer to my mind is clearly No.

81. That explains the difficulties that Ms Jones had in re-drafting the count so as both to charge an actual breach of the order (failure to disclose anything on 26 May) and to set out the real gravamen of the charge, which is the concealment of the mortgage. But however it is put, I do not think that the understandable complaint that Mr Watson did not tell Kea about the mortgage can be shoehorned into a breach of the obligation in paragraph 8 of the April Order. And if failure to disclose the mortgage was not a breach of the order, it does not seem to me to be something that Mr Watson can be said to have been under an obligation to do to cure the breach that he did commit (the failure to give any information at all by the deadline). The authorities are unanimous in strict insistence on the principle that a mandatory order should make it unambiguously clear what the person concerned should have to do to comply with it, and I do not think it would be consistent with that principle to hold that even though the Order did not require Mr Watson to disclose the mortgage on 26 May to avoid being in breach, it did in effect require him to disclose it on 6 July to cure the breach. A person should not be at risk of being sent to prison on such a doubtful point as that.

82. I will therefore dismiss Count 1(a). That makes it strictly unnecessary to resolve the question whether Mr Watson was lying in the explanation he gave that he believed, on advice, that the right to trace was lost if money passed through an overdrawn account, but it was fully argued and I should give my views. I am frankly sceptical of that evidence. I place little or no weight on Mr Watson's credibility, for reasons given below (see paragraphs 206, 253 and, particularly, 282). There are a number of problems with Mr Watson's account. First, the source of the advice is not identified: in his affidavit, Mr Watson simply referred to legal advice; in oral evidence he suggested it might have been his legal team at Oury Clark, or Mr Don Stanway, in-house counsel at Cullen Investments Ltd (**"CIL"**), but was unable to be precise. Second, no written advice to that effect has been produced, despite the fact that on this point Mr Watson has waived privilege. If this was a point on which reliance was going to be placed, one would normally expect solicitors to have kept a record of the advice. Third, no-one has been called to support this account, or even asked to write a letter confirming it, although this would have been easy enough to do. Fourth, I am rather doubtful if competent solicitors in April 2016 would have taken that view, or at any rate regarded it as clear enough to act on without properly researching the point, or having it confirmed by counsel: the issue about backwards tracing was known to those practising in the field to have been one that had been open to debate for some time. If the point had been researched, or counsel had been instructed to advise, it would not have been difficult to find the recent case of *Brazil v Durant* which put the matter beyond doubt, but even before then there was authority supporting the proposition that backwards tracing was appropriate where the payment out was intended to be funded by the later payment in, dating back at least to the decision of Millett J in *Agip (Africa) Ltd v Jackson* [1990] 1 Ch 265. Fifth, whatever the general position, on the particular facts of this case the

suggestion that tracing was barred by the fact that the purchase money was paid out of the 501 account 2 days before that account was replenished from the 507 account, would seem a particularly unrealistic conclusion. Not only was it entirely clear from the amounts that the payment out was intended to be, and in due course was, covered by the transfer in, but (i) Mr Watson's own evidence is that although he had a number of accounts and sub-accounts at JP Morgan, the facility that he had with them meant that he could be overdrawn on one account so long as the overall credit balance on his accounts did not dip below a certain figure, and if one combines his accounts in this way he was not overdrawn at all; and (ii) in a non-technical sense it is absolutely plain that he used the Munil Money to buy the Swedish property, and any suggestion that he did not would be contrary to a common-sense view of the matter and have to be looked at very carefully. Sixth, that is exactly what the table in Schedule 2 served with the Response on 2 June said, namely that $969,675.93 of the money in the 507 (USD) account had been used for the purchase of a Swedish property (paragraph 60 above). If Mr Watson's lawyers had really taken the view that the right to trace had been lost, one would not have expected them to produce a table showing that the Munil Money had been used to buy the property; nor would one have expected them to proffer the undertaking not to dispose of it as they did on 6 July, nor to give the further information that they gave on 20 July.

83. Overall I think there is a very real likelihood that this is a convenient argument that has been thought of later as an answer to the charge, and does not reflect the actual reason for the non-disclosure of the mortgage at the time, and that the actual reason is simply that Mr Watson did not tell Oury Clark about the mortgage transaction as he did not want Kea to know that he had helped himself to SEK 6m out of the property. Mr Grant referred to the fact that the title document in Swedish does include a brief reference to the mortgage, albeit in an amount that is unexplained (see paragraph 64 above), and said that Mr Watson could scarcely anticipate that Farrers, who have been unstinting in their pursuit of him, would not immediately have it translated. But this point carries no weight as Mr Watson said in evidence that he did not even know it was being sent – presumably he was asked for the address, and the lawyers then obtained the title document without reference to him.

84. In these circumstances if the question had been whether I accept Mr Watson's explanation on the balance of probabilities I would have unhesitatingly rejected it. On the criminal standard, however, the position is less clear – I cannot rule out the possibility that Mr Watson is genuinely remembering some conversation with a lawyer about tracing through an overdraft, and seized on this at the time as a reason not to have to disclose what he did not want to about the Swedish property. Mr Watson is entitled to the benefit of the doubt and in those circumstances I do not find it established beyond reasonable doubt that he is lying about this, however much I think it likely to be the case.

Count 1(b) – loans to Bendon

85. Count 1(b) alleges that among the pieces of information that Mr Watson failed to provide was:

> "that traceable proceeds of the Munil Money (namely £3m from the sale to Ivory Castle Limited of a 10% interest in Voltaire Capital Limited, and a £1m part repayment of a loan by Munil Development Inc **("Munil")** to the Richmond Trust) had been used in early 2015 to fund loans to Mr Rob Hersov and Braithwell Investments Limited **("Braithwell")** which had in turn been loaned on to Cullen

> Group Limited, EJ Group Limited **("EJ Group")** and Bendon Limited **("Bendon"),** pursuant to various loan agreements and associated security deeds dated 15 and 17 April 2015 which gave each of Braithwell, CGL and EJ Group rights into which the Munil Money could be traced".

86. Ms Jones described this as a particularly complicated part of the application, but in essence the allegation is that Mr Watson did not disclose the fact that he had used a substantial amount of the Munil Money, amounting to £4m, to provide working capital to Bendon Ltd (**"Bendon"**), a lingerie company that was his principal asset at the time, although the means employed were, as with so many of Mr Watson's affairs, intricate and convoluted.

87. Ms Jones set out first to establish that the £4m, or at least about 95% of it, was indeed derived from the Munil Money. The £4m is made up of two sums, of £1m and £3m. The position with the £1m is much simpler, and I did not understand it to be now disputed that this was derived from the Munil Money. The details are as follows:

(1) Mr Watson wanted to buy a house in Richmond, Surrey (for the use of Ms Deborah Houghton, a former partner of his). A trust, the Richmond Trust, was set up. The Richmond Trust was funded by Munil which made loans to it in the total sum of £1.43m, consisting of £930,000 lent on 29 May 2013 to fund the purchase, and further sums totalling £500,000 lent between June and August 2014 to fund refurbishment works.

(2) In March 2015 the Richmond Trust mortgaged the house for a sum of in excess of £1.3m and on 12 March 2015 paid £1m to Munil by way of partial repayment of the loan. It was paid into an account held by Munil at JP Morgan (the 400 (GBP) account).

88. In Mr Watson's Response dated 2 June 2016 to request 118, it disclosed these transactions as follows:

> "2. To the best of Mr Watson's knowledge, based on his own knowledge and on information provided to him by Munil, Munil has made the following payments using the said sum of £12,143,126.14:
>
> …
>
> b) Loans in the total sum of £1,430,000 were made to Richmond Trust.
>
> [i. and ii. detail the transfer of the £930,000, and of the further sums totalling £500,000]
>
> iii. £1 million was repaid by the Richmond Trust on 12.3.15, leaving £430,000 outstanding.
>
> iv. The Richmond property was sold on 24.7.15 for £1,895,000 with a net profit of £269,640. The proceeds of sale were used to fund the purchase of 4B Chislehurst Rd, Richmond TW10 6PW (the second Richmond property") on 24th December 2015 for a total purchase price of £630,000. The Richmond Trust still owns the second Richmond Property.
>
> v. [gives details of the Richmond Trust]."

On this basis it seems clear that the whole of the £1.43m was part of the Munil Money, and hence that Munil's right to repayment of its loan, and the £1m actually repaid, were assets acquired by use of the Munil Money. Nothing was said in the Response about the further use of the £1m by Munil.

89. The £3m is not so straightforward. The relevant transactions are as follows:

(1) The Munil Money, in the sum of £12,143,126.14, was received by Munil on 26 April 2013 by transfer into a GBP account at Bank Gutenberg in Zurich. This account previously had a nil balance which means that all the money in the account derived from the Munil Money.

(2) Starting in September 2013 Munil made a series of payments by way of loan to Voltaire Capital LP, a Jersey limited partnership. (There was later a restructuring under which Voltaire Capital LP was replaced by a UK company, Voltaire Capital Ltd, but it is not generally necessary to distinguish between them and I will refer to both as **"Voltaire"** and where necessary to Voltaire Capital Ltd as **"VCL"**). The loans continued until May 2014 and totalled £1.55m.

(3) The loans were initially governed by a Loan Agreement dated 27 September 2013, which provided for Munil to lend Voltaire up to £400,000. Under the agreement Munil was entitled, as well as to repayment of the loan and interest, to a profit share. The amount of the profit share was to be agreed but to be no less than 10% of the net proceeds received by Voltaire in relation to the closing of the first transaction; and the profit share was payable provided that Voltaire would remain solvent following payment.

(4) The initial £400,000 had been lent by the end of October 2013, and the Loan Agreement was then amended in November 2013 to increase the loan amount to £800,000. These further amounts had all been lent by the end of February 2014. Ms Jones took me through the bank statements and I am satisfied that the payments of the first £800,000 all came from either the GBP account or from Munil's USD account at Bank Gutenberg (itself wholly funded from the GBP account), and hence from the Munil Money – it is not necessary to set out the details.

(5) Meanwhile in January 2014 there was a proposal to restructure Voltaire. In an e-mail of 8 January 2014 from Mr Leahy to Mr William Gibson (Mr Watson's right-hand man) he said that Mr Watson was expected to participate in 2 ways, one of them being a 10% shareholding of which he said:

> "possibly goes to Munil in exchange for an increase in the loan".

By 22 January this had evolved into a proposal that Mr Perry Noble and Mr Leahy, who each held 1 share out of 20 issued shares in VCL, sell their 10% interest to Munil (as a vehicle for Mr Watson) for nominal value. Mr Gibson discussed it with Mr Urs Meier of Munil and evidently suggested to him that Munil take a position in the company in return for increased lending, as on 28 January Mr Meier replied to a query whether he was comfortable with Munil taking a position in Voltaire as discussed as follows:

> "Yes, I do feel comfortable, nevertheless we should maybe get a consent from Joan in a letter of wishes since Voltaire is becoming a big investment… Can you tell me again how much more we would invest?"

("Joan" is a reference to Mrs Joan Pollock, Mr Watson's mother, who was the principal beneficiary of the Samos Trust which held Munil). In evidence is an undated share transfer, signed by Mr Noble, of 1 share in VCL from Mr Noble to Munil for £1, and an undated share sale agreement, signed by Mr Leahy, between Mr Leahy and Munil for the sale of 1 share in VCL by Mr Leahy to Munil for a consideration which is left blank. As appears below it is not disputed that Munil acquired a 10% shareholding in Voltaire and Kea's case is that it acquired it for a nominal amount in return for agreeing to increased lending and giving up its 10% profit share.

(6) On 13 February 2014 there was a further amendment to the Loan Agreement. This increased the amount of the loan by £750,000 to £1.55m, and also deleted the provision for Munil to have a profit share. Munil then duly made various loans totalling £750,000 between March and May 2014.

(7) Mr Watson's description of these events in his witness statement for trial was:

> "Munil was entitled to a 10% profit share in the profits of Voltaire Capital LP from September 2013 until 13 February 2014, pursuant to the terms of its loan to Voltaire Capital LP. From February 2014 - April 2015 Munil held a shareholding in Voltaire Capital LP (this replaced its entitlement to a profit share under the terms of the loan)."

I consider below what his evidence in the present application was on this point.

(8) Not all the further £750,000 was paid out of Munil's Gutenberg account. Payments totalling £200,000 were, but the remaining £550,000 was paid (in a single payment on 14 March 2014) out of a USD account held by Munil at Finter Bank.

(9) Ms Jones accepts that she cannot show on this application that the entirety of the payment from Finter Bank came from the Munil Money. The details are as follows:

(i) On 12 March 2014 the account had a credit balance of $172,798.54. Ms Jones has not on this application sought to establish that this was, or derived from, the Munil Money.

(ii) On 13 March 2014 $800,000 was credited to the account, taking the balance to $972,798.54. This came from Mr Watson's 507 (USD) account at JP Morgan, and was derived from the Munil Money.

(iii) On 14 March 2014 $914,141.25 from the Finter account was converted to GBP and credited to Munil's account in the sum of £550,000, and on the same day paid to Voltaire.

Mr Watson's case is that the £550,000 was funded first from the $172,798.54 non-Munil money, and only as to the balance from the Munil Money, and the

calculation put forward on his behalf is that this means that only 93.25% of Munil's total loan of £1.55m was from the Munil Money. Ms Jones accepts that not all the £1.55m was derived from the Munil Money, although she says that Mr Watson's calculation has not applied the tracing rules correctly and the percentage should be slightly higher at about 95.6%. She is however content to adopt Mr Watson's figure of 93.25% as it makes no difference to her case. I will therefore proceed on that basis.

(10) Then in 2015 Munil sold its shareholding in Voltaire to Ivory Castle Ltd for £3m. The £3m was paid into Munil's 400 (GBP) account at JP Morgan on 6 January 2015. There was a very small credit balance on the account (under £500) so this took the balance to just over £3m.

(11) The same account was used for the receipt of the £1m from the Richmond Trust on 12 March 2015, taking the balance to just over £4m.

90. Kea's case is that the £3m was itself derived from Munil's use of the Munil Money to make loans to Voltaire, and hence that (at least) 93.25% of the £3m is traceable to the Munil Money. When added to the £1m from the Richmond Trust that was all derived from the Munil Money, it can be seen that this would mean that a slightly larger percentage (about 95%) of the credit of just over £4m in the 400 account derived from the Munil Money.

91. Ms Jones then took me through the use of that £4m. This is also a complicated story:

(1) On 12 March 2015 £831,015.93 was paid by Munil to EJ Group Ltd (**"EJ Group"**). This was a company in what can be called the Cullen structure, all held under a trust called the Valley Trust. The same structure held interests in a number of Bendon companies: a structure chart in evidence shows the structure as having an 80% beneficial interest in Bendon, and in a personal financial statement signed by Mr Watson in April 2015 for an extension of credit with JP Morgan he listed an 80% interest in Bendon Group Holdings Ltd as his most valuable asset, worth $240m. The other 20% was held by Mr Justin Davis-Rice, the CEO of Bendon, or interests associated with him. A spreadsheet in evidence shows that the payment by Munil to EJ Group was treated as a loan of £831,000 from Mr Watson to EJ Group, the equivalent of some NZ$1.637m.

(2) On 18 March 2015 EJ Group made a new loan (called Loan 5) to Bendon in the sum of NZ$1.625m odd. The terms on which it did so entitled it to interest at 30% per annum, and various security interests over Bendon's property, ranking behind the rights of Bendon's primary bankers, but ahead of other interests. Kea's case is that this was funded by the £831,000. The contrary is not suggested, and I am satisfied that this is the case. It therefore derived from the £4m in Munil's 400 (GBP) account, and hence on Kea's case as to about 95% from the Munil Money.

(3) Kea's case is that it was therefore entitled to trace into EJ Group's rights against Bendon in respect of the loan of NZ$1.625m (and indeed into Mr Watson's rights against EJ Group), as all being derived from the Munil Money, and, more pertinently, that these transactions should have been disclosed in answer to request 118.

92. Bendon remained short of working capital but Mr Watson decided that he wanted to route further financing through someone else because he was only a majority owner not sole owner, and he did not want to be seen as a continual backstop solution. By the end of March 2015 therefore Mr Rob Hersov had been approached with a proposal that Munil lend to him on a non-recourse basis and he lend on to EJ Group.

93. The arrangements for the loan routed through Mr Hersov took place at the same time as a corporate restructuring which complicates the picture, but it is not necessary to set out the details. On 14 April 2015 Munil transferred a sum of just over £1.528m (the equivalent of NZ$3m) from its 400 (GBP) account at JP Morgan to Mr Hersov. There had been no other transactions on the 400 account since the transfer of £831,000 odd on 12 March 2015, and so the £1.528m was also derived from the £4m. On 15 April 2015 that was advanced by way of loan by Mr Hersov to EJ Group. On 19 and 20 April 2015 EJ Group made two new loans to Bendon (Loans 6 and 7) which together came to just over NZ$3m. Kea's case is that this was funded by the £1.528m. Again the contrary is not suggested, and I am satisfied that this is the case. It therefore also derived from the £4m in Munil's 400 (GBP) account, and hence on Kea's case as to about 95% from the Munil Money.

94. It was then realised that tax considerations made it preferable for the loans to be routed through an offshore company rather than through Mr Hersov personally. So a new BVI company, Braithwell Investments Ltd (**"Braithwell"**), was introduced into the arrangements in place of Mr Hersov, and contractual documentation was put in place under which Munil would lend to Braithwell, Braithwell to Cullen Group Ltd (**"CGL"**) and CGL to EJ Group; at the same time Mr Hersov would be removed from the structure and cash would be paid to Mr Watson. Pursuant to these arrangements, on 28 May 2015 Munil transferred a sum of just over £1.41m (the equivalent of NZ$3m) from its 400 (GBP) account to Braithwell. That was paid directly by Braithwell to EJ Group but treated as a loan from Braithwell to CGL and from CGL to EJ Group. On 29 June 2015 EJ Group repaid Mr Hersov NZ$3m and interest, and on 1 July that was repaid to Munil's 400 account (in the sum of about £1.3m). £856,000 odd (the equivalent of NZ$2m) of that was then on 6 July lent by Munil again to Braithwell. That too therefore was funded from the original £4m in the 400 account. Again it was paid on to EJ Group as a loan from CGL, which used £717,000 odd to repay Mr Watson his loan, and on 20 August made a further loan (Loan 8) to Bendon in the sum of NZ$330,000 odd. Once again Kea's case is that this was funded by the payment from Munil's 400 account, and I am satisfied that this was the case.

95. That rather convoluted series of transactions can be summarised as follows: of the £4m in Munil's 400 (GBP) account, some £717,000 ended up with Mr Watson, and out of the balance a series of loans (Loans 5 to 8) were made to Bendon which together totalled just short of NZ$5m. Having been taken in detail through what the various bank statements, internal accounting records and contractual documents show, I am satisfied that these all represent payments out of the £4m and hence on Kea's case as to some 95% were derived from the use of the Munil Money.

96. Kea's case is that it was entitled to trace into this structure and hence claim the benefit not only of EJ Group's rights against Bendon, but CGL's rights against EJ Group, and the latter were particularly valuable because they included security over all of EJ Group's assets. And because the interest rate charged under the various loans was a high one (25% or 30%), these rights significantly increased in value: as

at 31 March 2018, for example, the total outstanding from Bendon to EJ Group under Loans 5 to 8 (which carried interest at 30% pa, compounded quarterly) had grown to over NZ$11.2m.

97. Mr Watson in his affidavit made a number of points, but only three of them seem to me to have any direct bearing on the charge. One is that not 100% of the £1.55m lent by Munil to Voltaire came from the Munil Money. I have already referred to this in detail above (paragraph 89(9)), where I have explained that Ms Jones accepts that she cannot show on this application that 100% of the £1.55m was derived from the Munil Money, and is prepared to proceed on the basis of Mr Watson's figure of 93.25% (although she in fact considers that it should be slightly higher). I do not need to say any more about it.

98. The second is that Mr Watson now says:

> "I do not believe that the Voltaire documents show that the 10% interest arrived [*sic*, presumably derived] from the £1.55m loan."

This is a point I will have to consider.

99. The third is that Mr Watson says:

> "I would like to reiterate that this £3m was declared to be traceable proceeds of Munil Money by the court on 13 November 2018. Prior to the post-trial disclosure and the advice I received from Grosvenor Law regarding the tracing claim, I did not believe that any tracing claim would apply here."

100. The first question then is whether the £4m, or at any rate the vast majority of it, was derived from the Munil Money. As to the £1m, I am satisfied that this was so (see paragraph 87 above), and the contrary was not argued.

101. As to the £3m, this requires resolving the point raised by Mr Watson as to whether Munil's 10% interest in Voltaire derived from the £1.55m loan. The steps in Kea's argument are as follows:

(1) Munil initially lent £400,000 to Voltaire. This money was part of the Munil Money. In return it was given a 10% profit share from Voltaire's first deal, provided that Voltaire could pay it without going into insolvency.

(2) The loan amount was increased to £800,000 on the same terms. The extra £400,000 was also part of the Munil Money.

(3) Munil was then effectively given a 10% shareholding in return for (i) giving up its 10% profit share and (ii) a further £750,000 lending. Since (i) was itself derived from the initial lending and (ii) was almost all part of the Munil Money, it follows that the 10% shareholding was also derived (as to at least 93.25%) from the Munil Money.

(4) Munil sold its 10% shareholding to Ivory Castle for £3m. The £3m was therefore (as to 93.25%) derived from the Munil Money.

102. Mr Watson did not dispute steps (1) and (2). The argument is over step (3). Kea could be forgiven when bringing this application for thinking that this would not be disputed given that (i) at trial Mr Watson's own witness statement said that Munil's

10% shareholding replaced its 10% profit share (paragraph 89(7) above), and (ii) as long ago as 12 November 2018, Mr Watson submitted to a declaration being made by me that Kea could trace into the £3m (described as "the purchase price for the shareholding in [Voltaire] acquired by [Munil] for loans made by [Munil] to [Voltaire]"). Since Mr Watson consented to this, there was no argument on the point, but Ms Jones took me through the analysis at the time, and must have satisfied me of the point although I do not remember the details. She accepted however that since this is a committal application, there is no question of *res judicata*, and she has to establish the point all over again. Mr Watson frankly explained in cross-examination that he had had second thoughts about it since his witness statement for trial (made in 2017), and now thought that the 10% shareholding was not attributable to Munil's lending (and indeed said that this was the view that had been taken at the time of the Response in 2016).

103. Mr Watson made two points in this respect. One was that the 10% profit share (limited as it was to Voltaire's first deal) was not at all comparable to the 10% shareholding and it would not really make sense for Munil to be given the latter in return for giving up the former. Second, although there were evidently discussions about Munil increasing its lending at the time of acquiring the 10% stake, that did not make sense either – you would not give someone 10% of your company for increasing a loan which carried interest anyway. Mr Watson's position was that the 10% was not being given to Munil in return for its lending or profit share, it was something that *he* was given in return for all the assistance he gave Voltaire, and he chose to place it in Munil as convenient place for it to be held.

104. I am quite willing to accept that the 10% shareholding was not offered by Voltaire to Munil in return for giving up its 10% profit share and extending further lending, and that the explanation for the 10% shareholding is that given by Mr Watson, namely that it was made available to *him* in return for various assistance that he gave to Voltaire, and he chose to place it in Munil. That would be entirely consistent with the way in which he operated; as he said the 10% was delivered to him for doing what he did: it was a normal part of his business model.

105. But that is not I think the end of the point. Ms Jones relied on an answer given by Mr Watson in cross-examination as follows:

> *"…in my view the stake that Munil had in Voltaire was not delivered as part of its loan, it was not given that stake as part of that loan, or that stake was not placed there as part of that loan. It was placed there because of the work overall that I had done for the various companies, in particular Voltaire, and I was, if you will, awarded a stake in that company which I chose to place in Munil. But it facilitated multiple transactions, it helped Voltaire, including the introduction to investors, a loan from Munil, other opportunities, other business opportunities which I'm happy to talk about. In return for that I was granted, if you will, a stake in Voltaire that I chose to place in Munil."*

106. This was a revealing answer. I think it was fundamentally accurate and I accept that the origin of the 10% shareholding that ended up with Munil was as a reward for all the things that Mr Watson had done for Voltaire. But this included not only introductions and opportunities (the evidence I heard at trial suggested that this was indeed a valuable part of what Mr Watson could bring to a start-up business) but also, as he himself recognised here, that he was able to procure a loan from Munil. That loan was substantial, and no doubt also a valuable part of what Mr Watson

brought to Voltaire. Since on Mr Watson's own account the 10% was derived from everything he had done for Voltaire, I find that the Munil loan, itself derived as to over 90% from the Munil Money, was one of the reasons for Mr Watson's being given a 10% shareholding in Voltaire. That seems to me to mean that it was (in the words of request 118) an:

> "asset which (directly or indirectly) represents, or was acquired in whole *or in part* through the use of, all or any part of the Munil Money" (emphasis added).

The fact that Mr Watson did other things for Voltaire as well as procure the loan from Munil does not affect this. It follows, and I find, that Munil's receipt of the 10% shareholding, and hence of the £3m from Ivory Castle, was itself derived, in part, through the use of the Munil Money.

107. Nor do I think that this is an artificial or strained way of looking at it. The Munil Money, which, as explained in the Main Judgment, Mr Watson succeeded in obtaining from Kea via Spartan, was a cash sum which was in effect available to Mr Watson to do what he liked with. As well as acquiring things (a house in Richmond, an apartment in New York, a property in Sweden) one of the things it enabled him to do was, via Munil, to provide cash not only for his own businesses but to others which he was willing to support. It is not surprising if he was able to use this ability to provide finance, which all derived from the Munil Money, as one of the means of securing valuable interests for himself. I find that that is what happened with the shareholding in Voltaire.

108. Quite apart from this, the fact that the £1m repayment from the Richmond Trust plainly derived from the use of the Munil Money means that the £4m in Munil's 400 (GBP) account was itself derived in part from the Munil Money.

109. Once the conclusion is reached, as I have, that the £4m is derived, at least in part, from the Munil Money, there is no difficulty in concluding that the use of that money should have been disclosed by Mr Watson. One of the matters required by request 118 was to state whether Mr Watson or any Watson Associate had at any time received all or any part of any asset which (directly or indirectly) represented, or was acquired in whole or in part through the use of, all or any part of the Munil Money. As a result of the various transactions detailed above, Mr Watson himself obtained some £717,000 (although it is to be noted that this is not in fact charged as part of Count 1(b)), and a whole series of Watson Associates, notably EJ Group and Bendon, but also CGL, Mr Hersov and Braithwell, received the monies which flowed down to Bendon and the rights that they thereby respectively acquired. Mr Watson did not need to ask Munil for information about any of this: he knew that Munil had derived £1m from repayment of the Richmond Trust loan (as this was disclosed – indeed Mr Watson was himself one of the trustees of the Richmond Trust); he knew that Munil had lent money to Voltaire (which he had himself arranged and again was disclosed); he knew that Munil had obtained the 10% shareholding in Voltaire and sold it to Ivory Castle for £3m; he knew that Munil made monies available to EJ Group and hence Bendon through Mr Hersov and then Braithwell, as this was his idea. In evidence he said that he was not focused on the granular detail: he set up deals and did not thereafter get involved with the detail of the transactions. But he did not need to know the detail to be aware that it was money coming from Munil that was being flowed down to Bendon. If he had wanted to know the details, he only had to ask those in his team who kept records.

110. I am satisfied therefore that Mr Watson was in breach of the April Order in failing to disclose these transactions.

111. The remaining question is whether this was a contumacious breach. That depends on why he did not disclose them. As set out above (paragraph 99), Mr Watson said in his affidavit that he did not believe any tracing claim would apply. That bald statement was unaccompanied by any explanation. In cross-examination he said that that was what he was advised by his lawyers at the time.

112. I am doubtful about this evidence. Again nothing documentary has been provided by way of advice or confirmation of advice, and no evidence provided from any of Mr Watson's lawyers. What *is* in evidence however is the correspondence between Oury Clark and Munil (or their Swiss lawyers, Schellenberg Wittmer Ltd) between January and May 2016. What Mr Watson told Oury Clark can be seen from Oury Clark's e-mail of 28 January 2016 to Schellenberg Wittmer in which they said:

> "As far as we understand, nearly all of the money paid in following the Rygen/Spartan transaction was subsequently loaned by Munil to EJW [Mr Watson], the Richmond Trust and a company called Voltaire, respectively. Those loans have, for the most part, not yet been repaid. An additional amount was lost on currency transactions."

That understanding must have come from Mr Watson (and in itself is indicative of his general knowledge as to what Munil had done with the Munil Money). There is nothing in the correspondence which raises queries as to what had happened to the £1m repaid from the Richmond Trust, or that makes any reference to the £3m received from Ivory Castle at all. Munil provided Oury Clark with bank statements, but only up to October 2014, so neither the receipt of the £3m, nor the payments out of the £4m, were disclosed to Oury Clark. Now it is theoretically possible that the reason that Oury Clark did not ask Munil any questions about the use of the £1m and £3m is because they had already considered the question, and formed the view (and advised Mr Watson) that these were not traceable proceeds of the Munil Money; but at any rate so far as concerns the £1m, it would be rather surprising if a competent firm of solicitors (and it has not been suggested, certainly not by Mr Watson, that Oury Clark were anything other than competent) had decided that money received by way of repayment of a loan was not itself an asset acquired by use of the money loaned. Admittedly the position in relation to the £3m from Ivory Castle is less self-evident, requiring as it does an explanation of how Munil had acquired the valuable 10% shareholding in Voltaire, but one would still have expected competent lawyers in possession of the facts to have satisfied themselves that the shareholding did not derive directly or indirectly from the loans to Voltaire which were known to have been made with the Munil Money. I think it far more probable that the reason Oury Clark did not seek any further details from Munil about these transactions was because Mr Watson did not tell them (and hence they did not give counsel who was responsible for settling the Response) the details of the transactions.

113. But if that is right, it still leaves the question whether this was because Mr Watson deliberately suppressed these transactions despite knowing that he should tell his solicitors about them, fearing that if he revealed them Kea would pursue other parties (and possibly disrupt his plans for a public offering of Bendon); or whether he genuinely thought that these transactions did not fall within the scope of the order because they were not concerned with traceable proceeds of the Munil Money.

114. I have considerable scepticism about Mr Watson's evidence on this point. It is entirely apparent from his evidence in this application, leaving aside the evidence I heard at trial, that he is financially very astute and perfectly capable of understanding the broad picture of his financial affairs, even if he left the detailed implementation to others. I am prepared to accept that he might have genuinely thought that the £3m was nothing to do with the Munil Money. He said in cross-examination:

> *"we certainly didn't believe the Ivory Castle money coming in, which was -- which had never had anything to do with Kea, was coming in was so-called Munil money. It was money coming in to buy a stake."*

I find it understandable that Mr Watson might have thought that the question whether the £3m was traceable turned on the source of the cash provided by Ivory Castle (and it is not suggested that that was derived from the Munil Money), so I accept that there is at the lowest a real doubt whether he appreciated that the £3m was traceable and that transactions in relation to it should be disclosed. But as to the £1m, I think it likely that he understood that the £1m repaid from the Richmond Trust was simply a replacement of the money lent (which was part of the Munil Money), and I have no doubt that he knew that he had used that, together with the £3m, both to pay himself some money and to fund Bendon. I have no real explanation why in those circumstances he thought these were not traceable proceeds, beyond his evidence that that was the advice he had, which I have already said I doubt.

115. Nevertheless the question on this application is whether I am sure, beyond reasonable doubt, that Mr Watson knew that the £1m was traceable to the Munil Money and transactions funded by it should be disclosed. With considerable hesitation I have concluded that I cannot be sure of that. One of the considerations that has weighed with me is this: it is clear from the correspondence between Oury Clark and Munil (and from the Response settled by counsel) that Mr Watson's lawyers knew that the Richmond Trust had repaid £1m to Munil. But Oury Clark did not ask any further questions of Munil about what Munil had done with that money. That suggests that they may well not have asked Mr Watson either. And I think Mr Watson, like most litigants who employ professionals to represent them, was *prima facie* entitled to assume that if his lawyers needed information from him they would ask him for it, and he was not obliged to start trying to work out for himself what he had to tell them. In those circumstances he might well have thought that if no further questions were asked of him, he did not need to say anything else.

116. I therefore find that although this breach has been proved beyond reasonable doubt, I cannot be sure that the breach was contumacious.

Counts 1(c) and 1(d) – loan to Mr Connell

117. Counts 1(c), as amended, and 1(d) allege that among the pieces of information that Mr Watson failed to provide were:

> "(c) that traceable proceeds of the Munil Money had been advanced to Tim Connell on 18 March 2016 in the sum of $1,800,024.85 pursuant to a loan agreement entered into between Munil and Mr Connell on about 4 February 2016;

(d) that the advance to Mr Connell was to be used to purchase shares in GEMFX (UK) Limited, now Stater Global Markets Limited".

It is convenient to take these two counts together.

118. The underlying facts are documented and not disputed:

(1) In early 2016 Mr Tim Connell said he wished to acquire GEMFX (UK) Ltd, an English company that operated an online forex trading platform in the UK. The purchase price was to be $1.5m, and he proposed to acquire it through a newly formed New Zealand company, Stater Holdings Ltd.

(2) On 27 January 2016 Mr Gibson e-mailed Mr Meier to introduce Munil to the suggestion that Munil might provide funds to Mr Connell for this purpose. He said:

> "As a heads-up, Tim Connell who Munil has loaned funds to in the past, is looking for funding to assist him in acquiring a currency trading platform… Cullen Group Limited is going to assist him with a Guarantee for the purchase and Eric thought that Munil Development might assist with funding."

CGL did in the event provide such a guarantee, signed by Mr Watson himself, and by Mrs Mary Watson-Burton, his sister, who dated her signature 4 February 2016.

(3) By 1 February 2016 Mr Meier had draft documentation. He forwarded them to a Mr Marco Ringger (another Munil person) asking if he agreed with the investment. Among other things he said (as translated from the original German):

> "Liquidity: William Gibson notified me that the outstanding credit to Voltaire (GBP 1.55 million) will be paid back shortly: the new loan is also supposed to be financed with that."

(4) The Loan Agreement was signed by Munil and Mr Connell by 4 February 2016. It provided for Munil to lend up to $2m, to be used by Mr Connell solely for the purpose of:

> "funding Stater [ie Stater Holdings Ltd] for the costs and related expenses of its acquisition of GEMFX (UK) Limited (GEM), and otherwise for working capital requirements of Stater relating to GEM. That funding shall be provided by way of loan by the Borrower [ie Mr Connell] on terms acceptable to the Lender [ie Munil]."

(5) On 4 February 2016 Munil advanced $150,050 to Mr Connell to fund a deposit, and on 10 February advanced a further £35,000 odd to Mr Connell (roughly equivalent to $50,000).

(6) Voltaire then repaid its £1.55m loan. Munil received just under £600,000 on 22 February 2016; and a further sum of just under £950,000 on 29 February 2016.

(7) On 4 March 2016 Mr Connell sent Munil a drawdown request under the Loan Agreement in the sum of $1.8m; and on 18 March 2016 Munil

transferred $1.8m to Mr Connell.

(8) It seems that the main purpose of doing that was so as to be able to show proof of funds to the regulator (the Financial Conduct Authority), and once that was done, the bulk of the funds were sent back to Munil, presumably to stop interest running until the purchase was ready to proceed. Munil received back a sum of $1.74m odd on 6 April 2016.

(9) On 17 June 2016 Mr Connell sent another drawdown request in the sum of $1.74m; Munil transferred the money to him on 23 June 2016.

119. As originally formulated this count relied on both the $1.8m transfer on 18 March 2016 and the $1.74m transfer on 23 June 2016, but in the amended count Ms Jones no longer relies on the latter (accepting, on the logic of Sir James Munby's decision in *re Jones*, that it was not a breach of the April Order to fail to disclose the $1.74m transfer as it had not taken place by the deadline for compliance with the April Order of 26 May 2016).

120. The only substantive question that arises is whether it has been proved that the $1.8m was derived, at least in part, from the Munil Money. No point on this was taken by Mr Watson in his evidence or by Mr Grant in his submissions, but I still need to be satisfied of it. Mr Graham in his evidence asserted that the $1.8m was funded by the repayment of the £1.55m Voltaire loan (which as set out above (paragraph 89(9)), was itself at least 93.25% derived from the Munil Money) but did not provide any supporting analysis; Ms Jones dealt with it very briefly in submissions. I am satisfied however that this has been proved; the details are as follows:

(1) Munil had a number of accounts with JP Morgan, including the 400 and the 401 accounts, each with a number of sub-accounts.

(2) The first tranche of the repayment from Voltaire, in the sum of £599,473.85, was received by Munil in its 401 (GBP) account on 22 February 2016, and transferred to its 400 (GBP) account on 25 February 2016. The 400 (GBP) account then had a very small credit balance of £119.23, so the vast majority of the money in the account was derived from the repayment.

(3) The second tranche of the repayment, in the sum of £949,473.42, was received by Munil in its 400 (GBP) account on 29 February. There had been no intervening credits so the total credit balance, of some £1,199,066.50 as at 29 February, was derived almost entirely from the Voltaire repayment. That was rather less than the £1.55m because £350,000 had been transferred to another account (the 508 account), but that was retransferred on 4 March at which the point the credit balance on the 400 (GBP) account was £1,549,066.50, again all but a trivial amount derived from the Voltaire repayment.

(4) On 18 March 2016, £621,513.65 of this was converted to $ in the sum of $900,000 and credited to the 400 (USD) account, leaving a credit balance of £927,552.85 in the 400 (GBP) account. The 400 (USD) account then had a credit balance of some $85,000 (not shown to be derived from the Munil Money). The $1.8m was then transferred to Mr Connell out of the 400 (USD) account. As can be seen, there was not enough in the 400 (USD)

account to fund the transfer and the result was that the 400 (USD) account was overdrawn in the sum of some $814,000 odd.

121. In those circumstances the position seems to me as follows. First, of the $1.8m transferred out of the 400 (USD) account, $900,000 came from the 400 (GBP) account and was almost all funded by the repayments from Voltaire (and hence as to at least 93.25% derived from the Munil Money). Second, the remaining $900,000 was not directly funded from the repayment; but given Mr Watson's evidence as to how *his* JP Morgan accounts were operated, and the format of JP Morgan's statements (which are in evidence) which treat the various sub-accounts in denominated currencies as part of one overall account, I am satisfied that Munil was able to overdraw on its 400 (USD) account because it had more than enough in its 400 (GBP) account to cover the payment, and hence the 400 account as a whole was not overdrawn even though the USD sub-account was. That means that the advance of the second $900,000 was also made possible by the use of the Voltaire repayment. That is sufficient to justify the conclusion that the $1.8m transferred to Mr Connell was virtually all derived from use of the Voltaire repayment and hence as to at least 93.25% from the Munil Money.

122. I am also satisfied that Mr Connell was a Watson Associate, as both a personal friend of Mr Watson (Mr Watson said he had known him for 25 years, and said of him in an exhibit to his 5th affidavit sworn on 20 December 2018 "We are friends"), and a person whom Mr Watson wished to benefit: Mr Watson's own evidence was that the reason for loaning the money was that he wished to partner Mr Connell.

123. There is also no doubt that Mr Watson, as he accepted in his evidence, personally knew about the loan to Mr Connell as he was involved in setting up the transaction. I think it also almost certain that he knew that it was to be funded by the Voltaire repayment, but if he did not, he only had to ask Mr Gibson, who plainly did understand this.

124. Request 118, among other things, required Mr Watson to state whether any Watson Associate had at any time received any asset which directly or indirectly represented all or any part of the Munil Money, or was acquired in whole or in part through the use of the same, and to state the nature and purpose of the transaction pursuant to which it was received. I find that it required Mr Watson to disclose the receipt by Mr Connell of the $1.8m which represented part of the Munil Money and was acquired in large part through the use of the Munil Money; and also required him to state the nature and purpose of the transaction pursuant to which it was received, and hence to disclose that it was paid under a Loan Agreement under which Munil agreed to lend money to Mr Connell to be used to purchase shares in GEMFX (UK) Ltd.

125. I therefore find that the breaches alleged in Counts 1(c) and 1(d) are made out.

126. The remaining question is whether Mr Watson's failure to disclose the information was contumacious. The position is very similar to that under Count 1(b). Mr Watson's position was again that he did not believe that the monies advanced to Mr Connell were the traceable proceeds of the Munil Money, or that he was obliged to give disclosure, and in cross-examination suggested that Mr Charles Pugh of Oury Clark must have taken that view. But when asked if Oury Clark knew about the loan to Mr Connell, he said he did not know. I think it unlikely that Oury Clark did know about the loan, because if they did one would have expected them to follow up on it.

But that still leaves the question whether Mr Watson knew that he ought to tell his solicitors about the loan to Mr Connell.

127. As with Count 1(b) I am sceptical about Mr Watson's evidence. There is in evidence a consent form signed by Mr Connell and dated 11 April 2016 under which he consented to the disclosure by Munil in these proceedings of information relating to the Loan Agreement. Mr Watson said in his affidavit that he thought this was something requested by Munil for its own protection, and there is some evidence which supports this (in that on 8 March 2016 Mr Roland Waldvogel of Munil asked Mr James Parker, another member of Mr Watson's team, to obtain a consent from Mr Connell) but this does show that this was not just something done by Munil without input from Mr Watson's office. This consent, and a similar one in relation to Mr Davis-Rice (see below), were not obtained in response to the April Order which had not yet been made, but show that even before the Order, someone anticipated that it might be necessary to disclose the loans in these proceedings.

128. Nevertheless, I have concluded, as with Count 1(b), that I cannot be sure, beyond reasonable doubt, that Mr Watson did know that the April Order required that the loan to Mr Connell be disclosed. As with the £1m repayment from the Richmond Trust, it is clear that Oury Clark knew of the repayment to Munil of the Voltaire loan, which Munil correctly told them had been fully repaid, but Oury Clark did not ask any further questions of Munil about what Munil had done with that money, and that suggests that they may well not have asked Mr Watson either. And as I have said above (paragraph 115) if his lawyers did not ask him any further questions, he might well have concluded that he did not need to say anything else.

129. I find that although this breach has been proved beyond reasonable doubt, I cannot be sure that the breach was contumacious.

Count 1(e)

130. Count 1(e), as amended, alleges that among the pieces of information that Mr Watson failed to provide was:

> "that traceable proceeds of the Munil Money, namely $475,024.63 had been paid to Justin Davis-Rice on 26 April 2016 pursuant to a loan agreement between Mr Davis Rice and Munil dated 21 April 2016 and used to purchase shares in Long Island Iced Tea Corp from Mr Connell."

Mr Davis-Rice was the CEO, and 20% beneficial owner of Bendon (paragraph 91(1) above).

131. The underlying facts are again documented and not disputed:

(1) By an agreement dated 23 January 2016 between Mr Connell and Mr Davis-Rice, Mr Connell agreed to sell 63,334 shares in Long Island Iced Tea Corp to Mr Davis-Rice for $475,005.

(2) On 15 April 2016, Mr James Parker sent to Mr Meier of Munil a draft loan agreement between Munil and Mr Davis-Rice for him to review.

(3) In evidence is a copy of the Loan Agreement, undated but signed by Mr Davis-Rice. It provides for Munil to lend $475,000 to Mr Davis-Rice at an interest rate of 5%, the purpose of the advance being stated to be to enable

him to purchase shares in a publicly-traded company.

(4) Munil advanced the $475,000 to Mr Davis-Rice on 26 April 2016.

132. The $475,000 was paid out of Munil's 400 (USD) account, and entirely funded by the repayment by Mr Connell of $1.74m odd on 6 April 2016 (paragraph 118(8) above). As such I am satisfied that it was derived, in very large part, from the Munil Money.

133. Mr Watson accepted that he knew about the transaction. I am satisfied that it should have been disclosed. I am satisfied that Mr Davis-Rice was a person that Mr Watson wished to benefit as the suggestion that Munil provide him with the money would have come from Mr Watson; it is also not disputed that he was a personal friend of Mr Watson's. The loan to him should therefore have been disclosed as a receipt by a Watson Associate of an asset which represented part of the Munil Money and which was acquired in large part through the use of the Munil Money; Mr Watson should also have stated the nature and purpose of the transaction pursuant to which it was received.

134. I therefore find that the breach alleged in Count 1(e) is made out.

135. Having however concluded that I cannot be sure beyond reasonable doubt that Mr Watson appreciated that he should have disclosed the transaction with Mr Connell, the same must follow with the transaction with Mr Davis-Rice, as what made the latter disclosable was that it was funded by the $1.74m repaid by Mr Connell.

136. I find therefore that although this breach has been proved beyond reasonable doubt, I cannot be sure that the breach was contumacious.

Conclusion on Count 1

137. For reasons given above, in the case of each of the sub-counts in Count 1, with the exception of Count 1(a), I am satisfied that Mr Watson was in breach of the April Order in not disclosing the various items of information specified, but in each case I have not been able to conclude that I am sure that the breach was contumacious. In those circumstances it is accepted that it would not be appropriate to commit Mr Watson for these breaches.

138. That makes it unnecessary to consider the other matters put forward in answer to this Count. Apart from the overall abuse of process argument, which I have said I will deal with after having considered all the detailed counts, the main points taken by Mr Grant were on delay and on the waiver of the absence of penal notice and personal service. I do not propose to lengthen this judgment by addressing these matters in relation to the April Order, as I do not see that it would serve any useful purpose, and will proceed to consider the remaining counts.

The September Order

139. The Main Judgment was handed down on 31 July 2018. Consequential matters were heard by me on 10 September 2018 (the applicable rate of interest) and 13 September 2018 (other matters). I then made an order, dated 10 and 13 September 2018 and sealed on 14 September, which is the September Order. I made a second

order dated 13 September 2018, and also sealed on 14 September, which was made by consent (**"the September Consent Order"**).

140. The September Consent Order was made in order to record undertakings given by Mr Watson. These were in the nature of worldwide freezing relief in the notification form, Mr Watson undertaking not to deal with any of his assets without giving 14 days' notice to Farrers. The Order contained a penal notice on its front page. It did not contain any ancillary provisions requiring Mr Watson to provide information about his assets such as are usually found in a freezing order.

141. The main September Order gave effect to my decisions in the Main Judgment and at the consequential hearing. The substantive provisions consisted of a series of declarations including declarations of Kea's entitlement to the taking of various accounts, and an order for interim payment by Mr Watson in the sum of over £25m. Paragraphs 13 to 16 provided for Mr Watson to provide a large amount of detailed information: paragraph 13 required Mr Watson to provide a particular spreadsheet; paragraph 14, which is the one relied on by Kea for Count 3, is set out below but in summary required Mr Watson to provide by affidavit details of his worldwide assets exceeding $100,000 or assets held by trusts connected with him exceeding $50,000; paragraph 15 required him to set out in an affidavit what had happened to the Munil Money with a large number of specific matters referred to; and paragraph 16 required him to provide documents including bank statements, asset statements and certain agreements and other transactional documents.

142. Paragraph 14 read as follows:

> "The First Defendant [Mr Watson] shall within 28 days of service of this order swear and serve on the Second Claimant [Kea] an affidavit setting out to the best of his ability details of all his assets worldwide individually exceeding US$100,000 in value whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. For the purpose of this order the First Defendant's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The First Defendant is to be regarded as having such power if a third party (including for the avoidance of doubt William Gibson) who holds or controls the asset habitually acts in accordance with the First Defendant's direct or indirect instructions. The First Defendant's said affidavit shall include details of (i) all interests and powers which the First Defendant has under any trusts whose assets exceed US$50,000 in value (and for this purpose the First Defendant has an interest or power under a trust if either he or a third party who habitually acts in accordance with his direct or indirect instructions has such an interest or power), and (ii) in so far as within the knowledge of the First Defendant (including knowledge he is able to obtain by asking William Gibson or other people working for Cullen Investments Ltd or by looking at documents in his possession, power or control) all assets individually exceeding $50,000 in value held directly or indirectly by trusts so identified."

143. The order does not on its face describe paragraphs 13 to 16 as having been made by consent (unlike paragraphs 7 to 9 which are expressly said to be by consent of Mr Watson), but Ms Jones showed me the transcript which makes it clear that the wording of these paragraphs, save for certain discrete points on paragraphs 15 and 16, was agreed between her and Mr Paul McGrath QC, who appeared at the consequential hearings for Mr Watson. So although not formally made by consent, paragraph 14 was one of the paragraphs of the order on which there was no argument.

144. The September Order, unlike the September Consent Order, does not bear a penal notice on its face. Nor was it served personally. Unless I have missed it, Mr Graham's evidence is in fact silent as to when it was served at all; this is a surprising omission (and a rare lapse for the normally meticulous Mr Graham) as Mr Watson's obligation was to swear and serve an affidavit "within 28 days of service of this order", and hence without proof of when the order was served, it is not possible to identify the date for compliance and so the date of breach. But it has never been disputed that the order was duly served: in evidence on this application is an e-mail of 15 October 2018 from Mr Dan Morrison of Grosvenor Law (then acting for Mr Watson) accepting that "[Mr Watson] has of course been served with the Order" and recognising that "he is presently in breach", which I consider is sufficient to establish that service had taken place at least by 17 September. In fact it is clear from the full correspondence bundle that service was effected by e-mail on 14 September (a Friday) after hours at 17.30 (and hence by CPR r 6.26 deemed to be served on the next business day, which was indeed Monday 17 September). I am satisfied therefore that paragraph 14 of the Order required compliance by 15 October 2018.

145. Mr Watson in fact swore an affidavit for the purposes of paragraph 14 (his 2nd affidavit) a little late on 19 October 2018 and served it that evening. No point is taken on the lateness but technically this means that a breach of the order was committed on 15 October 2018. Among the exhibits to the affidavit were both a hard-copy statement of assets and a thumb drive with 2 spreadsheets in Ms Excel electronic form, one detailing Mr Watson's own assets (in excess of $100,000) and liabilities, and the other the assets of the Valley Trust (in excess of $50,000) and liabilities, in each case as at 30 September 2018 and including both the nominal value and current realisable ("real") value of the assets. The personal spreadsheet showed a total of some $109m in assets, with a real value of only some $30m, and some $141m of liabilities (and so overall a net deficit). Apart from the Valley Trust, there was no disclosure of other trusts holding assets in excess of $50,000.

Count 3 – general

146. Count 3 alleges a contempt by Mr Watson in failing to comply with paragraph 14 of the September Order. I set out here the general part of Count 3:

> "Eric John Watson in breach of paragraph 14 of the September Order failed within 28 days of service of the said order or at all to provide in an affidavit the value and details of all of his assets (as defined in paragraph 14 of the said order) worth over £100,000 and further failed to include in the said affidavit the value and details of all individual assets individually worth over $50,000 which were held by trusts identified by Mr Watson in answer to paragraph 14 of the September Order. In particular Eric John Watson failed to provide:"

The reference to £100,000 is an obvious error for $100,000, and I propose to read it as such.

147. Mr Grant made a number of submissions directed at expounding the precise meaning of paragraph 14. I propose to pick these up if and insofar as necessary when considering the individual sub-counts.

Count 3(c)(i) – Chancery Capital Advisors LLP

148. Count 3(c)(i) alleges that among the matters Mr Watson failed in breach of paragraph 14 of the September Order to disclose were:

> "details and/or values of his interests in litigation funding businesses which are assets of trusts falling within paragraph 14 of the September Order, including:
>
> (i) Chancery Capital Advisors LLP or other entities associated with Chancery Capital Advisors LLP".

149. The evidence in support of this charge is (again) detailed and complex, but the essential defence to it is that whatever interest Mr Watson or trusts associated with him had in the relevant business was worthless and so did not have to be disclosed.

150. On the Excel spreadsheet detailing his personal assets, Mr Watson included a number of loans owed to him. These included (i) a loan made on 10 January 2018 in the sum of £48,376 to Libra Trust (a Jersey trust of which Mr Watson was both settlor and a beneficiary) for a 10 year term at 2.5% interest; (ii) a loan made on 5 April 2017 in the sum of £47,000 to Calibre Holdings Ltd (a Jersey limited company held by the Libra Trust) (**"Calibre"**) for a 10 year term interest-free; and (iii) a loan in the sum of £50,000 to Chancery Capital Advisors LLP (an English limited liability partnership) (**"CCA"**). The only details given in relation to the third loan were that there was no formal loan documentation but that it represented the balance due to Mr Watson by way of reimbursement of costs. It may be noted that the $ value given in each case was about $60-65,000 and so well under the threshold of $100,000. As already referred to, Mr Watson did not disclose any trusts other than the Valley Trust as holding assets worth more than $50,000, and in particular did not disclose the Libra Trust as doing so.

151. The story starts in December 2015 with a business to be called Templar Litigation Capital (**"Templar"**). Its aim was to raise funding from outside investors to invest in litigation funding. It had close connections with Mr Watson: its general counsel was to be Mr Stanway (general counsel of CIL) and CIL was described as Templar's sponsor, and it later appears that it was held under the Libra Trust. Templar's Chief Operating Officer was to be Mr Stuart Hills. By April 2016, if not before, Mr Hills had met Mr Nicholas Rowles-Davis and had had discussions with him about the proposed business. Mr Watson explained in his 7th affidavit (sworn on 31 January 2019 pursuant to an order made by me on 19 December 2018) that the way he operated was by finding investment opportunities and identifying appropriate individuals to assist in the execution or operation of the new businesses, resulting in entities associated with him acquiring interests in the businesses or providing finance to them. One of the examples he gave was Mr Rowles-Davis, who was introduced to Mr Watson when the latter was exploring litigation-funding opportunities, which led to Mr Watson providing preliminary funding to CCA for working capital. A draft business plan produced in May 2016 (at which stage the business was to be called Calderbank Capital) provided among other things for Mr Rowles-Davis to be Chief Executive Officer, and a Mr Matthew Denney to be a director.

152. Then on 6 July 2016 a Loan Agreement was entered into under which Mr Neil Richardson agreed to lend Mr Watson $2m (for a different transaction). In the Loan Agreement Mr Watson agreed to provide security for the loan over:

> "any and all direct or indirect interest the Borrower [ie Mr Watson] (or a vehicle holding any such interest) has in the business venture involving the Borrower and the Lender [ie Mr Richardson] known as Chancery Capital (previously Templar Litigation Capital) … The Borrower shall grant such security to the Lender promptly following completion of the transaction pursuant to which Chancery Capital is formed …"

That indicates that Chancery Capital had not yet been formally established, and is no doubt some indication that Mr Watson and Mr Richardson then expected it to be valuable, although of course it does not establish what value either of them in fact placed on this security over a future business.

153. Although this describes Chancery Capital as the same venture as Templar Litigation Capital, an e-mail from Mr Stanway and structure plan from August 2016 shows that by then it was to be set up as a separate structure from Templar, initially to be held by Calibre under the Libra Trust, but with the potential for the participation of (i) a provider of capital (namely a hedge fund associated with Mr Elliott), (ii) "Founder 2" (Mr Rowles-Davis) and (iii) management. The structure provided for the various participants to become partners in a Jersey partnership which would hold SPVs, one for each piece of litigation funded.

154. Mr Watson initially funded the business, making payments to Mr Rowles-Davis from October 2016 onwards (explained by Mr Watson in oral evidence as payments to tide him over while he was on garden leave). An e-mail from Mr Stanway of January 2017 shows that at that stage Mr Watson was expected to have an initial 94% interest in CCA, with Calibre as the designated vehicle for holding that interest; and CCA was in due course incorporated as an English LLP on 30 March 2017, with Calibre registered as Designated Member (the other members being Mr Richardson and Mr Denney), and Mr Watson registered as a person with significant control, holding directly or indirectly 75% or more of the voting rights in the LLP, and of the rights to surplus assets on a winding-up.

155. An e-mail of 30 March 2017 referred to the "advisory vehicle" (ie CCA) needing to fund the Jersey partnership to the extent of £50,000, which as Mr Watson's initial share of CCA was 94% meant that he would have to fund £47,000. By a Loan Agreement dated 5 May 2017, Mr Watson duly agreed to lend up to £47,000 to Calibre for 10 years interest-free to enable Calibre to fund a capital investment into CCA. This is the second loan identified on Mr Watson's schedule of assets (paragraph 150 above).

156. On 5 May 2017 Mr Rowles-Davis became a member of CCA with a 59% interest, Mr Watson's interest (held through Calibre) being reduced to 35%. This appears from an LLP agreement executed by Calibre – it is undated but can be dated to 5 May 2017 because Mr Rowles-Davis was registered as having become a person with significant control (with a right to more than 50% but less than 75% of surplus assets on a winding up) on that date, and the date is also recited in the Deed of Confidentiality and Post-Termination Restrictions referred to below.

157. Ms Jones drew my attention to the fact that under the terms of the LLP Agreement there was provision not only for the drawing up of statutory accounts of the LLP as required by law but also of a separate profit and loss account and balance sheet for each year for internal purposes only, showing the allocations of profits and losses to

the partners and their drawings. No such internal accounts have been produced by Mr Watson.

158. A few days later on 9 May 2017 a number of documents were executed, including at least the following:

(1) The partnership agreement for Chancery Capital Partners (**"CCP"**), the Jersey partnership. There were only two partners: CCA and a vehicle for Mr Elliott's interest called Richmond Investments Ltd (**"Richmond"**). Although the capital contributions (and interest in capital) were split 49.999% (CCA) to 50.001% (Richmond), the distribution of profits was more complex with detailed waterfall provisions.

(2) An Overdraft Facility Agreement between Colby Capital II S.à.r.l. (**"Colby"**) as Lender and CCP as Borrower under which Colby (another Elliott entity) agreed to lend CCP up to £6.3m, the purpose of the loan being to pay CCA's costs and expenses in an amount agreed with Colby up to £1.3m, and otherwise for general corporate purposes.

(3) An Investment Advisory Agreement between CCP and CCA (in its capacity as Investment Advisor) under which CCP agreed to pay CCA certain fees as there set out; for the first 2 years these were at the rate of £375,000 per quarter, although thereafter they were dependent on the level of net capital invested.

(4) An agreement which took the form of a letter from Richmond and Colby jointly to Mr Watson in which they agreed that he should have a co-investment right, that is the right (but not the obligation) to participate in up to 20% of the funding and investments made by them in CCP.

(5) A Deed of Confidentiality and Post-Termination Restrictions between CCA, CCP and Mr Rowles-Davis under which Mr Rowles-Davis after leaving would be subject to a 6-month restraint on being engaged in the UK in any competing business.

159. On 4 July 2018 Mr Richardson resigned as a member of CCA.

160. Ms Jones also showed me screenshots from a website for "Chancery". These are dated 14 May 2019 but other evidence (below) suggests that Chancery may no longer have been active by then, so the website might have been out of date. Under "Who We Are", it listed a number of individuals including Mr Rowles-Davis as Chief Executive Officer, Mr Denney as Managing Director, and Mr James Parker (as referred to above, one of Mr Watson's team) as Financial Controller. Another person listed was Mr Sam Watson, Mr Watson's son, who was said to have joined Chancery in mid 2017.

161. The Main Judgment was handed down on 31 July 2018. In August 2018 a number of individuals joined a business called Litigation Capital Management (**"LCM"**). LCM's website includes reference to Mr Denney (referred to as having set up Chancery Capital with Mr Rowles-Davis and having joined LCM in August 2018); and Mr Parker's LinkedIn profile refers to him as having been Financial Controller at Chancery Capital from October 2017 to November 2018 and at LCM from

November 2018. The address and telephone number for LCM's London office given on its website are the same as given for Chancery.

162. On 19 October 2018 Mr Watson made his 2nd affidavit in response to paragraph 14 of the September Order. As set out above (paragraph 150), it disclosed 3 loans outstanding to Mr Watson, each of £50,000 or less, but no other interest in CCA.

163. In November 2018 a number of agreements were entered into. First is a Deed of Release dated 16 November 2018. This recited that CCA had retired as a partner of CCP on that date, and provided for CCP and Richmond to release CCA from its obligations as Advisor under the Partnership Agreement of 9 May 2017, and from any claims against it. Ms Jones pointed out that it was not expressed to effect a general dissolution of the partnership, and suggested that CCP continued. The effect of the retirement of one partner in a Jersey partnership is self-evidently a matter of Jersey law (on which there is no evidence), but on the assumption that Jersey law is the same as English law, the retirement of one partner from a partnership in which there were only two partners would necessarily bring the partnership to an end, as partnership is a relation between two or more people, but in practical terms it would seem likely that the retirement of CCA would leave Richmond in control of what had been the partnership business (to the extent that it still subsisted).

164. Second, there were two Deeds of Termination which terminated ancillary agreements, one being the agreement for CCA to have a co-investment right (paragraph 158(4) above), and the other another agreement between Richmond, CCA and CCP dealing with miscellaneous matters such as employees, key persons and funds flow.

165. Third, the Investment Advisory Agreement of 9 May 2017 (paragraph 158(3) above) was amended and restated. It recited that CCA had retired as a partner and been released from its obligations as advisor, and that CCP wished to secure its services in relation to the Investment, defined as lending by the Fund pursuant to the Loan Agreement; the Fund was a Jersey limited company called Project Benni Ltd, and the Loan Agreement a limited recourse loan agreement to be agreed between that company and the Borrower (unidentified). CCA agreed to provide services to CCP in relation to the Investment, in return for fees consisting of a sum of £98,000 odd payable on the signing of the agreement, a lump sum of £250,000 payable within 3 days of signing of the Loan Agreement, and further sums. In addition CCA had a potential interest in proceeds of the Investment: under a waterfall provision which provided for sums paid to Project Benni Ltd pursuant to the Loan Agreement to be distributed between CCP and CCA, CCA stood to receive up to £54,000 by way of Monitoring Fee, and also 25% of any ultimate surplus after all other calls on the proceeds (that is, repayment of principal advanced under the Loan Agreement plus 8% interest, plus some £5m).

166. The restated Investment Advisory Agreement did not say anything about the ownership of Project Benni Ltd, and when Kea tried to discover from the annual return filed in Jersey, it only disclosed that the shares were held by a nominee company called Aztec Nominees Ltd. But there seems to me no reason to doubt that it was one of the SPVs set up to fund individual pieces of litigation. This is what Mr Watson said in his 7th affidavit of 31 January 2019. He there referred to Project Benni Ltd as "an SPV related to a single-case litigation funding opportunity" and said that the Project Benni proposal would only go ahead if the litigation claimant signed up to the funding proposal put forward to it by Project Benni Ltd. He also

said that if it went ahead, any proceeds would go to "its parent, Chancery Capital Partners LP" to defray its working capital deficit. As appears below I think this was intended to be a reference to CCP, which was not in fact a limited partnership but a general Jersey (customary law) partnership.

167. In August 2019 a firm of solicitors called Bhatia Best chased Mr Watson for fees due to its client, VG Ltd, a Jersey trust services provider (**"VG"**) for administering various entities, including the Libra Trust, Calibre, "Chancery Capital Advisors Ltd" and three Templar entities, which he had guaranteed. Then in September 2019 Mr Watson wrote to Farrers explaining that a chalet in Switzerland (called Chesa Lumpaz) had recently been sold and that he was entitled to a share of the proceeds of some CHF 1.2m (about £1m), and requesting Farrers' agreement to the proceeds being used, among other things, to pay VG, subsequently explaining that VG had said that if they were not paid, annual returns would not be filed and the relevant companies would be struck off "and therefore potential of the assets being lost", and reserving his rights should any value be lost due to the inability to use the Chesa Lumpaz proceeds. That led to Farrers asking what real value there was and where, to which Mr Watson replied on 28 September 2019:

> "In relation to the Libra Trust, it holds interests in contingent outcomes of 2 litigation cases therefore I do not have the ability to value it."

On 16 October 2019 the Jersey Registrar of Companies published a list of limited companies struck off and dissolved on 1 October 2019, which included most of those referred to by Bhatia Best, including Calibre, Chancery Capital Advisors Ltd, and the 3 Templar companies. (This incidentally confirms that Chancery Capital Advisors Ltd was a Jersey limited company and hence not the same entity as CCA, an English LLP – I have no evidence that this limited company was ever actually used.)

168. That is effectively the evidence put forward by Kea on this count. Mr Watson's evidence in his 8th affidavit was to the following effect. He explained that Calibre held a 49.001% interest in "Chancery Capital Partners LP", that the intention was to set up a series of Jersey registered SPVs, each of which would have allocated to it a specific litigation funding project, one such project being Project Benni, and that Aztec Nominees acted as nominee for "Chancery Capital Partners LP". (As above I assume that what Mr Watson is referring to is CCP, which was not in fact a limited partnership; Ms Jones did not suggest that he was referring to anything else). Mr Watson accepted that at the time of the security granted to Mr Richardson (paragraph 152 above), it was expected that the combination of a deep-pockets funder (ie Mr Elliott) and an experienced team of litigation funding executives (ie Mr Rowles-Davis, Mr Denney and others) would make the business very valuable. He said however that the expectations never materialised; the projects put forward to the funder were all rejected as unsuitable, other than one which resulted in a loss; the whole arrangement never took off, and entirely broke down in November 2018. Mr Rowles-Davis gave up on the Chancery concept, and moved, with his team to LCM, a quoted Australian litigation funder seeking to open operations in London. LCM paid Chancery £150,000 which enabled some of its creditors (not including Mr Watson) to be paid; Mr Watson received no payment from CCA or CCP and had no interest in LCM.

169. In oral evidence he said (in chief) that Calibre had been struck off because it was effectively worthless. He also said that the "2 litigation cases" which the Libra Trust

had a potential interest in were (i) a case involving Lloyds which was being pursued by Templar and which in the event was lost; and (ii) Project Benni. In re-examination he referred to 3 potential cases, one the Lloyds one dealt with by Templar, one a small case called Utley funded through CCP which had been unsuccessful, and the third being Project Benni, which never happened. He confirmed that he had no current interest in any litigation funding business at all. He also put in evidence the last filed accounts for CCA, which were those for the year ended 31 December 2018 and showed net amounts due from the members of over £2m.

170. Very detailed submissions were made to me on both sides on this count, but I have reached the clear conclusion that I cannot be satisfied so that I am sure that Mr Watson was in breach of paragraph 14 of the September Order in this respect. I will try and summarise the main submissions by Ms Jones and why I have not been persuaded by them.

171. First, there was some debate about the wording of paragraph 14 and what it required to be disclosed, but I agree with Ms Jones that the key question is whether it has been shown that at the relevant time (whether that be the date Mr Watson's affidavit was due (variously suggested to be 11 or 12 October 2018 but I think actually 15 October) or when it was in fact served (19 October 2018)) the Libra Trust had assets worth $50,000 or more. Ms Jones said that Count 3(c)(i) was not confined to the Chancery Capital business but extended to any other litigation businesses, and that Kea did not know what the unknown unknowns were. I do not agree. Had Kea proceeded with the whole of Count 3(c), that might have been the case, but having confined itself to Count 3(c)(i), I think the only reasonable way to interpret this sub-sub-count is as being focussed on the non-disclosure of the Libra Trust's interest in the Chancery Capital business. In any event, no other litigation funding business held by the Libra Trust (or any other trust associated with Mr Watson) has been evidenced other than the Templar structure, and there is no evidence that that is, or in October 2018 was, a business with any value. In effect therefore the question is whether the Libra Trust's interest in the Chancery Capital business has been shown to have been worth at least $50,000 on October 2018.

172. I am satisfied that in October 2018: (a) the Libra Trust owned Calibre; (b) Calibre was a 35% partner in CCA; and (c) CCA then had the benefit of a number of rights under agreements to which it was a party. Those included (i) a right to distribution of profits from CCP; (ii) rights to fees under the Investment Advisory Agreement; and (iii) the benefit of the restrictive covenant against Mr Rowles-Davis. The question therefore is what these rights were worth.

173. As to (i) the right to distribution of profits, that of course only has value if there were profits to distribute. No evidence has been adduced that CCP ever made any profits at all. Mr Watson's evidence was undoubtedly somewhat unsatisfactory, as it shifted from suggesting there had been two potential cases to three (the Lloyds case (Templar), the Utley case (introduced in re-examination) and Project Benni), but the fact remains that there is no evidence at all that there were any profitable cases ever funded by Chancery Capital. Ms Jones pointed to the fact that Mr Watson's own evidence was that it was expected that the business would be valuable, and the fact that his interest was considered likely to be sufficiently valuable to put up as security for the $2m loan from Mr Richardson; but an expectation that a business will be a success does not take one very far in establishing that it was.

174. She also pointed to the Investment Advisory Agreement as amended and restated in November 2018 under which it was anticipated that CAA would be paid £250,000 within days of the Loan Agreement being entered into, and that there might ultimately be sufficient proceeds, after providing for over £5m of prior receipts, to split the proceeds 25% to CCA. That undoubtedly suggests that Project Benni concerned a significant piece of (actual or potential) litigation and that if it ever happened and the claim succeeded, it might have produced substantial returns to CCA. But that was all contingent on the Loan Agreement being entered into, or in other words the prospective claimant deciding to fund the litigation on the terms offered. Mr Watson's evidence was that this never happened, and that one could not place any value on Project Benni unless and until the claimant signed up to it. That seems to me to be right – at any rate I am not prepared to conclude, without any evidence, that the prospect of entering into a future funding arrangement with a claimant has any value before the claimant has signed up to it. And what I infer from the terms of the amended and restated Investment Advisory Agreement is that apart from Project Benni there were indeed no deals in the pipeline, as if there had been others, one would have expected CCA to want to add them into the agreement.

175. Ms Jones pointed to the substantial fees payable to CCA under the original Investment Advisory Agreement, amounting to £375,000 a quarter for the first 2 years. At first blush that would appear to make CCA's interest in the business as at October 2018, less than 2 years from its inception, one of some considerable value. But CCA's ability to collect these fees was of course dependent on CCP's ability to pay them, and Mr Watson accepted in cross-examination Ms Jones' suggestion that CCP was in turn dependent on the money coming from Colby to fund CCA's fees. It is known that about a month later, on 18 November 2018, arrangements were entered into under which CCA lost all its rights save for those relating to Project Benni, and it is an obvious inference that it gave up on them because the Elliott parties were not willing to continue funding a business that had not proved a success; and I think it is entirely credible that, as Mr Watson said, the business was effectively defunct long before November. It is noticeable that Mr Richardson had resigned as a member of CCA in July 2018, which suggests that he may not have thought there was any value in it. It is also noticeable that although CCA was due fees at the initial rate of £375,000 per quarter (or £1.5m a year), under the Overdraft Facility Agreement CCP was only permitted to spend advances by Colby on CCA's costs and expenses (i) with Colby's agreement and (ii) up to £1.3m. In those circumstances I think there is a real doubt whether the Elliott parties were in October 2018 willing to continue to fund CCA's fees for a business that, save for the possibility of Project Benni, did not have any prospects. This question was scarcely explored in the course of what was otherwise a thorough cross-examination and I do not think I can be sure that CCA's contractual right to fees of £375,000 a quarter from CCP remained a right that in practice had any value at all in October 2018.

176. Ms Jones also pointed to the right that CCA had to enforce the restrictive covenant against Mr Rowles-Davis. The difficulty with that is that, as Mr Watson pointed out, Mr Rowles-Davis was himself the majority partner in CCA with 54%, and would scarcely cause CCA to enforce the covenant against himself. Richmond as majority partner of CCP no doubt also had the ability to enforce the restrictive covenant, but Mr Watson's evidence was that it chose not to do so. There may be more to that than Mr Watson suggested, but even if Richmond was in a position to exploit the covenant, that would not mean it had any value to CCA.

177. Ms Jones pointed to the information that Mr Watson could have made available but had not, such as the internal accounts of CCA (paragraph 157 above), and suggested that the statutory accounts gave only a very partial and possibly misleading picture. She said that the requirement in paragraph 14 of the September Order to provide "details" required Mr Watson either to provide a detailed narrative of his (and his trusts') interests or alternatively to produce the underlying documentation so that Kea could see the details for itself. The difficulty I have with that is that unless the Libra Trust had assets in excess of $50,000 Mr Watson did not have to disclose anything at all in relation to it under this paragraph, and I do not think I can rely on his failure to give further explanations as in itself proving that it did have such assets.

178. Ms Jones referred me to the decision of Teare J in *Ablyazov (HC)* at [123] where he had to consider whether Mr Ablyazov had failed in breach of an order to disclose an interest in a company called Bubris. Having decided that the ostensible owner was a mere nominee for Mr Ablyazov and that his evidence that Bubris had no net assets could be put on one side as unreliable, he said that there was no other evidence as to value and Mr Ablyazov had chosen not to tell him its true value, but had taken steps to conceal his ownership of it, and in those circumstances he was sure that it was worth more than £10,000. Ms Jones said that similar considerations applied here: see also *Masri* at [388]-[403] where Christopher Clarke J took a not dissimilar approach. But in *Ablyazov*, Teare J had other evidence that Bubris was valuable. Here in the end I do not think I have any positive evidence that CCA's interest in CCP as at October 2018 had any substantive value at all. Ms Jones referred to Mr Watson's attempt to use the Chesa Lumpaz proceeds to pay VG's fees and his threat to hold Kea responsible if anything of value was lost; but that seems to me too slender a basis on which to conclude beyond reasonable doubt that CCA did have substantial value at the relevant date. What Mr Watson referred to was the "*potential* of the assets" and "interests in *contingent* outcomes" (paragraph 167 above), and so long as Project Benni remained a real possibility I think that is readily explicable; and it is apparent from the Investment Advisory Agreement as amended and restated in November 2018 that it was still hoped in November that Project Benni might go ahead.

179. I have not detailed all the points on which Ms Jones relied, but I have said sufficient to indicate why I am not satisfied that CCA, and hence the Libra Trust's interest in it through Calibre's 35% holding, was worth anything of substance in October 2018. Ms Jones may be right that there was in fact more to this than Mr Watson has disclosed, but the onus of proof is firmly on Kea, and unless Kea can establish that it was worth at least $50,000, it cannot show that there has been a breach. I find that this has not been established to my satisfaction and that this count has not been made out.

Count 3(d) – FOH loan

180. Count 3(d) alleges that among the matters Mr Watson failed in breach of paragraph 14 of the September Order to disclose were:

> "the location or value or details of a loan receivable from "FOH Online Corp" in the sum of USD2,143,212".

181. Included in the spreadsheet detailing Mr Watson's own assets attached to his 2nd affidavit (paragraph 145 above) were various loans. One of these was a loan of

$2,143,212 to "FOH Online Corp.". The spreadsheet contained various columns for details to be given (such as "Comments", "Agreement Date" and the like) but the only ones completed for this loan were the following: (i) under "Term / Notes" it said "No loan agreement"; (ii) under "Loan Parties" it said "EW and FOH Online Corp."; and (iii) under "Real value USD" it gave the same figure as the nominal value, ie $2,143,212. No other information in relation to this loan or FOH Online Corp. (**"FOH"**) was given at all: Ms Jones pointed out that by contrast with other borrowers, where their location was given (such as "Hart Acquisitions LLC (USA)" or "Leonie Investments Ltd (BVI)") nothing was even said as to where FOH was incorporated. A little more information (but not much) could be found in the spreadsheet detailing the Valley Trust's assets where one of the assets listed was "FOH Online" with a value of $18,395,430; under "Notes" this said "Cullen Investments Wholly owned online retail business".

182. Ms Jones took me through what Kea had subsequently discovered, which she described as a pretty baffling story. On 22 October 2018 Farrers wrote a long letter to Grosvenor Law complaining of numerous deficiencies in Mr Watson's disclosure. On 5 November 2018 Grosvenor Law wrote to Farrers a long reply which among many other matters referred to the fact that they had recently been made aware of a proposed value of FOH of $23.472m in relation to a proposed transaction under which CIL would sell FOH to Naked Brand Group Ltd (**"Naked"**). That enclosed an e-mail dated 25 October 2018 from Mr Davis-Rice to Mr Gibson with a proposed allocation of proceeds "for a settlement tomorrow". The proposed transaction is not explained but it indeed appears to value FOH at $23.472m to be settled by debt forgiveness of some $9.9m and the issue of some 4.5m shares in Naked at a price of $3, of which 714,404 shares would be distributed to Mr Watson to clear his debt of $2,143,212. (The e-mail does not indicate if the $ figures are US$ or NZ$).

183. Also enclosed with Grosvenor Law's letter was an Excel spreadsheet with a General ledger reconciliation of "EJ Watson loan account" for "Fredricks of Hollywood" (**"the FOH ledger"**). This showed a total of NZ$2,143,212 outstanding (here specifically identified as NZ$). The account starts with an (undated) accrual to Mr Watson of $2.6m in respect of inventory, and after various interest charges and partial repayments to Mr Watson there is a payment to Mr Watson of $3m on 2 March 2017, followed by other advances and payments including payments to Mr Watson of $1.5m (29 March 2017), $900,000 (24 April 2017) and $1.2m (30 January 2018). Embedded notes against each of these four payments read "via K Rattan".

184. The next relevant thing that happened was that Farrers received a letter dated 16 November 2018 from Wynn Williams, a firm of New Zealand lawyers acting for CGL and CIL (but not for Mr Watson), notifying Farrers that the sale by CIL of FOH to Naked was proceeding. Among other things they said:

> "As you will be aware, FOH has a debt to Mr Watson of US$2,143,212. This debt will remain owing by FOH and is not affected by the transaction."

It also said that Naked would not be contracting with, or otherwise exchanging consideration with, Mr Watson as part of the sale of FOH (although it disclosed that Ivory Castle would be receiving some 787,944 shares as part of a settlement of potential liabilities, but their instructions were that Ivory Castle was associated with Mr Gibson and that Mr Watson had no interest in it).

185. Mr Watson then attended on 19 December 2018 (before me) for cross-examination on his assets pursuant to CPR Part 71. In relation to many of the questions he said that he did not have the information with him in the witness box, and thereafter I made a further Order by consent dated 19 December 2018 under which Mr Watson was to swear affidavits providing certain information and exhibiting certain documents. One of the questions he was ordered to provide information about was whether there was a loan agreement between him and Fredricks of Hollywood or FOH, and why various payments were recorded on the ledger as being made via Mr Rattan.

186. That was answered in Mr Watson's 7th affidavit sworn on 31 January 2019. He said that there was no written agreement between himself and Fredricks of Hollywood or FOH; that the figures in the FOH ledger did not reconcile to the bank account reconciliation prepared by his team and he had asked Bendon to explain the differences; and that he did not recollect Mr Rattan being paid from FOH and had asked Mr Davis-Rice to provide details so he could provide a full explanation.

187. That explanation was given by Mr Watson by letter dated 8 March 2019 to Farrers. It is a complex one that is difficult to summarise but simplifying somewhat it amounts to this:

(1) Mr Rattan owed Bendon money. In March 2018 Bendon's auditors were concerned about Mr Rattan's creditworthiness and proposed writing down the value of this debt, which would have affected Bendon's balance sheet and prevented it meeting the capital requirements for a proposed Nasdaq listing.

(2) A solution was proposed under which in order to allay the auditors' concerns Mr Watson would absorb Mr Rattan's advance against his own FOH loan account, the intention being that Bendon would be able to get the money back to Mr Watson by paying a higher price for FOH, it having been proposed for some time that Bendon would acquire FOH from CIL.

(3) However Bendon then merged with Naked Inc, and Naked was listed on Nasdaq. The Naked Board would not support the higher value for FOH, and re-priced the deal downwards. But FOH was operationally dependent on Bendon so there was no other possible buyer and it was decided to accept Naked's terms. That meant that value could not be delivered to Mr Watson to make him whole for having absorbed Mr Rattan's advance. Nor did Naked have the cash to repay him the FOH loan.

(4) The upshot was that Mr Watson was not made whole for enabling the merger and listing to proceed, and had to abandon the amount he had expected to recover through the sale of FOH.

In other words, as I understand it, the four "repayments" shown on the FOH ledger as having been made to Mr Watson via Mr Rattan were not paid in cash, but were the result of the debt due from FOH to Mr Watson being set off against amounts owing from Mr Rattan to Bendon.

188. Ms Jones submitted that this count had been made out. She pointed out that Kea through Farrers had repeatedly tried to get to the bottom of this loan, but still did not know whether an asset existed, or what its value was, or whether it could enforce against it.

189. There were I think three respects in which it is said that Mr Watson failed to comply with paragraph 14 of the September Order in relation to this loan, although the first two are of much less significance than the third. First it is said that he failed to give the location of the asset. As a matter of fact that is undeniably true. But Mr Watson explained that he did not understand what the location of an intangible and undocumented asset was. He now understood that what was wanted was the location of the debtor, but he said that would not have been difficult to find online (something not shown to be untrue); and in his 8th affidavit (sworn for this application) he in fact referred to FOH as being incorporated in Delaware. As a matter of law, a debt does have a location or situs, namely (usually) where the debtor is located, but I think that Mr Watson's explanation that he did not understand this at the time is an understandable one. It is easy enough to understand what is meant by the location of a physical asset, but far less obvious what, if anything, is meant by the location of a non-physical asset such as a loan. Indeed I find in *Dicey, Morris & Collins on the Conflict of Laws* (15th edn, 2012) at §22-025 the following:

> "It was formerly said that a chose in action had no location. This is correct in a general sense, since something with no physical existence can hardly have a location in space; nevertheless, the courts have evolved rules under which a situs is ascribed to choses in action of different kinds in order to apply legal rules originally developed for tangible property."

This was not cited to me but is no more than common sense: the location of an intangible asset is a legal construct for the purpose of applying certain legal rules, not a physical reality. Although I find there was a breach of the order, I think there is at the lowest a real doubt whether Mr Watson appreciated that he should have given the location of this asset and I do not find that Mr Watson acted deliberately or contumaciously in withholding this information; Ms Jones also accepted that Mr Watson had now provided sufficient information in relation to location.

190. The second alleged failure was a failure to give details of the loan. The particular matter that Ms Jones relied on was the failure to give details of the interest chargeable (she did not rely on the confusion between US$ and NZ$ – I agree that she was right not to do so, the evidence pointing to this probably being in fact a US$ loan, which is what Mr Watson said in his October 2018 asset schedule). Again I find that Mr Watson was in breach of the order in this respect: he said nothing in his asset statement about interest, but it is apparent from the FOH ledger enclosed with Grosvenor Law's letter of 5 November 2018 that interest was in fact charged and capitalised each quarter, and I agree that the fact that a loan carries interest is one of the "details" of a loan and should have been disclosed. Mr Watson said that he thought the loan did not carry interest, and I am not persuaded that I can be sure that he is lying about that, which means that at most this comes down to a failure to make inquiries which would have revealed the position. But the fact that the loan carried interest was disclosed shortly afterwards when the FOH ledger was sent, and although no details were given, the rate is easily calculable from the entries in the ledger. For example the interest charged for the December 2015 quarter was $81,242.74; the outstanding balance as at the end of the previous quarter (30 September 2015) was $2,148,811.51; and a few moments with a calculator shows that the interest charged was interest at a rate of 15% pa for exactly 92 days. The breach was therefore in effect cured within less than a month, and even if there were a technical contempt, it is not one that would justify committal.

191. The real complaint is the third one, which is the failure to give the value of the asset. Mr Watson did of course put a value on the loan, namely $2,143,212, but Ms Jones's submission is that this is not the real value, and Kea still has no idea what the true amount outstanding is. She pointed out that a statement of Mr Watson's Net Asset position as at 30 September 2017 (one of a number of such statements, some at least prepared for his bank JP Morgan), gave a figure for "Loan to FOH" of $8.5m, and a statement of "Cash Position" as at 17 October 2017 gave a similar figure, of $8,594,000. These are obviously difficult to reconcile with there only being $2,143,212 outstanding as at October 2018, yet that was the figure given by Mr Watson in his asset statement exhibited to his 2nd affidavit.

192. Ms Jones pointed out that the figure of $2,143,212 was apparently based on the FOH ledger, but (i) Mr Watson said he had not seen that before and (ii) in his 7th affidavit in January 2019 he said that the figures did not reconcile with his team's bank account reconciliation and he had had to ask Mr Davis-Rice for an explanation. That she said indicated that he had no basis for putting forward the figure in October 2018 as the correct figure.

193. Then he gave an explanation in his letter of 8 March 2019 which Ms Jones characterised as wholly incredible: it was, she said, perfectly apparent from his oral evidence that Mr Watson had no actual recollection of having agreed that Mr Rattan's indebtedness could be set against the loan owed to him by FOH; the account he gave was incomprehensible and made no sense, and it made no sense because it was untrue and Mr Watson had made it up.

194. I do not accept this characterisation, and I do not find that it has been proved, so that I am sure, that Mr Watson has made this up. In essence I do not think the following explanation (which is effectively what Mr Watson's case amounts to) can be regarded as shown beyond reasonable doubt to be false: (i) Mr Watson's team had records which showed the FOH loan at about $8.5m; (ii) however when he and his team were compiling his asset statement in October 2018, someone on his behalf contacted FOH or Bendon to confirm the outstanding figure and was given the figure from the FOH ledger of $2,143,212 – there is evidence that the FOH Ledger was compiled by a Dylan Chatterton, who was not one of Mr Watson's team but who was, he thought, at Bendon – and that that was therefore the figure put in the asset statement; (iii) Mr Watson himself did not see the FOH ledger at the time – this I do not find surprising as he was compiling a very large amount of information from multiple sources, with the assistance of his team, and there is no reason why he personally should have checked the ledger or doubted what he was told; and (iv) when he was ordered in December to provide further information, he could not himself explain why there was such a variance between the figure of $8.5m odd which his team had in their records and the $2.1m odd which they had been given, and hence Mr Watson spoke to Mr Davis-Rice who gave him the explanation that Mr Watson put in his letter of 8 March. None of that seems to me implausible.

195. Nor do I find the explanation given in Mr Watson's letter as incomprehensible as Ms Jones submitted it to be. The story is undoubtedly a complex one, and I agree that Mr Watson plainly did not understand in January 2019 why the loan was only $2.1m odd rather than $8.5m, and had very little recollection of the offset arrangement. But his evidence was that there was a lot going on, that he largely left the detailed arrangements necessary to Mr Davis-Rice, whom he trusted to do what was necessary, and, quite apart from the fact that he was, through Cullen, an 80%

owner of FOH (which largely negated the impact to him of reducing the loan), that – and he said he did vaguely remember this – he would be made good by a higher price being paid for FOH. I am not persuaded that it has been shown, beyond reasonable doubt, that all this is untrue.

196. Ms Jones also referred to the fact that when Mr Watson was facing an application for security for costs in the Court of Appeal (in relation to his appeal against the interest rate used for calculating his liability for equitable compensation) he wrote to Master Meacher on 12 March 2019 stating that his letter to Farrers of 8 March 2019:

> "should make it very clear that the likelihood of recovering any amount in respect of this asset is negligible."

In cross-examination he suggested that there was nothing inconsistent between this assertion and the value he placed on the asset in October 2018: the loan, he said, had a different value depending on the context, and it was of negligible value for the purpose of raising money to meet an order for security but that, given time, he believed he would be able to collect the loan. I did not find that particular explanation very convincing – the letter to Master Meacher plainly suggests that there was a negligible prospect of recovering anything. I think that does cast real doubt on whether the loan was actually worth $2,143,212 in October 2018, or how easy it would be to collect now. But it is not enough for Kea to say that there are doubts about the collectability of the loan. What they need to show is that Mr Watson gave a value for the asset in October 2018 that was wrong; I find this has not been established. It is equally likely that he was understating the recoverability of the loan when writing to Master Meacher as that he was overstating it when swearing his 2nd affidavit – as far as I can see the letter of 8 March 2019 that he referred to in fact said nothing about how collectable the loan then was. That would depend on whether there was reason to think that the management of FOH would dispute the figures in the FOH ledger, and whether FOH was able to meet its debts, but I have no evidence about either of these matters, either as at today, or, more pertinently, as at October 2018.

197. In those circumstances I find that it has not been shown that Mr Watson failed to disclose the value of the loan, and save for the minor respects in which the order was broken which I have referred to above, none of which would justify a committal, I find that this count is not made out.

Count 3(e) – Hart loan

198. Count 3(e) alleges that among the matters Mr Watson failed in breach of paragraph 14 of the September Order to disclose were:

> "the value or details of an apparent loan receivable from Hart Acquisitions LLC in the sum of $7,210,535."

199. The second loan included in the spreadsheet detailing Mr Watson's own assets attached to his 2nd affidavit (paragraph 145 above) was a loan of $7,210,535 to "Hart Acquisitions LLC (USA)". The columns completed for this asset were as follows: (i) under "Comments" it said "Farms – Eric Watson's brother's entity"; (ii) under "Term / Notes" it said "No loan agreement"; (iii) under "Loan Parties" it said "EW and Hart Acquisitions LLC (USA)"; and (iv) under "Real value USD" it said "-";

and (v) under "Notes" it said "After repayment of Queensborough Bank and Cullen there will be nothing left".

200. One of the assets included in the spreadsheet detailing the Valley Trust's assets was a loan to "Hart Acquisitions LLC" with a value of $12,622,555; under "Notes" this said "Cullen Investments Ltd".

201. As with the FOH loan, Grosvenor Law's letter of 5 November 2018 gave further details in answer to Farrers' enquiries. These were as follows:

(1) Hart Acquisitions LLC was an entity 100% owned by Mr Watson's brother (in fact half-brother) Richard Watson.

(2) It operated two businesses: Hart Agriculture (a farming business) and Hart Acquisitions (an equity trading business).

(3) As far as Mr Watson was aware the current valuation of land, improvements and livestock (ie Hart Agriculture) was $21,621,000; and the equity holdings (ie Hart Acquisitions) consisted of a single holding worth $808,368, so the total asset value of Hart Acquisitions LLC was $22,429,468.

(4) The following lenders had secured loans outstanding from Hart Acquisitions LLC: (i) Queensborough National Bank and Trust Company (**"QNBT"**) in the sum of $11,230,000 and (ii) CIL in the sum of $12,622,555 (the figure given in the Valley Trust asset statement), that loan having been originally made in April 2009 and replaced by an agreement in July 2017, which was further amended in December 2017, in each case to allow for additional secured advances.

(5) Mr Watson's loan (or, to use the language of Grosvenor Law's letter, "what Mr Watson considers as his loan to Hart Acquisitions LLC" – Ms Jones pointed to this strange terminology) was undocumented and unsecured. Mr Watson believed there to be a third secured loan in the region of $4m from Hart Holdings USA LLC (an entity connected to Mr Tim Connell in which Mr Watson was not involved); and since the combined amount of the three secured loans exceeded the aggregate of the current valuations of the assets, Mr Watson considered that the real (recoverable) value of his undocumented loan to Hart Acquisitions LLC was nil.

202. Farrers had also raised another query, based on the fact that in a Net Asset Statement dated 30 November 2018 prepared for JP Morgan, Mr Watson had claimed 100% ownership of "Hart Agriculture" and 56% ownership of "Hart Acquisitions". Grosvenor Law's explanation of this was as follows. As to Hart Agriculture:

> "The 100% ownership figure used in Mr Watson's asset statements provided to various banks in the past referred to a then-live proposal that Cullen Investments Ltd and Mr Watson discussed with Richard Watson by which the two lenders would have been able to acquire Hart Acquisitions LLC in lieu of/as a repayment of the Cullen Investments Ltd/Eric Watson loans. The proposal was eventually not agreed and the idea was dropped entirely in 2017."

And as to Hart Acquisitions, Grosvenor Law said that Mr Watson was hoping, under an "undocumented oral agreement" to receive 56% of the net profits of the equities trading business, but it had not performed well enough to justify any payments to

him and he had not received any. Mr Watson did not expect that it would produce payments to him which was why it was not included in his asset statement.

203. Mr Watson disclosed a schedule of payments to Hart Acquisitions LLC. This starts with an entry in January 2013 with an amount of "£24k from EW???" (not included in the total) and continues with an entry for $175,000 for August 2013 (paid from "JPM 501", which is evidently a reference to Mr Watson's 501 account at JP Morgan), followed by numerous other entries, all in $ and many of them substantial, including one of $750,000 and another of $1m; the total is given as over $7.2m. It is to be noted that the last 7 entries, amounting in total to over $130,000, were all in 2018 – that is after the date when Grosvenor Law said that the proposal for Mr Watson and/or CIL to acquire Hart Acquisitions LLC had been "dropped entirely".

204. In October 2018 Farrers wrote to Hart Acquisitions LLC asking for confirmation of the debt to Mr Watson; the response came in a letter dated 19 November 2018 from Mr Robert Wright, an attorney in Georgia, in which he said that Hart Acquisitions LLC was not in fact indebted to Mr Watson for any amount; there was no promissory note, nor loan agreement or other document between it and Mr Watson.

205. On 28 February 2019 Mr Watson made a witness statement in opposition to the application for security of costs in the Court of Appeal. Here he referred to an answer which he gave when cross-examined on his assets on 19 December 2018, when he had said that he might still reach agreement with his brother about converting the loans to equity and that it was therefore still possible that he might end up with an equity interest. In his witness statement for the Court of Appeal he said this answer was given in the context of being able to persuade his brother that the payments he made to Hart Acquisitions LLC should be "reclassified" and recognised as repayable loans or convertible loans; that he was currently a long way from being able to do that, but that he had not given up hope of doing so. He also gave an explanation for the 7 payments in 2018 which he explained as being payments to creditors of Hart Acquisitions LLC so as to protect what he believed to be his investment. He commented that it now seemed as if he might have a dispute with his brother about the status of the payments he had made; but that he was not an owner although he had hoped he might be granted equity.

206. In his 8th affidavit for these proceedings Mr Watson said that he believed that the payments he made to Hart Acquisitions LLC were loans, but that they had no value because the secured loans would absorb the total value of the asset; and that when he made the payments in 2018 he was entirely unaware that Hart Acquisitions LLC would subsequently deny they were loans.

207. Ms Jones however showed me documents that she said put a rather different complexion on things. These were disclosed by Mr Gibson in November 2019 in proceedings brought by Kea against him and Ivory Castle, now compromised, in which Kea's case was that Ivory Castle (ostensibly owned by Mr Gibson's interests) was in fact holding assets as nominee for Mr Watson. They are as follows:

    (1) The accounts for CIL for the year ended 31 March 2009 show that it paid for Richard Watson's mobile phone and domestic and international travel; and that among its assets were advances to "Hart Acquisitions Ltd" of some $4.25m.

(2) In August 2010 Mr Mark Flay (who worked at Cullen) sent an e-mail to Mr Watson with a list of assets and liabilities "which you have an economic interest in, ie it ignores legal structure". He said that if Mr Watson wanted to cash everything except Bendon and certain other assets, he could probably get to a cash position of NZ$50-75m depending on various things including whether selling the Dairy Farms happened. The list included:

> "US Dairy - $11m [ie NZ$] – based on US$8m, being $4m of equity in CAGZ and $4m of equity in Hart via Cullen loans."

(3) In September 2010 Mr Flay sent Mr Watson a further e-mail with a cashflow analysis showing what was being earned or spent on various matters, including:

> "US Dairy – positive [NZ$]927k. This is the net number based on the Note repayments ex CAGX, less the funding costs of Hart."

Mr Watson's response to Mr Flay and Mr Gibson was to the effect that he was concerned at the high monthly run rate of costs and wished them to adopt the same "PRE approval process" as Mr Paul Vassilakos used so he could get a decent understanding of the cash burn in advance. As appears below Mr Vassilakos, who worked with Richard Watson assisting him with financing and accounting, sought approval in advance from Mr Watson for expenditure on the dairy farm business run by Hart Acquisitions LLC.

(4) In January 2011 Mr Flay sent Mr Watson "an initial cut of your Net Assets for the UK Rich List". This included:

> "US Dairy – NS13.7m, being approximate equity in the Hart farms and CAGZ."

(5) A Balance Sheet of Mr Watson's assets as at 25 January 2011 prepared for JP Morgan included under Commercial Real Estate a value of $10.471m for "Cullen Agriculture", with the accompanying notes showing that this was the equivalent of NZ$13.7m odd for US Dairy. A similar Balance Sheet as at 14 November 2011 (signed by Mr Watson as being true and complete and a correct statement of his financial condition) gave a similar figure of $10.4m, this time noted as Cullen Agricultural Holdings Corp & Hart Acquisitions.

(6) In November 2011 Mr Vassilakos sent Mr Watson and Mr Flay details of Hart's financing needs through 2012, with budgets for two farms called Girard and Seven Oaks. Mr Watson's response was that he wanted key financials, and then gave the go ahead, saying:

> "Okay, go ahead. Don't miss the budgets this year guys."

(7) On 17 April 2012 Mr Vassilakos sent Mr Watson and Mr Flay proposed changes to the 2012 budgets. These included such items as buying 200 cows, hiring a manager, expansion of the farms and the purchase of new equipment, and would require capital of $1.013m, to be financed as to $485,000 by loans from QNBT and vendor financing for equipment, and "$528k in equity". On 19 April 2012 Mr Vassilakos asked Mr Watson whether he had had a chance to review the expansion plans "which require your approval", to which Mr Watson replied:

> "$528k maximum equity approved (subject to your arranging balance in debt finance)."

(8) A similar exercise was repeated in August 2012 with Mr Vassilakos putting forward to Mr Watson a proposal involving an extra $350,000 in capital, to be financed by $150,000 increase in debt from QNBT and $200,000 in equity, which Mr Watson approved as follows:

> "I'm happy you and Richard have this business heading in the right direction. I will make additional capital requested available."

(9) Again in November 2012 Mr Vassilakos put forward to Mr Watson a proposal involving a requirement for a further $610,000 of capital, this time for purchasing and improving 163 acres of land, which would require $232,000 in "new equity funding", to which Mr Watson simply replied "Go ahead".

(10) A Net Asset Statement for Mr Watson as at 30 November 2013 prepared for QNBT (and said to represent "the net position of assets in which Mr Watson has a direct, indirect or beneficial interest in") gives a figure of $17.4m for "Cullen Agritech and Natural Dairy" (a structure chart for the Valley Trust shows CIL as having an 82.5% interest in Cullen Agricultural Holdings Corp which had a subsidiary called Natural Dairy Inc, which in turn had a subsidiary called Cullen Agricultural Technologies Inc.) A Balance Sheet for Mr Watson as at 20 February 2014 prepared for JP Morgan gave a similar figure of $17.4m for "Cullen Agricultural" showing a $6m increase on the figure for 31 December 2012 – a note attached showed the same figure as "US Dairy".

(11) A Balance Sheet for Mr Watson as at 31 December 2015 included under Commercial Real Estate a figure of $25m for "Hart Dairies". It also included under Private Equity Funds a figure of $5m for "Hart Acquisitions".

(12) In March 2016 QNBT asked Mr Vassilakos for an updated personal financial statement for Mr Watson since the last one they had on file was November 2014.

(13) A Balance Sheet as at 30 September 2017 in the JP Morgan format continued to show a value of $5m for Hart Acquisitions under Private Equity Funds, and to show Hart Dairies under Commercial Real Estate, this time with a value of $26.25m and a note "Loan from Cullen Investments".

208. A press release dated 23 October 2018 from "Hart Dairy" announced the formation of a new joint venture company between Hart Dairy and an Australian distribution company to distribute Hart Dairy's line of dairy products to the Asian market. It refers to Hart Dairy as a producer of milk and other dairy products, located near Augusta, Georgia and sitting on more than 4000 acres of farmland with more than 3,500 cows. It refers to Mr Connell as Hart Dairy's CEO. An e-mail from Mr Connell to Mrs Watson-Burton dated 28 October 2018 refers to him as having "started last year with Hart Dairy at a $40m valuation" but:

> "Once Publix is rolled out Hart will be worth north of $150m."

Mr Connell signed the e-mail as "CEO Hart Holdings LLC".

209. A further press release from Hart Dairy dated 6 June 2019 referred to a funding round by Hart Dairy, again described as sitting on more than 4,000 acres near Augusta with more than 3,500 happy cows. It again refers to Mr Connell as Hart Dairy's CEO, and also describes Hart Dairy as:

> "under the direction of Dr Richard Watson, a pioneer in world-class grazing and pasture-based techniques".

210. An analysis by Farrers of Mr Watson's bank statements shows payments into his bank account over the period from March to August 2019 of over £100,000 from "Richard Hart", "Cullen Systems" or "RH and BA Watson". In his 6th witness statement dated 18 September 2019 Mr Watson referred to income that he formerly received by way of consultancy fees from Southern Farming Systems LLC (which he said in oral evidence was now called Cullen Systems) which was set up to help his brother monetise the pasture-based processes he had developed by introducing them to other dairy farmers who wished to produce grass-fed milk.

211. On 6 December 2019 Clyde & Co, who were then acting for Mr Gibson, notified Farrers (under a notification injunction to which Mr Gibson was subject) that Mr Gibson intended to invest in shares in Hart Dairy Creamery Corp (which it referred to as "Hart Dairy" but which I will refer to as **"HDCC"**). He had previously intended to purchase such shares from Hart Acquisitions but now intended to subscribe for them directly. The letter explained that HDCC was a Delaware corporation, predominantly owned by family interests, Mr Connell and Hart Acquisitions being shareholders in Hart Dairy. It continued:

> "For the avoidance of doubt, [HDCC] is an entirely separate entity to Hart Acquisitions (which also trades as Hart Agriculture), the latter being wholly owned by Mr Richard Watson and operating as a dairy farming business which is a class of agriculture for long-term production of milk, which is processed for eventual sale of a dairy product. [HDCC] is a procurer of the milk production referred to, from a co-operative of local farmers including Hart Agriculture."

212. Ms Jones also referred me to 2 sets of proceedings that were issued earlier this year in the United States. Both were issued in the Federal Courts, the first on 31 January 2020 by HDCC and Mr Connell in the US District Court for the Southern District of Florida (on the basis that HDCC, although a Delaware corporation, has its principal place of business in Florida, and Mr Connell is a resident of Florida); and the second on 3 February 2020 by Hart Agriculture Corporation (**"HAC"**) and Richard Watson in the US District Court for the Southern District of Georgia (HAC being a Georgia corporation with its principal place of business at Richard Watson's residential address in Georgia).

213. The two suits are very similar; each is issued against Kea and seeks a declaration that the plaintiffs are not liable on the judgment against Mr Watson in this action, and an anti-suit injunction to prevent Kea from proceeding against the plaintiffs or their assets in England. The complaint in the Florida suit describes HDCC as a business involved in the marketing and production of organic dairy products in the US and the development of facilities and marketing channels for the expansion of that business in the US; that in the Georgia proceedings describes HAC as maintaining and operating a 4,000-acre dairy farm in Georgia. Each asserts that Mr Watson was not then and never had been an owner of or investor in the relevant company (HDCC or HAC), whether beneficially or of record, constructively or

otherwise. The Florida complaint refers to Mr Connell as a shareholder and CEO of HDCC; the Georgia complaint says that Richard Watson is the sole beneficial owner of HAC. Each makes the point that the relevant plaintiffs were not parties to the present action (with the result, as Ms Jones pointed out, that they would not be bound by any findings of fact in the Main Judgment). Each exhibited Mr Graham's 16th affidavit in this action, sworn on 29 January 2020: this was sworn in the context of the proceedings against Mr Gibson and Ivory Castle and referred in some detail to what Kea had discovered about Mr Watson's dealings with the Hart businesses. Mr Watson accepted that he had sent this to his brother.

214. Ms Jones submitted that Mr Watson was not telling the truth when he said that the interest he had acquired for the $7m odd that he had advanced was a loan of no value. She said that his own oral evidence made it entirely clear that the true position was completely different, and demonstrated that Mr Watson advanced monies on the basis that, either directly or indirectly through Cullen, he was entitled to the value in the business in excess of the lending to banks, as follows:

(1) In chief he was shown the Balance Sheet as at 31 December 2015 (paragraph 207(11) above) showing a value of $25m for Hart Dairies, and asked what his economic relationship with Hart Dairies was at that stage. His answer was that Cullen provided all the finance; that it was better for a number of reasons for Cullen "to treat that as a loan"; that it could give you more say in the business and more control than having equity, and be more tax effective; that his brother "certainly owned the company, but he hadn't actually put any equity in"; and that:

> *"So it suited us from a -- certainly having a US owner to borrow money in the US -- Richard was a US citizen. It would have been much harder for a New Zealand company to get involved with a bank in the US and buy a farm. Having him as the owner legally was sensible from that perspective and indeed from a Cullen Investments perspective having control through advancing a loan."*

(2) When asked about the value in the Balance Sheet of $25m, he made it clear that this was not the value of the then loans (which were lower) but was a value for the farm which varied depending on the milk price and number of livestock and the like.

(3) In cross-examination he said that he just continued to advance money to his brother over the years, but:

> *"I did think ultimately we would come to some agreement when or if the company was sold or taken public or some liquidity event that we would look to convert it to equity, pay it back."*

(although he also said that until it was something else, it was "just a loan"). Again when it was put to him that he had provided all the money and all the economic value in the business was his, he said that at some point if they agreed to convert the debt:

> *"there would have to be a discussion with Richard and an agreement, and we would have to agree the appropriate economics above the value of the debt and the advance as to capital in Cullen, yes."*

And when it was again put to him that the value he had in the Hart business was not just the loans but the whole of the equity interest, he said:

> *"Well it wasn't. But that would be my assumption, that at some point that if that event occurred, if for example Hart Acquisitions was to go public or Hart Acquisitions was to be sold, that would be the way that we would look at it."*

(4) When it was put to him that that was his understanding with his brother from the beginning, he said that his brother was a scientist and they did not tend to have many financially-focused conversations but that he trusted himself to be able to negotiate a deal given that they had provided the bulk of the funding; and when it was suggested that that understanding was reached years ago, he said:

> *"I think I would agree in the sense that philosophically we are aligned on that, but what the actual split of any economics over and above the value of the loan, it would have been a specific day, it would have been you have X, I have Y. We just never got to that because there's been no reason to get to that."*

And when he was asked about Grosvenor Law's statement in their letter of 5 November 2018 that the proposal for him to have equity had not been agreed and then "dropped entirely" (paragraph 203 above), he said:

> *"Well, we have also, as I have said before, we have always assumed that any surplus over and above our loans with Hart, the value of that we would take, but we would agree something with Richard at that point in time. So there would be an allocation of Richard's equity, over the years, that he would get a piece of any economics. I touched on this before. We never really finalised on what that might be.*
>
> *We had discussions about it when we were talking about changing the loan to a secured loan to Cullen, but we just never got around to doing it. So we left things how they were, apart from the change in loan.*
>
> *…*
>
> *We didn't spend a lot of time on it and I think we both felt that ultimately we would work it out in due course, which indeed we hopefully will. He is my brother."*

There were further answers to much the same effect which it is not necessary to refer to.

215. Ms Jones says that it is plain from these answers that Mr Watson had an oral understanding with his brother on the basis of which he advanced the $7.2m, which gave him significantly greater rights than he disclosed in his asset statement. It did not matter whether such an arrangement was legally binding: the issue was whether Mr Watson's true interest in Hart is the alleged loan of nil value which he put forward in his asset statement. She said that the Court did not have to find exactly what the arrangement was; it simply had to be satisfied that it was not the mere undocumented and worthless loan which was disclosed by Mr Watson.

216. I accept that Mr Watson's oral evidence, together with the contemporaneous material, strongly suggests that his interest in his brother's business was not just that of an unsecured creditor, but that he expected to obtain – and in all probability if it were ever in his interests to do so would obtain – at least the majority of the equity in the company, if not 100% of it. The general thrust of his evidence is clear enough from the passages I have referred to above: he, either through Cullen or personally, had funded the entire business (over and above bank loans and the like) by way of what was termed "equity funding"; his brother had contributed his scientific expertise but nothing by way of equity, and had been selected to be the owner of the company as he was a US citizen which made it easier for him to obtain a mortgage; and Mr Watson had always assumed that he would take any surplus over and above the amount of loans although he would no doubt agree to let his brother have something ("a piece of any economics"). He was no doubt right in his assessment that he would be in a position to "negotiate" a deal with his brother, who in any event was "philosophically aligned" with him, or in other words was in principle happy that Mr Watson / Cullen as funder would take the lion's share of the equity. I also accept that Mr Watson's oral evidence showed that two things said by him or on his behalf were simply untrue: it was not the case, as Grosvenor Law said in their letter of 5 November 2018, that the proposal that Mr Watson should have equity was "dropped entirely" (paragraph 203 above); nor was it the case, as Mr Watson told the Court of Appeal on 28 February 2019, that he might have a dispute with his brother (paragraph 205 above) – on the contrary, he confirmed in evidence that he had not fallen out with his brother. Indeed he and his brother have an obvious alignment of interest in seeing off Kea's attempt to obtain any value from the Hart businesses, and Mr Watson accepted that he has been helping his brother to that end, liaising with him over his response to Farrers' letter of claim against Hart Acquisitions LLC, and assisting him in relation to the Georgia proceedings.

217. Moreover I accept that it would appear that at least one of the Hart businesses is potentially very valuable. The position is made obscure by the numerous corporate entities called Hart: I have referred above to Hart Acquisitions Ltd, Hart Acquisitions LLC, Hart Agriculture Corporation, Hart Holdings LLC and Hart Dairies and Creamery Corporation, not to mention other entities such as Natural Dairy Inc and Southern Farming Systems LLC. Which of the Hart companies are separate companies and which are the same companies under different names has not been explained, although I assume that what is now HAC is the same as, or successor to, what was Hart Acquisitions LLC. The picture now put forward by Mr Watson and his associates is that HDCC (a Delaware corporation owned by Mr Connell and numerous outside investors which markets the diary products) is an entirely separate business to HAC (a Georgia corporation wholly owned by Richard Watson which holds the farms), and that all the potential future value is in HDCC and none in HAC. But it seems clear that there is a close relationship between them: the reference in the press releases to Hart Dairy (ie one assumes HDCC) sitting on 4,000 acres with 3,500 cows is accepted to be a reference to HAC's farms and cows – Mr Watson said in oral evidence that "sitting on" did not mean that it owned the farms – and Mr Watson also said that he thought HAC was currently HDCC's sole source of milk. No real explanation has been given as to why HDCC was set up as a separate business, or the extent of HAC's (and hence potentially Mr Watson's) interest in it – Clyde & Co's letter revealed that Hart Acquisitions was a shareholder in HDCC, but not the extent of value of the shareholding. The suspicion inevitably is that HDCC was set up with Mr Watson's friend Mr Connell in charge so as to ensure that any profit accrued to a company with which he had no ostensible

connection (but in which he continued to have some real potential interest), while HAC had no surplus assets to repay Mr Watson's unsecured loan, care having been taken to ensure that his personal loan was postponed to Cullen's loan which was turned in 2017 into a secured loan. Mr Watson explained that the value of HAC's farm assets depended on the price of milk, but with (one assumes) all its milk being supplied to HDCC, the potential to manipulate the price so that HAC earned enough to keep the bank happy and all the profits were booked to HDCC, is obvious.

218. For all these reasons I am not surprised that Kea thinks it has not been told the whole picture of Mr Watson's relationship with the Hart businesses.

219. Mr Grant however said that the Court had to focus on the precise allegation made in this count. As specified in the Particulars of Contempt it was a failure to give:

> "the value or details of an apparent loan receivable from Hart Acquisitions LLC in the sum of $7,210,535."

In Mr Graham's 11th affidavit in support of the application, the evidence in support of this count was a single paragraph, which (omitting most references) was as follows:

> "Fifth, in his personal statement … Mr Watson also identified an undocumented personal loan of $7,210,535 to Hart Acquisitions LLC. In their letter of 5 November 2018 Grosvenor Law stated that Mr Watson's loan is *"unsecured and undocumented"*. Mr Watson has disclosed a schedule from which it can be seen that payments have continued to be made very recently, including seven payments during 2018. However, Hart Acquisitions has (in response to a letter from this firm) denied that there was any loan at all. Mr Watson again failed to provide any such explanation in his First (in fact his Third) Witness Statement dated 23 February 2019, which was filed in his appeal. Mr Watson has accordingly not complied with paragraph 14 of the September Order. A copy of a letter which my firm has recently written to Hart is at **[2943]**."

220. I agree with Mr Grant that it is apparent from the authorities I have already referred to above that the Court must confine itself to the terms of the count as specified in the Particulars of Contempt, and that if it is sought to go outside them, it is necessary formally to apply to amend them (which has not been suggested in respect of this count). I also agree that since it is a requirement of CPR r 81.10(3)(b) that the application notice must be supported by an affidavit setting out *all* the evidence on which the applicant relies, a respondent to a committal application who wishes to know in precisely what way he is said to have been in breach of the order is entitled to look not only at the terms of the Particulars of Contempt scheduled to the application notice, but at the supporting affidavit to discover what the applicant relies on.

221. Here a fair reading of the Particulars of Contempt together with Mr Graham's affidavit does not to my mind alert the reader that what would be contended is that the true position is that Mr Watson had an oral understanding with his brother on the basis of which he advanced the $7.2m, which gave him significantly greater rights than he disclosed in his asset statement, nor that the value of his interest might be significantly more than stated. It is true that if one goes to Farrers' letter exhibited by Mr Graham at **[2943]**, one can find there referred to some of the same matters as have been relied on by Ms Jones; but the significant thing to my mind is that these matters are not referred to in the body of the affidavit, or there evidenced, nor does

Mr Graham say in terms that Kea's application is based on the fact that Mr Watson's rights in relation to the Hart business are more extensive or more valuable than he has disclosed. All that he refers to is that although Mr Watson's asset statement referred to a loan, Hart Acquisitions LLC denied that there was one, and Mr Watson had not given an explanation. That does not in my judgment amount to a complaint that Mr Watson has not disclosed the true arrangement with his brother; at most it amounts to a complaint that he has not given "such explanation": that does not make it clear what explanation Mr Graham is referring to, but reading the whole paragraph is best understood as an explanation of the discrepancy between Mr Watson's assertion that there was a loan and Hart Acquisition's denial that there was one.

222. In those circumstances the only questions that I think I can properly consider under this count are: (i) did Mr Watson wrongly state there was a loan when in fact there was none? and (ii) did Mr Watson wrongly fail to explain why he asserted there was a loan when that is denied by Hart Acquisitions LLC? I have not overlooked the fact that the Particulars of Contempt refer to a failure to disclose the *value* of the apparent loan, but there is nothing in Mr Graham's evidence that begins to suggest that Kea would rely on evidence that the loan was more valuable than Mr Watson said, and I do not think such a contention is open to Kea on this count.

223. As to (i) I do not think it can be said to have been shown that there is no loan. It is common ground that Mr Watson made payments of some $7.2m. It has not been suggested, by anyone, that they were gifts. It seems to me that the default position is that payments made to a business for business purposes are to be regarded as loans unless referable to some other arrangement. Ms Jones says that the nature of the arrangements between Mr Watson and his brother may mean that they were not loans at all, but she did not suggest that she was in a position to be able to say that was definitely the case, and Mr Watson's consistent evidence, as set out above, is that they were to be considered as loans until some other agreement was come to, although he expected to be able to convert them into equity. The evidence I have heard on this application (quite apart from the evidence at trial and subsequently) makes it clear that it was a very common feature of Mr Watson's way of doing business to rely on loans as a means of giving him, or entities associated with him, interests in business ventures, and as he says there may be a number of reasons why that was advantageous to him, but I do not think I can conclude, and certainly not beyond reasonable doubt, that it has been shown that Mr Watson was wrong to refer to the payments to Hart as loans.

224. As to (ii), I do not think this is made out either. I do not see how Mr Watson could have been expected in October 2018 to explain the difference between his position and that of Hart Acquisitions when the latter was only articulated in November. What Farrers no doubt really want is a full explanation of Mr Watson's dealings with and interests in all the Hart businesses, but for the reasons I have sought to explain, I do not think that can fairly be said to be the count that is charged.

225. In those circumstances I find that this count has not been made out.

Count 4

226. Although both Count 3(f) naturally comes next, both numerically and chronologically, I find it more convenient to address Count 4 next.

227. Count 4, as amended to correct the date for compliance, reads as follows:

> "Eric John Watson in breach of the order of 12 November 2018 ("**the November Order**") failed by 4pm on 21 December 2018 or at all to provide either and/or both of:
>
> (a) a list and explanation of all of his interests (as defined in the said order) held by his mother, Joan Pollock, particularly the sum of NZ$3.5m transferred from Valley (NZ) Limited to an account in the name of J M Pollock on 8 May 2018 as required by Schedule 1 Part 2 Paragraph (12); and
>
> (b) bank statements as required by Schedule 2 Part 2 Paragraph (47) of the said order."

228. Following Farrers' letter of 22 October 2018 to Grosvenor Law and Grosvenor Law's reply of 5 November 2018 (paragraph 182 above), Kea issued an application, which resulted in a consent order, made by me on 12 November 2018, which is the November Order.

229. The relevant parts of the November Order are as follows:

(1) Paragraph 1 provided as follows:

> "In this Order and its schedules, "Mr Watson's interests" shall include interests or assets (including choses in action) held by:
>
> 1.1 Mr Watson personally whether legally or beneficially
>
> 1.2 any trust of which Mr Watson or Mr William Gibson (**"Mr Gibson"**) is a beneficiary or appointor or protector or of which Mr Watson is the settlor or economic settlor or whose trustee(s) or appointor(s) or protector(s) routinely act in accordance with the instructions of Mr Watson or Mr Gibson or any other person who in turn routinely acts in accordance with Mr Watson's or Mr Gibson's instructions;
>
> 1.3 any person who holds assets as nominee for Mr Watson or on the basis, whether documented or undocumented, that Mr Watson in fact shares in the economic interest in such assets (including for the avoidance of doubt Mr Gibson and his related trust entities, the Heron Bay Trust or Ivory Castle Limited (whether or not Mr Watson considers them to fall within paragraphs 1.1 to 1.2 above);
>
> 1.4 any company or other entity which is directly or ultimately owned, in whole or in part, by any person falling within paragraph 1.1, 1.2 or 1.3 above."

(2) Paragraph 5 provided:

> "Mr Watson shall by 4 pm on 21 December 2018 swear and serve upon Kea an affidavit providing the information set out in part 2 of Schedule 1 to this Order."

(3) Paragraph 7 provided:

> "Mr Watson shall by 4 pm on 21 December 2018 provide to Kea's solicitors copies of the documents set out in part 2 of Schedule 2 to this Order."

(4) Schedule 2 part 2 paragraph (12) provided, so far as relevant:

> "A full list and explanation of all Mr Watson's interests held by:
>
> …
>
> (iv) Mr Watson's mother, Joan Pollock;
>
> …"

(5) Schedule 2 part 2 paragraph (47) provided, so far as relevant:

> "The bank statements for 1 January 2018 to date for the accounts from which the following sums were transferred to Mr Watson's BNZ account no 00/02-056-0180535-000:
>
> (i) Payment of NZ$575k from "0271/271000000/002" on 27/7/18 (which has a code "J Pollock");
>
> (ii) Payment of NZ$530,000 from "0271/271000000/002" on 20/7/18;
>
> (iii) Payment of NZ$575k from "0271/271000000/02" on 18/6/18;
>
> …"

230. The November Order bears a penal notice on its face. It was sealed on 13 November 2018, and a sealed copy was served personally on Mr Watson at Grosvenor Law's offices on 15 November 2018.

231. Pursuant to that order Mr Watson swore his 5th affidavit dated 20 December 2018. Paragraph 3 of the affidavit was as follows:

> "Reference in this affidavit to "my interests" is to the interests defined in the Order as "Mr Watson's interests" and is not intended as an admission that in fact I have a personal interest in any such asset."

That, as Ms Jones submitted, indicates that Mr Watson and those advising him had the expansive definition of "Mr Watson's interests" in paragraph 1 of the November Order in mind when the affidavit was prepared and sworn.

232. In answer to paragraph (12) of part 2 of Schedule 2 of the November Order (which required Mr Watson to provide a full list and explanation of all his interests held by, among others, Mrs Pollock), his affidavit referred to the contents of a USB drive which he exhibited, and specifically to File 1. So far as concerns Mrs Pollock this was as follows:

> "Joan is my mother and a settlor and/or discretionary beneficiary of a number of trusts connected with me. Other than in respect of trusts of which Joan Pollock was the settlor and I am a discretionary beneficiary (details of which I have already provided to Farrer & Co), neither she, nor any trust, company or entity connected with her holds any interest for me or on my behalf."

233. In answer to paragraph (47) of part 2 of Schedule 2 of the November Order (which required Mr Watson to provide bank statements for, inter alia, account 0271/271000000/002), his affidavit contained the following:

> "As regards the bank statements for 1 January 2018 to date for the accounts from which the various sums (as listed in the Order) were transferred to my BNZ account no 00/02-0256-0180535-000: the statement[s] are from originating banks that I do not control and I have asked the owners of those accounts (Joan Pollock and Ivory Castle) for copies of the statements. Both parties declined to provide them to me".

234. Ms Jones took me through the history of what Kea has subsequently discovered:

(1) When Mr Watson was cross-examined on his assets on 19 December 2018, he was asked about the payment into his account of $575,000 on 27 July 2018; he said he assumed that was his mother's account, but would rather not guess and would get the exact answer.

(2) That (and similar answers) led to a consent order made by me the same day which required Mr Watson to swear affidavits providing the information scheduled to the order, including:

> "3. What happened to the proceeds of the sale of the Westbury Estate, the Warriors and Soul Bar?
>
> …
>
> 6. In respect of the payment of $575,000 received into Mr Watson's BNZ account on 27 August 2018:
>
> a. Who is the holder of the bank account from which the payment came?
>
> b. Which bank is that account held with?
>
> c. In which jurisdiction?
>
> 7. What other assets are held by the holder of the bank account from which the said $575,000 was paid?"

(3) Pursuant to that order, Mr Watson swore his affidavit dated 18 January 2019. The answer to Question 3 included a statement that the proceeds of sale of the Warriors (a rugby league team) were used, among other things, for the following:

> "4.3.2.2 Purchase of 50% stake in Malibu Investments Ltd: NZ$3,500,000;
>
> 4.3.2.3 Repayment of Eric Watson loan: NZ$420,000".

The answers to Questions 6 and 7 were as follows;

> "4.6 In respect of the payment of NZD 575,000 received into Mr Watson's BNZ account on 27 August:
>
> 4.6.1 Joan Pollock, my mother, is the account holder from which the payment came;
>
> 4.6.2 As far as I know the originating account was with ANZ Bank, Devonport Branch;

4.6.3 As far as I know, the jurisdiction of the account is New Zealand;

4.6.4 I assume the three payments were recorded as coming from account "0271/2710000000/002" and not from "Pollock, Joan" (like other smaller payments) because the three payments were made through cheque payments rather than direct transfers, and I assume this was because my mother's online/telephone banking limits were too small to make the payments on-line and she had to use cheques.

4.7 I do not know what other assets are held by the holder of the bank account from which the said NZ$575,000 was paid."

(4) On 21 January 2019 Farrers wrote to Grosvenor Law saying that the purchase of the 50% share in Malibu Investments Ltd (**"Malibu"**) was simply the exchange of asset between two trusts, NZ$3.5m being transferred from the Valley Trust to the Eric John Watson Family Trust (**"the EJW Trust"**) and asking what had happened to the NZ$3.5m in the hands of the latter and any subsequent holder.

(5) On 28 February 2019 Mr Watson made his witness statement in opposition to security for costs in the Court of Appeal. He referred to NZ$2m having been made available to him by his mother, and said:

"25. …The original source of the money that I received was the Valley Trust, of which I am a discretionary beneficiary; had the payment been made to me directly from the Valley Trust it would have attracted a high personal tax charge. Following specialist tax advice, the Valley Trust money was used to acquire an asset of a trust of which my mother was a beneficiary (but I was not) and she gifted some (not all) of these proceeds of sale to me, resulting in a legitimate tax saving. I was therefore the discretionary beneficiary of the trust from which the money that was gifted to me originated but it was passed to me in a legally tax efficient way…. So this is not, as described by Mr Graham, an example of so-called nominee arrangements whereby somebody else secretly holds my money in their name. Subject to the discretionary powers of the valley trust trustee, I could have been a beneficiary and (subject to trustee discretion) received this money in my own right."

Later in the same statement he said:

"47. …The fact is that in the past I had money and was able to call on friends and family to lend me money, but my legal expenses have been such that now I have no funds of my own and my ability to borrow (including from my mother, who has no money left to lend me) is almost entirely exhausted."

And later still:

"53. …my mother funded some family holidays last summer and this winter. She felt that my children (her grandchildren) should still have the opportunity to have some family holiday time…

54. What small amount I spend on living is given to me by my mother.

> Her financial resources are now largely depleted, as is evident from her bank statements which she has shown me to alert me to this."

and he exhibited a number of bank statements.

235. The exhibited bank statements showed the following (all figures in this paragraph, and in the rest of the discussion of Count 4, are NZ$):

(1) A statement for an account in the name of the EJW Trust with BNZ showed a receipt of $3.5m from a company called Valley (NZ) Ltd for "MIL shares" on 8 May 2018, and a transfer out of the same amount on the same day to Mrs Pollock.

(2) A statement for an account in the name of the Valley Trust with BNZ showed a receipt of $245,000 from Mrs Pollock on 17 May 2018.

(3) The remaining pages were a statement of transactions between 15 May 2018 and 25 February 2019 on an account (account no. 06-0583-0203351-03, titled "Rainy day") (**"the Rainy Day account"**) in the name of Mrs Pollock with ANZ Bank New Zealand Ltd. The Rainy Day account was an online account and the statement was downloaded from the internet on 25 February 2019.

(4) The statement shows that on 17 May 2018 there was a transfer of $3,255,000 to the Rainy Day account from another account (no. 06-0583-0203351-00 – ie the same number save that the last element is "00" rather than "03") (**"the 00 account"**). Mr Watson's evidence is that this was his mother's current account. The £3.255m is evidently the $3.5m transferred to Mrs Pollock less the $245,000 paid to the Valley Trust. It took the balance on the Rainy Day account to $3,300,445.49 which means that before the receipt there was $5,445.49 in the account.

(5) In May 2018 $26,000 was transferred to the 00 account noted as "Rent for Clifton", and in June 2018 a further $26,000 to account 06-0583-0203351-10 (**"the 10 account"**), noted as "rent thru 26/2/19". As appears below, this refers to rent on Mrs Pollock's house.

(6) Also in May a transfer of $40,445.00 was made to account 06-0583-0203351-04 (**"the 04 account"**). It is noticeable that it is almost, but not quite, a round number, and that the odd $445 is reminiscent of the $5,445 in the account on 17 May, which suggests that it was designed to include the $5,455.

(7) Payments of $500 per week to the 00 account were made between July and August 2018. Other evidence establishes that Mr Watson had historically made regular payments to his mother of $500 per month from his personal accounts. Then in August 2018 a transfer of $26,000 was made to the 04 account, and in February 2019 a transfer was made, again to the 04 account, of just under $26,000. As appears below this was subsequently used to pay $500 per week to Mrs Pollock.

(8) But by far the largest value payments were made to Mr Watson or for his benefit. This included $600,000 on 18 June, $530,000 on 20 July and two

payments, of $575,000 and $585,000, on 27 August 2018; a payment to Grosvenor Law of nearly $60,000 in October 2018, a payment of $133,000 in January 2019 to Ran Meinertzhagen (for rent on the house Mr Watson was renting in London), and numerous smaller payments. On 8 February 2019 the final $50,000 was transferred to Mr Watson which reduced the account balance to zero.

(9) Ms Jones drew attention to the fact that on 21 December 2018 (when on Kea's case this account should have been disclosed in accordance with the November Order) there was still a balance of over $481,000 on the account; and on 17 January 2019 (the significance of which is explained below) there was still a balance of over $268,000 on the account.

236. On 12 March 2019 Mr Watson wrote his letter to Master Meacher (paragraph 196 above). Included in the letter, under the heading "Sums received from Joan Pollock", was this:

> "I have no control over my mother's financial affairs. She previously declined to give me copies of her bank statements on the basis that she was reluctant to give up her privacy rights and she did not know how these documents would be used (or misused) in the litigation. I pressed her hard and she relented. She does not have to make payments to me from her assets, but at times when I have pressed her she has chosen to do so. The purpose of having her agree to disclose her bank statements was precisely to demonstrate that her financial resources are so depleted so no further money is available to me from her. Even if she still had money available to provide to me (which I believe she does not), it is not certain that she would lend or give it to me."

237. In his 8th affidavit sworn for this application, Mr Watson said among other things:

> "388. In the middle of January 2019 I video called my mother (as I do on a regular basis) and pressed her to lend or give me money because I was desperate to fund my legal costs. She had previously agreed to use her money to help me in my time of need but, by the time of this call, the gradual depletion of her own resources meant that she was unable to continue to support me, as she told me during the video call.
>
> 389. When in my First Witness Statement on the issue of security for costs dated 28 February 2019 … I referred (at paragraph 54) to my mother showing me her bank statements, I was referring to what my mother showed me during her video call. I had told her that I found it very hard to believe that she had no money left to help me and in response she showed me on the call a view of the relevant statements. In this way she demonstrated to me that she could no longer help me financially. When I saw this I then pressed her hard to overcome her (completely understandable) reluctance and send me copies of the statements so that I could demonstrate that this source of financial support was no longer available to me. She eventually agreed…"

Ms Jones pointed out that it was untrue to say that in the middle of January 2019 when this call supposedly took place there was no money left and that Mrs Pollock was unable to make payments to Mr Watson: as at 18 January there was $268,000 left, and even on 30 January 2019 there was over $200,000 in the account (almost all in the event used for Mr Watson's benefit or paid to him).

238. Ms Jones showed me some further documents. One was an e-mail dated 1 May 2018 from Mr Kevin Thorne of Grant Thornton, who gave tax advice to Mr Watson, to Mr Parker. This shows that there had been discussions about how to use the proceeds of sale of the Warriors in a tax efficient way. Among other things he said:

> "You are considering using the sale proceeds to purchase some of the shares in "Malibu" a company in which 50% of the shares are held by the EJW Family Trust…. You were then considering paying the proceeds from that sale to EW's mother who is not UK tax resident. She might then gift some or all of those proceeds to EW. Tax issues aside should you go ahead with this proposal I suggest you should consider taking legal advice to check that the proposed course of action does not amount to a breach of trust given that EW is not a beneficiary.
>
> A number of points arise:-
>
> a. It would be important for any such sale to take place at market value …
>
> b. Paying out the proceeds in the way described above (a capital payment) and then EW's mother passing them to EW would risk EW being taxed as though he had received the capital payment unless there was a gap of at least 3 years between the payment to EW's mother and the onward gift to EW…
>
> …
>
> I have not yet thought of any other route whereby the NZ warriors disposal proceeds could be used tax efficiently but will continue to consider this."

That is consistent with what Mr Watson said in his witness statement in the Court of Appeal (paragraph 234(5) above) about having received advice as a result of which the money was passed to him in a legally tax efficient way.

239. Ms Jones also referred me to a letter written by Mr Watson to Farrers on 21 June 2019. As appears above (paragraph 234(3)) part of the proceeds of the Warriors had been used to repay Mr Watson a loan of $420,000. In this letter he disclosed that on 4 May 2018 he paid his son Sam Watson $162,000, and on 11 May 2018 his former partner Ms Houghton $210,000, in each case the amount being intended to cover their living expenses for 18 months.

240. In the same letter Mr Watson responded to a request from Farrers for all documents recording or evidencing requests for money being made to Mrs Pollock by him or on his behalf. He said he believed all requests were made by Mr Gibson to Mr Watson's sister, Mrs Watson-Burton, by text message, and attached copies of the messages. They start on 3 May 2018 (shortly before the transfer of the $3.5m to Mrs Pollock on 8 May 2018) with a request from Mr Gibson to talk; they continue on 15 June with:

> "Hi Mary, can you please ask Joan to send NZD$600k to Eric's NZD account?"

followed on 19 July with:

> "Hi Mary, can you please ask Joan if she would send NZD$550,000 to Eric in his NZ account, to cover personal expenses, rent etc. Thank you."

and on 23 August with:

> "Good morning Mary,
>
> Further to our conversation yesterday can you please ask Joan if she wouldn't mind setting up a AUD$3k a month automatic payment to you."

241. Ms Jones pointed out that the tone of the requests changed – after the Main Judgment was handed down at the end of July 2018, Mr Gibson tended to phrase his texts as "If you could ask her if she wouldn't mind setting up … if she wouldn't mind sending" (23 August 2018); or "Is it possible for Joan to consider making the following payments on behalf of Eric" (15 October 2018); and by 11 January 2019 he phrased it as follows:

> "Hi Mary, Eric has asked if you could ask for Joan to consider advancing him another £25,000?"

242. Also attached to the same letter were more bank statements for Mrs Pollock's accounts. These show the following:

(1) Statement No 1 for the 10 account (from inception to 8 June 2018) showed an automatic payment out of the account of $5,200 on the 26th of each month to Clifton 25 Ltd (Mrs Pollock's address being 25 Clifton Road), and an initial transfer from the 00 account of $20,800 labelled "rent funds". The $5,200 per month therefore evidently represented rent payable by Mrs Pollock on her house and explains the two transfers of $26,000, one to the 00 account before the 10 account was set up, and the second to the 10 account. Between them these payments therefore covered 10 months' rent (that is, up to and including the payment on 26 February 2019, as noted on the Rainy Day account statement).

(2) Statement no 1 for the 04 account (from inception to 11 June 2018) shows an initial transfer from the Rainy Day account of $40,445 on 30 May 2018. (I have suggested above that $5,445 of that might represent the balance on Mrs Pollock's Rainy Day account before it was used for the receipt of the $3.255m; if so, the remainder of the payment would be the round sum of $35,000.) From August 2018 the 04 account was used to fund weekly payments to Mrs Pollock's current account (the 00 account) of $500. The 04 account was also used for the receipt of the transfer from the Rainy Day account of $26,000 in August 2018 (enough to fund a year's worth of the weekly payments), and the transfer in February 2019 of nearly $26,000.

(3) The statements for the Rainy Day account start with statement no. 125 for 12 December 2017 to 11 January 2018. Since they are monthly statements, that would suggest the account had been held by Mrs Pollock for some 10 years prior to that. The statements from December 2017 to May 2018 show a balance of $45,400 odd with no movements in or out other than the crediting of modest amounts of interest less withholding tax, until the receipt of the $3.255m on 17 May 2018.

243. In those circumstances, Ms Jones invited me to find that the money was transferred to the Rainy Day account on the basis that Mrs Pollock agreed that she would give the money to Mr Watson to help him in his time of need, not least because that is exactly what Mr Watson himself said in paragraph 388 of his 8th affidavit (paragraph 237 above). That, she says, is sufficient to establish that Mr Watson in fact shared in

the economic interest in the Rainy Day account; and hence that it was within paragraph 1.3 of the definition of "Mr Watson's interests" in the November Order. It was therefore within paragraph (12) of part 2 of Schedule 2 to the order which required him to provide a full list and explanation of "Mr Watson's interests held by … Mr Watson's mother, Joan Pollock."

244. Mr Grant submitted that the count as charged is founded on a factual misconception, because it refers to:

> "the sum of NZ$3.5m transferred from Valley (NZ) Limited to an account in the name of J M Pollock on 8 May 2018"

and as the bank statements show (paragraph 235(1)-(4) above), this is not what happened. What happened was that $3.5m was transferred from Valley (NZ) Ltd to an account in the name of the EJW Trust.

245. I do not accept this submission for a number of reasons. First, as a purely semantic point, the breach charged is that Mr Watson failed to provide:

> "a list and explanation of all of his interests (as defined in the said order) held by his mother, Joan Pollock, particularly the sum of NZ$3.5m transferred …"

and so it is wide enough to catch a failure to disclose the sum in the Rainy Day account even if the reference to the $3.5m was not quite accurate. Second, more substantively, I do not think there is any inaccuracy. The bank statement for the BNZ account for the EJW Trust shows that the $3.5m was received from Valley (NZ) Ltd on 8 May 2018 and immediately transferred out to Mrs Pollock on the same day. (The statement for the BNZ account does not show which account of hers it was paid to, and no statement for the receiving account is in evidence, but Mr Grant himself said that she received it into her 00 account, which was her current account, and I agree that this is what the evidence indicates, since the bank statements which are available show that she transferred $3.225m from her 00 account to the Rainy Day account on 17 May). In those circumstances it does not seem to me inaccurate to describe the $3.5m as having been transferred from Valley (NZ) Ltd to an account in her name, even though it was not transferred directly but passed (momentarily) through the EJW Trust account. Third, and most significantly, there has not been the slightest suggestion from Mr Watson (or indeed Mr Grant on his behalf) that Mr Watson has been misled or confused or left in any doubt as to what the charge is that he has to meet.

246. So far as the facts are concerned, I am left in no real doubt what happened, which is largely proved from the documents and Mr Watson's own previous statements. My findings are as follows.

247. Mr Watson had raised money from the sale of the Warriors. He wanted to have access to the funds, but (as usual with Mr Watson) did not want to pay any tax. He took advice from Mr Thorne of Grant Thornton, whose e-mail (paragraph 238 above) shows that he had been asked how "the NZ warriors disposal proceeds could be used tax efficiently". One idea (among others) was to get the cash into the EJW Trust, and distribute it to Mrs Pollock who might then "gift" some of the proceeds to Mr Watson. This does not appear to have been Mr Thorne's idea but to have come from Mr Watson's team, and Mr Thorne himself had reservations about it both from a trust perspective (whether it was proper to pass money to a beneficiary

(Mrs Pollock) for her to pass on to a non-beneficiary (Mr Watson)) and a tax perspective (suggesting a 3-year gap between the distribution and onward gift). Mr Watson's own evidence to the Court of Appeal (paragraph 234(5) above) confirms that he saw the arrangement as one whereby money that could have been paid direct to him from the Valley Trust (of which he *was* a beneficiary), but at a cost of a high tax charge, could be passed to him in some other but more tax-efficient way.

248. Mr Thorne's reservations did not prevent Mr Watson and his team from going ahead with the arrangements. The Valley Trust (through Valley (NZ) Ltd) acquired the shares in Malibu from the EJW Trust for $3.5m. Mr Grant in his submissions placed some emphasis on the fact that this was a transfer at market value. He did so, as I understood it, to make the point that this was not simply a case of Mr Watson taking $3.5m of his own money and putting it in his mother's name for her to act as nominee for him. That I accept, but I do not see that this is of any significance – the plan was to get cash into his mother's name, and, as appears from Mr Thorne's advice, that required the first stage to be a sale at market value, followed by a distribution to her in her capacity as beneficiary of the EJW Trust. Mr Grant said there was nothing improper or wrong about that: the Valley Trust had not been diminished because it had received full value for the $3.5m in the shape of the Malibu shares, and the EJW Trust had made a distribution as it was entitled to do. That rather overlooks the trust law point raised by Mr Thorne as to whether it would be a proper exercise of discretion to distribute $3.5m to a beneficiary for her to make available to a non-beneficiary, but I am not concerned on this application with whether that was proper, and this was not argued by Ms Jones (although for what it is worth it seems to me to have all the hallmarks of a classic fraud on a power); what is relevant however for present purposes is that the intention and effect was to get $3.5m out of one part of the trust structures used by Mr Watson to hold his wealth (what at one point he called his "ecosystem") and into his mother's name. There is no real or relevant difference between that and his simply transferring the cash into her name.

249. I have not the slightest hesitation in finding that the purpose of this arrangement was that the money, or at least the vast bulk of it, should be available to Mr Watson to use for his own purposes. Every indication points in that direction. First, that was the plan, as shown by Mr Thorne's e-mail and by Mr Watson's own description of it in his witness statement for the Court of Appeal.

250. Second, that is what actually happened. An analysis of the Rainy Day account shows as follows:

(i) I accept that Mrs Pollock's Rainy Day account was a pre-existing account that she had had for some time – probably about 10 years. The evidence suggests that apart from a term deposit (which is of no relevance to the present application) Mrs Pollock had in May 2018 only two bank accounts, a current account (the 00 account) and the Rainy Day account. Mr Watson's evidence was that he understood from his mother that she used it as a savings or reserve account from which she could make transfers to her current account whenever she needed funds for spending or emergencies (a rainy day), and I see no reason to doubt that. Before being used for receipt of $3.255m of the Valley Trust money, she had about $5,455 saved in it.

(ii) After receipt of the $3.255m, money was set aside for Mrs Pollock's future

rent of her house at 25 Clifton Rd, and a new account (the 10 account) opened for this purpose. Two transfers of $26,000 were made, which between them covered 10 months rent at $5,200 per month (from 26 May 2018 to 26 February 2019 inclusive).

(iii) Money was also set aside to fund payments of $500 per week to Mrs Pollock, a payment which Mr Watson had previously regularly made out of his own bank account. Again a new account (the 04 account) was set up for this purpose, and two transfers were made, one of $26,000 and one of very nearly $26,000 (which together with the final $50,000 transferred to Mr Watson ran down the balance on the account to zero); between them these transfers covered nearly 2 years' worth of weekly payments.

(iv) I accept Ms Jones's submission that these payments can be explained as Mr Watson setting aside money for his mother for the near future, in the same way as he admitted that he had done for his son Sam Watson and his former partner Ms Houghton.

(v) In addition a sum of $40,455 was transferred to the 04 account. I think it very probable (although not proved beyond doubt, but it does not matter) that the $40,455 included the sum of $5,455 that Mrs Pollock had in her Rainy Day account in May 2018 (or possibly $455, $5,000 being given to Mrs Pollock's grand-daughter (below)), and I infer that that was to preserve that for her benefit. If so, the balance of this transfer was $35,000 (or $40,000): I do not think the evidence makes it clear if this was also intended to fund the $500 per week, or there was some other reason for it, but I am satisfied that it was at least designed to segregate Mrs Pollock's own assets from those in the Rainy Day account.

(vi) Apart from those, there are very few payments which appear to be for Mrs Pollock's benefit or at her request. There is one initial payment in May 2018 of $5,000 to Mrs Watson-Burton with a reference which suggests it was a gift for her daughter (Mrs Pollock's grand-daughter); there is a transfer of $4,000 to Mrs Pollock's 00 account in December 2018 with a reference suggesting it was to be used for a rental deposit on a property in Christchurch (Mr Watson's evidence being that his mother wanted to move – and indeed has now moved – to Christchurch); and there is a transfer to her 00 account in February 2019 of some $600 for water rates.

(vii) There is also a payment of $9,900 on 24 August 2013 to Mrs Watson-Burton: Mr Watson suggested that might be because his mother wanted to give some money to his sister, but in fact it is clear that this payment was made because Mr Gibson requested on 23 August that a regular payment be set up to Mrs Watson-Burton of AUD$3k per month (paragraph 240 above). There was a very interesting answer given by Mr Watson on this, as follows:

> *"Q. …you were asking for payments to be made to your sister. This is not something generated by your mother?*
>
> *A. No, that is not true. I mean, you have to get this in context. My mother is 80, over 80 now, and my sister helps her a lot with many tasks, and I would have spoken to my mother and she would like Mary to get some money and I would like to do that. And I talk to*

William and William talks to Mary and actions that."

As Ms Jones pointed out, if this was Mrs Pollock's money to do whatever she wanted with, it would be ridiculous for her to ask Mr Watson to ask Mr Gibson to ask Mrs Watson-Burton to ask Mrs Pollock if she would mind doing it. She would simply do it. It is perfectly obvious that the initiative for this payment came from Mr Watson, for whatever reason. And Mr Watson's *"and I would like to do that"* inadvertently reveals what I am sure is the truth – that this money was intended to be, and was, at his disposal for him to do what he wanted with.

(viii) There are two other payments, one again of $9,900 in October and one in November of $3,000 which are not explained in the evidence (but which may be further payments to Mrs Watson-Burton although they go to Mrs Pollock's 00 account). Other than that, the entirety of the $3.255m transferred to the Rainy Day account was transferred to Mr Watson or for his benefit. The same is no doubt true of the $245,000 transferred by Mrs Pollock to the Valley Trust in May 2018 (paragraph 235(2) above) – Mr Watson suggested that this might be outstanding fees due in respect of the trust structure and his mother might want to do that because she was a beneficiary, but this is not credible. If the $3.5m were hers to do as she wanted with, she would doubtless have regarded her prospects of receiving further distributions as beneficiary as not very high and certainly not worth spending $245,000 on so as to keep the structure going. I am satisfied that this is a payment that Mr Watson wanted to be made.

251. Third, I accept Ms Jones's submission that the initial tone of Mr Gibson's "requests" shows that this was treated as money available to Mr Watson to draw on. His first text (paragraph 240 above) did not even bother to explain what Mr Watson wanted the money for – it just asked her to send $600k to him. There is also no trace in the texts of suggestions that money was wanted to take the children on holiday, and Mr Watson's assertion in his witness statement for the Court of Appeal that she funded holidays because she felt that her grandchildren should still have the opportunity to have some family holiday time (paragraph 234(5) above) was, I am satisfied, untrue. She provided money (which may have been used for family holidays among other things) because Mr Watson asked her to, and that was the arrangement.

252. Fourth, it is supported by Mr Watson's own evidence. I accept that he repeatedly said in oral evidence that he "hoped" his mother would "give or lend" him money, saying for example:

"I was certainly hoping that she would give or lend some of it back to me".

(That word "back" is revealing – it indicates that he thought of it as his money which he had given her, although of course when she received it, it was money that belonged to a trust of which he was not a beneficiary and to which he had no right or entitlement at all). But his next answer is even more revealing:

"Q. You had agreed with her that she would help you in your hour of need by giving you money?

A. Yes, but I didn't specifically agree "You will give me this, you will give me that." I was hopeful we would have other money. I was hoping she would

> *lend me some or give me some for sure, yes. She knew that. But there was no guarantee that she would."*

Although he seeks to row back from it, the initial "Yes" and the suggestion that what was not agreed was the specifics rather than the principle, is by itself a powerful indication that the arrangement was indeed that the money would be available to him if he needed it. And this is entirely consistent with what he told the Court of Appeal, namely that:

> *"She had previously agreed to use her money to help me in my time of need"*

(paragraph 237 above). He attempted to explain that in oral evidence as meaning that she had agreed from time to time to help him, but this is not the most natural meaning. Mr Grant submitted that this one sentence was far too slender a basis on which to find a prior concluded agreement, so I should make it clear that if this one sentence had been the only evidence I might have accepted that submission; but as I have attempted to show, it is far from the only evidence.

253. Allied to this is the fact that Mr Watson can be shown to have told lies in relation to this aspect of the case. I have already referred to the fact that his account of his mother providing money because she wanted her grandchildren to have a holiday is untrue. Another lie is the suggestion, made in his affidavit in these proceedings, that he spoke to his mother by video call in mid-January 2019 and she both told him, and showed him bank statements to establish, that she had no money left to help him (paragraph 237 above). At that stage there was still some $288,000 in the account, and it did not drop to zero until Mr Watson cleared it out on 5 February.

254. Fifth is the sheer improbability of $3.5m being distributed to Mrs Pollock for her to do as she liked with without, so far as the evidence suggests, her either asking for it or having any immediate need for it (in itself raising questions as to the propriety of the decision to distribute). It stretches incredulity well beyond breaking point to imagine that this distribution was made to her without it being explained to her that the plan was that it should be made available to Mr Watson as and when necessary. Indeed the evidence establishes that after Mr Thorne gave his advice on 1 May, Mr Gibson asked Mrs Watson-Burton on 3 May when she was free to talk, and the likelihood is that he explained the plan to her (for her to explain to her mother) then.

255. Finally there was a very curious answer given by Mr Watson when he was asked whether his case was that his mother had given him monies or lent them to him (since his evidence referred to both), as follows:

> *"Q. …So was it a gift or it was a loan?*
>
> *A. Well, I don't think we determined yet how we will treat that from a tax perspective, my Lord, because it is more likely to be a loan, I would think. If it is a gift it is potentially taxable.*
>
> *Q. Mr Watson, I don't know if you understand that what usually happens is people agree what a thing is and then the tax treatment gets applied to that. So when [your] mother advanced you these monies did she give them to you or loan them to you, on your story?*
>
> *A. It is not my story, my Lord, it is what actually happened. So it is my mother, she doesn't really mind whether she is sending money to her family as a gift*

> *or a loan… She would probably like to think it was a loan, but loaning me money is not probably not a very good investment now.*
>
> *So from a tax perspective we don't have to decide whether it was -- until we file those tax returns."*

Mr Grant submitted this was understandable when dealing with relations between mother and son, but it still seems to me a remarkable suggestion that Mr Watson could simply choose subsequently whether to treat the money as a gift or a loan depending on which was more tax efficient, on the basis that his mother didn't really mind. It shows that he regarded the matter as one for him and not really for his mother at all (as well as being an interesting insight into how fluid his financial arrangements were, and how he manipulated them for tax purposes).

256. For all these reasons, I am entirely satisfied, as I have said, that the $3.5m coming from the Valley (NZ) Ltd was transferred to Mrs Pollock on the basis that it, or at least the vast bulk of it, would be made available to Mr Watson for him to use.

257. The next question is whether this means it should have been disclosed in accordance with the November Order. Again, I have no hesitation in answering Yes. The definition of "Mr Watson's interests" was carefully drawn so as to encompass not only formal nominee arrangements but also assets held by any person:

> "on the basis, whether documented or undocumented, that Mr Watson in fact shares in the economic interest in such assets".

Mr Grant submitted that "shares in the economic interest" was not a common or usual phrase to be included in orders, and as far as he was aware it had not been considered in any of the decided cases. He suggested that it was very difficult to know what it meant, and on that basis alone the order was not one which should be capable of being enforced by committal.

258. I do not accept this suggestion. The phrase may be a novel one but that does not mean it is difficult to understand. As Ms Jones submitted, it is obviously intended to extend the definition from nominee arrangements under which Mr Watson had the formal legal right to dictate how assets should be dealt with to less formal arrangements where in practice ("in fact") they were held in such a way that they were wholly or partly (hence "shares in") at his disposal. That to my mind is clear enough, and exactly matches the arrangements that I have found applied to the money in the Rainy Day account.

259. In my judgment therefore I am satisfied that the Rainy Day account should have been disclosed in accordance with paragraph (12) of part 2 of schedule 2 to the November Order, and Mr Watson's failure to do so was a breach of the order.

260. The remaining question on this aspect is whether I am sure that Mr Watson acted contumaciously in not disclosing the account. I am satisfied that he did. He said in oral evidence that he did not understand what sharing in an economic interest meant but that he did not believe he had one; but that was premised on the notion that he was merely hopeful that his mother might give or lend him money. Given the true position as I have found it, he must have known perfectly well that the money was transferred to his mother for him to have access to. I do not think there is any difficulty in understanding that that falls within the extended definition of his

interests (and as referred to above, it is obvious that he and his advisers had this definition in mind when his affidavit was prepared).

261. I find therefore that the contempt as alleged in Count 4(a) has been proved.

262. Count 4(b) refers to the bank statements. I can deal with this very briefly. On the face of the November Order there was a plain breach of paragraph (47) of part 2 of Schedule 2 as Mr Watson did not provide the bank statements. Mr Grant pointed out that even if there were a technical breach, there would not be a contempt if it was impossible to comply: see *Sectorguard* at [32]-[33] per Briggs J where he said:

> "An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment, a contempt of court."

263. I accept the principle referred to by Briggs J. The question therefore is whether it was impossible for Mr Watson to obtain bank statements for the Rainy Day account. His position in his affidavit was that he had asked his mother and she had declined to provide them. That is supported by an e-mail exchange between Mr Czarnecki and Mrs Pollock on 11 December 2018 when Mr Czarnecki sent an e-mail telling her of the court order (ie the November Order) and asking her if she was willing to provide copies of the bank statements. That evidently went to Mrs Watson-Burton as she replied saying her mother had not received it but copying her in on the reply; and Mrs Pollock herself then replied saying:

> "I'm not at all comfortable to share my private details.
>
> I will not be providing any bank statements."

264. That plainly suited Mr Watson as if he had disclosed the bank statements for the Rainy Day account on 21 December 2018 as he had been ordered to do, it would have revealed that there was still $481,873.52 in the account, and Kea would have been in a position to take steps to secure that. Mr Grant suggested that that would not have been easy, necessitating proceedings in New Zealand against Mrs Pollock, but I think Mr Watson had every reason to think that Kea would attempt to do just that, with at least some likelihood of success.

265. When on the other hand it suited Mr Watson to demonstrate that there was nothing left in the account, the bank statements were made available. In March 2018 Mr Watson pretended to Master Meacher in the Court of Appeal that he had had to press his mother hard to let him have them (paragraph 236 above) but this is another demonstrable lie. In re-examination evidence was adduced, which shows the following:

(1) At 11.04 pm on (Friday) 22 February 2019 Mr Czarnecki sent a Whatsapp message to Mrs Watson-Burton (copying in Mr Gibson) saying that Mr Watson had decided to fight the security for costs application and:

> "One of the documents we will need is an unredacted copy of Joan's bank statement into which she received that $3.5m from the date she received it until now. I hope she has an online access and can produce statements for that account only.

> It's urgent and we cannot miss the Tue deadline."

This appears to be taken from Mrs Watson-Burton's phone and I think the timing of 11.04 pm is therefore likely to be New Zealand time (I believe 12 hours ahead of UK time in February), but it does not in the end matter.

(2) At 12.05 am on 23 February Mr Gibson added "Ask Mary please" (presumably directed at Mr Czarnecki).

(3) At 2.19 am Mrs Watson-Burton replied with a pdf of the transactions for the Rainy Day account for the period 1 June 2018 to 9 February 2019, with the comment:

> "This is probably the best she can provide"

(4) Mr Czarnecki replied at 2.23 am:

> "Any chance she could try to do it from 17th May when $3.255m arrived or if June the furthest she can go?"

(5) Mrs Watson-Burton replied at 2.27:

> "The amount was originally in another account so it was a little messy transaction wise for a few days. I will speak to her when she wakes and send through another from 17 May on this account and we can see what you think"

and added at 2.33:

> "Best she can really produce online is the transaction report. Bank statements all have the account balances of the overall accounts on them which she isn't keen on sharing."

(6) Then at 4.48 pm on (Monday) 25 February, Mrs Watson-Burton sent a pdf of the transactions for the Rainy Day account from 15 May 2018 to 25 February 2019, this being the one exhibited to Mr Watson's witness statement in the Court of Appeal (paragraph 235(3) above).

266. What this shows is that Mrs Watson-Burton was quite willing to send Mr Czarnecki a statement of transactions on the Rainy Day account when told that it was urgent to do so, and did so without even checking with her mother who was asleep. It also shows that two days later she sent a fuller statement of transactions – that must have been either after speaking to her mother as she had said she would (in which case she persuaded her mother to agree to its disclosure), or without even obtaining her mother's agreement. It does show that Mrs Pollock was sensitive about revealing her personal financial information, that is the balances on her other accounts, which is why Mrs Watson-Burton downloaded and sent to Mr Czarnecki a list of transactions which did not do this; but demonstrates beyond doubt that that sensitivity did not extend to the Rainy Day account. It also shows that the story that Mr Watson pressed his mother hard and she relented is completely false.

267. In other words, the available evidence is that when Mrs Pollock was asked for the bank statements in circumstances when it suited Mr Watson to say he was unable to provide them, she said she was unwilling; but when Mr Watson really did want them, they were forthcoming without difficulty. There is not the slightest reason to

doubt that if Mr Watson had really wanted to provide them in December 2018 so as to comply with the November Order, he could have obtained them equally easily. He chose to hide behind the fact that the account was in his mother's name. That does not involve, as Mr Grant submitted, any findings as to a lack of integrity on Mrs Pollock's part: it is impossible to know what was said to her in oral conversations in December, but I strongly suspect that she may have been led to believe that it would suit Mr Watson if she refused to provide them.

268. In those circumstances I am satisfied that it was not impossible for Mr Watson to provide the statement of transactions on the Rainy Day account in December 2018, that he chose not to obtain them, and that he was in contempt in failing to provide them.

Count 3(f)

269. I can now return to Count 3(f). Count 3(f) alleges that among the matters Mr Watson failed in breach of paragraph 14 of the September Order to disclose were:

> "details and values of other assets held by Mr Watson which are unknown to Kea or which Mr Watson alleges are held by persons other than Mr Watson."

270. Ms Jones relies on three strands of evidence in support of this count. One is evidence of Mr Watson's lifestyle, the suggestion being that his lifestyle is at odds with his claimed lack of money. The second is evidence of steps taken by Mr Watson in anticipation of judgment after trial and the use by Mr Watson of nominees and the like: Kea does not ask me to find that any particular asset belongs to Mr Watson, but relies on the suggested pattern of behaviour. The third is something said to Mr Graham in the courtroom by Mr David Megginson, a chartered accountant who was assisting Mr Watson, on 19 December 2018 just after the Court had risen.

271. I will take these in reverse order. The facts in relation to Mr Megginson's remarks are as follows:

(1) As already referred to (paragraph 185 above) Mr Watson attended court on 19 December 2018 to be cross-examined on his assets (before me). Kea was represented by counsel (including Ms Jones who conducted the cross-examination) and Farrers (including Mr Graham). Mr Watson was not represented at the hearing, but he was accompanied by Mr Czarnecki and Mr Megginson. Mr Watson had engaged Mr Megginson to assist him with compiling the disclosure he was ordered to give, initially in relation to the Munil Money.

(2) After the hearing was over and I had left court, while Ms Jones and Mr Czarnecki discussed the next step in the proceedings, there was a conversation between Mr Watson and Mr Graham. Nothing turns on precisely what was said but the general thrust was that Mr Watson said he wanted to focus on his business and was fed up with the litigation but that Mr Morrison of Grosvenor Law had told him Kea did not want to settle, to which Mr Graham replied that Kea would be willing to have settlement discussions but it would require a "grown-up" settlement proposal and full disclosure of assets adopting a "cards on the table" approach.

(3) At that point Mr Watson looked over to Mr Megginson and said he was talking about sitting down with Mr Graham, providing further information and talking about settlement. Mr Megginson then said something, which Mr Graham took to mean that Mr Watson had further assets which he had not disclosed.

272. Quite what Mr Megginson said has generated a considerable degree of controversy but by the end of the oral evidence I did not detect any substantial dispute. The evidence is as follows:

(1) Mr Graham's first account, given in a letter dated 1 February 2019 to Mr Watson, said that Mr Megginson:

> "intervened with words to the effect that you could not agree to give full disclosure because the documents would be used in enforcement claims."

(2) He wrote another letter on 4 February 2019 to Grosvenor Law in which he said:

> "The discussion on 19 December – and in particular Mr Megginson's remark that Mr Watson could not agree to give full disclosure because the documents would then be used in enforcement claims – made clear (a) that your client had not given full disclosure of his assets, as required (b) that he knew he had not done so and (c) that he did not intend to do so."

(3) Mr Megginson was prompted by these letters to give his own account. That was given in a letter also dated 4 February 2019 to Farrers. He said:

> "My reply was that Mr Watson could not have settlement discussions since anything he said could be used against him in enforcement proceedings."

Mr Megginson was at pains to point out that he did not say that "Mr Watson could not agree to give full disclosure because the documents would be used against him".

(4) In the course of his cross-examination, Mr Graham was asked about this several times and gave a series of consistent answers as follows:

> "He is saying that Mr Watson, and I distinctly remember him saying this, cannot have the discussion that Mr Watson was proposing to have with me because it would be used in enforcement proceedings."

> "I can categorically assure you that he said that this information could not be provided because it would be used in enforcement proceedings"

> "I clearly remember Mr Megginson saying to Mr Watson that he could not provide further information because it would be used in enforcement claims."

But he was quite happy to accept that Mr Megginson had not been talking about Mr Watson "giving full disclosure" as this was not what Mr Watson was proposing. What Mr Watson was proposing was to provide information in the context of a settlement discussion. He referred to the way in which Mr Megginson put it (sub-paragraph (3) above) and added:

> "Now, that is my recollection of what he says, so he seems to be saying the same thing."

and later, when Mr Grant reverted to it, repeated that what Mr Megginson had said was:

> "You can't enter into discussions, it would be used against you in enforcement proceedings."

(5) In the light of this there seems to be no real dispute and I find that what Mr Megginson said was along the lines of:

> "You cannot have settlement discussions with Farrers as anything you say would be used against you in enforcement proceedings."

273. What does remain in dispute is what Mr Megginson meant. Mr Graham said more than once that what he understood Mr Megginson to mean was that Mr Watson couldn't tell Farrers about the assets that he would use to fund the settlement because that would amount to an admission of breach of the order (ie the September Order requiring him to list his assets). Mr Graham, a patently honest witness who was, as one would expect, both careful to be precise and wholly professional, gave his evidence in an entirely straightforward and credible way (and Mr Grant expressly disavowed any suggestion that he was giving consciously false evidence), and I have no reason to doubt what he says. I therefore accept that this is what he did assume Mr Megginson to be saying – it was suggested to him that he had not thought it particularly noteworthy at the time, but Mr Graham said it was a surprising statement and again I accept that this is indeed what he thought at the time.

274. Mr Megginson was not called to give evidence but his explanation of what he meant is found in his letter of 4 February to Farrers where he said this:

> "What I meant (and it should have been clear from the context of the conversation) was that as long as he was under attack for allegedly failing to disclose his assets he could not discuss settlement, as any proposals that Mr Watson put forward in an attempt to reach a settlement could be (unjustifiably) used against him as evidence that he had undisclosed assets with which he could bargain. He would be in the position of postulating settlement undertakings that in practice he would find very difficult to deliver on as long as he was still embroiled in litigation. Accordingly it made no sense for Mr Watson to have settlement discussions if in the course of those discussions what he said could be used against him in enforcement proceedings as evidence that he had assets to bargain with.
>
> Of course the fact that has only limited assets to settle with does not mean there cannot be a settlement: he could for example pledge future earnings and assets, either directly or indirectly."

275. Ms Jones submitted that in this explanation Mr Megginson had in fact made Kea's case for it, by demonstrating that if Mr Watson started talking about settlement, it would provide evidence that he had assets that he had not disclosed. But I do not think this is what Mr Megginson meant. It would no doubt have been clearer if Mr Megginson had been called to give his account orally, but in the end I have to try and make sense of what I have accepted he said.

276. Mr Graham in oral evidence eloquently explained that Mr Watson was quite unlike other litigants he had dealt with in the course of his lengthy career, and how much of

a bombshell it was to discover that somebody who had been presented as one of the richest people in New Zealand in the summer of 2018, and appeared to enjoy the lifestyle that goes with that, had become penniless; and it is quite apparent that he had himself come to the conclusion by December 2018 that Mr Watson was only pretending to have nothing. I do not find it surprising in those circumstances, when he was already deeply suspicious about Mr Watson's compliance with existing orders, that he interpreted Mr Megginson's remarks as confirmation that Mr Watson had not come clean about his assets, and could not have settlement discussions as they would confirm that he had not done so.

277. But as I have said, I do not think that is what Mr Megginson meant. I think that what Mr Megginson meant is that if Mr Watson started having settlement discussions, any proposals he made would be seized upon by Kea (wrongly) as evidence that he must have undisclosed assets and Kea would then pursue him to give explanations as to how he proposed to fund any settlement and he would become embroiled in further enforcement proceedings. That does not mean that Mr Megginson accepted that such proceedings would be justified, or that Mr Watson did in fact have other undisclosed assets, but only that Kea would pursue Mr Watson anyway. That is effectively what Mr Megginson says, and I do not think I can reject it as obviously wrong. If that is what Mr Megginson meant, I do not see that it amounts to evidence that Mr Watson did have undisclosed assets.

278. Ms Jones was sceptical about Mr Megginson's suggestion that future assets could be used to fund a settlement but I do not see that there is anything surprising about it. If Mr Watson is telling the truth that he currently has no assets with which to fund a settlement, his only prospect of holding anything out to Kea is the prospect of earning money in the future and agreeing to pay over to Kea funds derived from that. The evidence on this application amply demonstrates that the way Mr Watson does business – or at any rate has done in the past – is to put together those who want to run new and potentially profitable business ventures with those who have capital and are willing to fund them, Mr Watson taking a share, quite often a significant one, of the profits as his reward (as well as co-investing his own money, or money borrowed from the funder, for a further slice of the business). He has been able in the past to do this very successfully and make very significant amounts of money from it. I have no evidence as to whether the effect of the judgment, and the attendant adverse publicity he has received, will or will not have any impact on his ability to do that in the future, but I do not find it surprising that if Mr Watson was approaching Farrers to settle the judgment debt and put this litigation behind him, his ability to make money from new business is what he would be relying on – and it is to be noted that that would be likely to be so whether he genuinely has no other assets and that is his only prospect of funding a settlement, or whether, as Mr Graham so obviously believes, this is all a pretence and he in fact has other assets available to him which he wishes to keep hidden from Kea.

279. In those circumstances I am not persuaded that what Mr Megginson said after court on 19 December 2018 can be invested with the significance that Mr Graham understood it to have, or can prove this count.

280. I will now consider the other evidence that Ms Jones relied on, but I will say straightaway that although it gives very strong grounds for suspicion, and I have very considerable doubts whether Mr Watson is telling the truth, suspicion is not proof, and I do not think I can find to the requisite standard that he does have other

undisclosed assets which he failed to disclose in breach of the September Order. I therefore propose to take matters comparatively briefly, although as with everything to do with Mr Watson's affairs, it is impossible to summarise matters, and brevity is unfortunately only a relative term.

281. The second strand of evidence that Ms Jones relied on was evidence of what Mr Watson had done with his assets in preparation for the judgment. She started with Mr Watson's trust protection advice. This is in itself quite a long and complex story, but in essence it became apparent to Kea that between the end of the trial in July 2017 and the handing down of the Main Judgment in July 2018 (a period which was unfortunately much longer than I would have wished due to matters beyond my control) Mr Watson had taken advice from lawyers on "trust protection". By the time of the security for costs application in the Court of Appeal in early 2019 Farrers had in their possession an e-mail from Mr Parker to Grant Thornton in April 2018 referring to "lawyers working on trust protection", which led Mr Graham to say (in his 33rd witness statement dated 17 January 2019) that he inferred that "trust protection" meant making it more difficult for Mr Watson's creditors to access assets held by his trusts. In his response (in his witness statement dated 28 February 2019) Mr Watson denied this, saying that Mr Graham was in error in his insinuation, and adding:

> "the reference to "trust protection measures" in the email to Grant Thornton relates to steps being considered at the time to professionalise the management of the trusts through the appointment of specialist professional trustees – i.e. the "protection measures" relate to the management and integrity of the trusts (for management, legal and tax purposes) and have nothing to do with the position of creditors (as erroneously suggested by Mr Graham)….
>
> Contrary to Mr Graham's inference… the change in the trustees of the Valley trust (and in any other trusts in like manner) had nothing to do with making it more difficult for my creditors to access assets held in that structure (and I do not understand how a change of trustee could have that effect). The change was purely to professionalise the trusteeship."

That was simply untrue and Mr Watson presumably only thought he could get away with it because he did not expect the relevant advice to be disclosable.

282. In the event however the relevant documents were later disclosed, and demonstrated how blatantly Mr Watson lied to the Court of Appeal. They show that as early as 23 October 2017 Mr Watson had a conversation with Mr Paul Tracey, a solicitor at Grosvenor Law, in which they discussed the Pugachev judgment (ie not the decision of Rose J on committal, but the decision of Birss J in *JSC Mezhdunarodniy Promyshelnniy Bank v Pugachev* [2017] EWHC 2426 (Ch) in which he found that Mr Pugachev remained the beneficial owner of assets ostensibly settled on New Zealand trusts). On 6 February 2018 Mr Watson and Mr Gibson attended a meeting at Grosvenor Law's offices with Mr Tracey and others, and in preparation for that meeting on 29 January 2018 Mr Ben Wolfe, another solicitor at Grosvenor Law, wrote to Mr Watson reminding him of advice that Mr Tracey had given to him (and Mr Gibson) to effect transfer of their New Zealand trusts to arms-length trustees. His e-mail included the following:

> "As you know we are particularly concerned with the vulnerability of the New Zealand trusts to attack, by reason of the identity of the trustees…

> If you receive a negative judgment from Nugee then both Glenn and Novatrust will immediately start enforcement proceedings and they will go after the most substantial assets that they are aware of…. Our advice remains that all of these trusts should be transferred to independent professional trust companies so that they can be managed on a fully arms-length basis. The effect of this would be to safeguard the trust assets and to give you confidence that the trusts would be unimpeachable.
>
> … Please provide us with an update as to progress of transfer [of] the New Zealand trusts to Vistra. As you know we consider this as real priority in respect of asset protection."

How, in the light of this, Mr Watson could bring himself to say in a formal witness statement to the Court of Appeal that the advice had "nothing to do with making it more difficult for my creditors to access assets held in that structure" is difficult to understand – or rather can only be understood by Mr Watson's willingness to tell outright lies if he thinks they will remain undetected. It is one of the clearest examples of why I regard him as a witness whose evidence is almost worthless.

283. A note of the conference on 6 February shows that a number of matters were discussed (mostly redacted). It included the following:

> "**Preparation for receipt of judgment:**
>
> …
>
> If EW is ordered to pay £30m he will not / could not pay and will instead go bankrupt. Bankruptcy will result in tracing claims and a fight over assets held in trusts in various jurisdictions.
>
> If Glenn wins it will take approximately 1 year of legal battle over multiple jurisdictions for him to realise/accept that it will be difficult to get assets and by this stage EW may be out of bankruptcy.
>
> We will want to demonstrate to the other side that the assets are held in bona fide trusts and that it will be along [*sic* – evidently "a long"] hard fight that they will lose. GL are preparing the trust material and overarching statement of assets for EW and also for WG.
>
> …
>
> **Asset protection / transfer of NZ trusts to professional trust companies**
>
> PT/GL are concerned that assets held in NZ trusts (Bendon, Warriors etc) are vulnerable to attack on the basis that the trustees are entities or individuals closely connected to EW. They should be transferred to an independent professional licenced as soon as possible."

284. In a further conference call on 10 April 2018 Mr Gibson confirmed that his team had decided to focus on the 3 trusts that held any assets of value (and a fourth which would receive assets on Mr Watson's death). The note of the call includes a note of Mr Tracey's advice as follows:

> "PT emphasised the urgency and requirement for the trusts to be transferred before we receive judgment: it will look bad to the court if the transfer occurs post judgment."

It also includes the following:

> "**Trusts analysis**
>
> As GL has said on many occasions, on the assumption that Glenn/Kea will win at trial they will first go after EW's personal assets before seeking to attack the trusts. GL spoke to Jakob [ie Czarnecki] yesterday who mentioned a loan between Eric and EJ Group in respect of the Warriors Rugby League team. GL has not seen any loan agreement or corresponding documents. PT stated that any loan advanced by EW is an asset and that this will need to be disclosed if Glenn/Kea apply and obtain a freezing injunction."

Ms Jones pointed out that this was the loan in respect of which the proceeds of sale of the Warriors were used to make a repayment to Mr Watson in the sum of $420,000, which he then used in early May 2018 to provide for the living expenses of his son Sam Watson and his former partner Ms Houghton for 18 months (paragraph 239 above), or in other words that he was taking steps to get in the loan and put its proceeds out of reach of Kea for the benefit of those he wished to support in anticipation that he would receive (or at least might receive) an adverse judgment.

285. Ms Jones then referred me to a letter written in March 2019 by Farrers to Farry & Co, a New Zealand firm acting for Mr Connell, which among other things sets out in some detail Kea's case that when Mr Connell acquired his interest in GEMFX Ltd through Stater Holdings Ltd (see paragraph 118 above) he was acting as nominee for Mr Watson, who was the person who not only brought the opportunity to acquire GEMFX Ltd to Mr Connell but provided a large amount of the funding, and that Mr Connell now held his interests for Mr Watson. It is a substantial case; it is denied by Mr Connell, but no full explanation has ever been given by him or Mr Watson.

286. But Ms Jones made it abundantly clear that she was not asking me to make any findings on this application that Mr Connell is such a nominee (or make any such findings in respect of others whom Kea asserts are nominees for Mr Watson, such as Richard Watson and Mr Connell in relation to the Hart businesses, or Ivory Castle, or numerous associates of Mr Watson who obtained shares in Naked, as shown by a prospectus dated 15 August 2018); all she asked me to find was that Mr Graham believed, and had reasonable grounds for that belief, that Mr Watson does have other substantial assets that he did not disclose. I have no difficulty in making those findings: Mr Graham's belief that Mr Watson is hiding assets is palpable, and I am fully persuaded that there are reasonable grounds for suspecting that to be true. By itself however that does not take Kea very far.

287. Ms Jones also showed me a schedule outlining "major dissipation transactions" which had been prepared to summarise what Kea currently knew about what Mr Watson had busied himself with between October 2017, when the Westbury Estate (a substantial property) was sold for NZ$14.02m, and January 2019. It is not necessary to detail it: it includes a number of transactions which have already featured in this judgment, such as monies paid to creditors of Hart Acquisitions LLC, the use of the proceeds of sale of the Warriors to fund the repayment of Mr Watson's loan (and its payment on to Sam Watson and Ms Houghton), and the channelling of NZ$3.5m to Mrs Pollock's Rainy Day account where it was made available to Mr Watson. But it also shows other transactions, such as over NZ$535,000 paid to Mr Gibson in March 2018, and NZ$10.5m paid under a

convertible loan agreement in May 2018 (by a company held in the Valley Trust called SHL Investments Ltd) to Stater Blockchain Ltd (Mr Connell's company and I believe the same company as was used by him to acquire GEMFX Ltd, then called Stater Holdings Ltd). Other complex transactions took place which it is also not necessary to detail but under which a large number of shares in Naked ended up with a number of Mr Watson's associates, including notably Mr Connell's company, now renamed SBL Holdings Ltd.

288. These matters undoubtedly give rise to strong grounds for believing that Mr Watson used the period between the end of trial and judgment being handed down to arrange his affairs to put himself in the best position to make it difficult for Kea to enforce any judgment, and inevitably a suspicion that while pretending to have no assets the reality is that he has made arrangements with some or all of the recipients to hold assets for him. I have no difficulty in finding that the grounds for such a suspicion are reasonable and indeed strong. But the difficulty I have with this aspect of the case is that it has been made clear that I am not being asked to find that any particular asset is held by any particular person as nominee for Mr Watson; and if Kea has not sought to prove that any particular asset is really Mr Watson's, I do not see how I can add together a number of suspect transactions (none being proved to be a nominee arrangement) and find that I am sure that Mr Watson owns *something*. As I have said, suspicion, even strong suspicion, is not proof; and I am not persuaded that I can jump the gap from being suspicious to being satisfied so that I am sure.

289. The third strand of evidence relied on by Ms Jones was evidence as to Mr Watson's expenditure and lifestyle. She referred to a list of living expenses produced for Mr Watson in 2019 which indicated that he anticipated spending £109,000 odd for the 8 months to 30 June 2020 and over £330,000 for the year to 30 June 2021; and the analysis made by Farrers of his bank statements for September 2018 to September 2019 which showed over £500,000 coming into his account, much of it from the Rainy Day account; and substantial sums on travel to a number of places, and over £100,000 on what Farrers called "High level spending" such as school fees, restaurants and shopping at Harrods and elsewhere. She also showed me some more recent bank statements for Mr Watson's Clydesdale bank account, downloaded on 6 April 2020 but only showing transactions for the four months from October 2019 to January 2020 inclusive: these show the account being topped up by a series of transfers, each of several thousand pounds and amounting in total to over £66,000 during that period. When asked in cross-examination where that money came from, Mr Watson said he thought they had sold some shares, and there might have been a transfer from his BNZ account; when asked what he had been living on since the end of January, he referred to a tax refund and some consultancy fees for some work he had done. These assertions, surprisingly vague for someone who one would have thought would know in detail what he had been living off for the last year, were not supported by any documentation and cannot be tested, and I have real doubts as to whether Mr Watson has been as forthcoming about them as he could have been; but nevertheless I do not have any basis for concluding that the actual source was a hidden asset that should have been disclosed under the September Order.

290. I have now been through the evidence adduced by Ms Jones. The oral evidence did not add anything significant. If I stand back from the detail and look at the totality of the evidence on all three strands, I remain unpersuaded that I can properly be satisfied that Mr Watson had other assets which he should have disclosed under the

September Order. I have no confidence that he is telling the truth, but that is obviously not enough – I cannot find him guilty of contempt unless I am sure, which I am not.

291. I therefore find that this count has not been established.

Other points

292. I will deal here briefly with some more general points that Mr Grant relied on.

293. I heard substantial argument on the question of waiver of the lack of penal notice and personal service, but in the light of my findings in which I have only found a contumacious contempt in relation to the November Order, where no such waiver is required, it is not necessary to address this issue.

294. Nor is it necessary to address the question of delay. This was primarily (indeed I believe only) deployed in relation to the April Order, and it was not I think suggested that it had any application to the November Order. If it had been, I would not have accepted it. There is undoubtedly a principle that committal applications should be brought reasonably promptly, but there is also a principle that they should be used as a last resort. Quite how these two principles interplay in any particular case will depend very much on the facts, but on no sensible view could it be said – nor, as I say, did I understand that it was said – that Kea delayed unduly in relation to the breach of the November Order.

295. Equally it is not necessary to address a principle which Mr Grant sought to draw from the decision of Marcus Smith J in *Absolute Living Developments Ltd v DS7 Ltd* [2018] EWHC 1717 (Ch) (***"Absolute Living"***), and which he called the *Absolute Living* principle. Mr Grant submitted that this principle meant that it was inappropriate for Kea at one and the same time both to maintain that Mr Watson was in breach of the April Order and to seek the September Order covering the same ground (in relation to the Munil Money): see the way in which Marcus Smith J dealt with Breach 5 in *Absolute Living* at [15]-[19]. He also submitted that it was in a wider sense unfair for Kea to rely on the way that Mr Watson had gone about answering the September Order in support of its case that he was in breach of the April Order. I have doubts about both propositions, but it is not necessary to explain why as I have not found any contumacious contempt proved in relation to the April Order.

Oppression and abuse of process

296. The only other point that I should deal with is the submission by Mr Grant that the entire application is oppressive and an abuse of the process of the court and should be struck out or dismissed for that reason. I have no hesitation in rejecting this submission, although I should deal with the points raised by Mr Grant.

297. The principles that Mr Grant relied on were these:

(1) The disproportionate use of pointless litigation is an abuse, and this applies as much (indeed if not more) to committal proceedings as other proceedings. The pursuit of committal proceedings which merely establish technical contempts is inappropriate and may lead to the applicant having to pay the respondent's costs. For all this, Mr Grant referred me to *Sectorguard* at

[44]-[46] per Briggs J, who continued at [47]:

> "Committal proceedings are an appropriate way, albeit as a last resort, of seeking to obtain the compliance by a party with the court's order (including undertakings contained in orders), and they are also an appropriate means of bringing to the court's attention serious rather than technical, still less involuntary, breaches of them. In my judgment the court should, in the exercise of its case management powers be astute to detect cases in which contempt proceedings are not being pursued for those legitimate ends. Indications that contempt proceedings are not so being pursued include applications relating to purely technical contempt, applications not directed at the obtaining of compliance with the order in question, and applications which, on the face of the documentary evidence, have no real prospect of success. Committal proceedings of that type are properly to be regarded as an abuse of process, and the court should lose no time in putting an end to them, so that the parties may concentrate their time and resources on the resolution of the underlying dispute between them."

(2) If a past breach has been cured, that may, depending on the seriousness of the breach, suggest that contempt proceedings are not necessary: *Absolute Living* at [36].

(3) An example of a contempt application dismissed as an abuse is *Sports Direct International Ltd v Rangers International Football Club* [2016] EHWC 85 (Ch). Here Peter Smith J in fact dismissed the application for other reasons but also found that Mr Ashley (the individual behind the applicant) was pursuing a vendetta against the respondent; that the alleged breaches had caused no disadvantage to the applicant; that the applicant regarded the application as merely another method of enforcing bargains; and that it was utterly disproportionate to any benefit that would ensure: see at [86]-[89].

298. On the facts Mr Grant made a number of points. He pointed out that Mr Graham had said in his 11th affidavit in support of the application that the reason for it was to ensure Mr Watson's compliance with existing and future orders, but the existing orders he referred to were the September and November Orders and these had now been complied with. In particular, so far as the November Order was concerned, the only remaining outstanding matter was that relating to the Rainy Day account, and that has now all come to light. As to future orders, the only ones Mr Graham referred to as having subsequently been made concerned disclosure in the Ivory Castle proceedings, but those had now been put on hold (and in the light of what I was told about those proceedings having been compromised may not now be proceeded with). In those circumstances Mr Grant suggested that this lengthy and expensive application was disproportionate.

299. I do not accept the submission. It is obvious that Kea's attempts to recover its judgment are not over, and that it will continue to seek orders against Mr Watson until it has got to the bottom of his affairs. The application to commit is designed to ensure that he complies with any future orders that are made. That seems to me an entirely proper purpose. And quite apart from that, what Briggs J said in *Sectorguard* is that it was legitimate to bring committal applications either in order to secure future compliance or to bring to the attention of the Court serious rather than technical breaches, which the contempt I have found proved under Count 4 certainly was, and that the Court should be astute to detect cases in which contempt

proceedings were not being pursued for those ends. The Court, as has frequently been said, has its own interest in seeing that those who do not comply with its orders are the subject of contempt proceedings, because the entire system of the administration of justice depends on litigants complying with court orders. I see nothing illegitimate or inappropriate in this application.

300. Mr Grant also submitted that I should infer that the application was driven by a desire for revenge by Sir Owen. That was based on some colourful remarks made by him or those close to him to which Mr Watson referred in his 8th affidavit for this application, including statements that Sir Owen would pursue Mr Watson to the ends of the earth, that he would not stop pursuing him and:

> "Owen Glenn is very much committed to seeing Eric Watson "buried and pulped" says one source familiar with the case…. "Owen and his advisors believe that they've minced him up and smeared him on the pavement. He's hanging on for grim death to see Eric in a six foot hole before he is" said the source."

That was however written in April 2018 when Sir Owen was reported to be battling cancer and I think largely referred to him wanting to stay alive to see the judgment which was still then anticipated.

301. Mr Grant pointed out that Sir Owen had not been called as a witness to answer the suggestion that this application was brought to wreak revenge on Mr Watson, which he said would be an improper use of the jurisdiction, and referred me to the well-known principle in *Wisniewksi v Central Manchester Health Authority* [1988] PIQR P324 that a judge is entitled to draw an adverse inference if a witness who might be expected to have material evidence to give is not called. But I agree with Ms Jones that it was not necessary to call Sir Owen. It is, as she said, perfectly apparent that Farrers, who are handling this case for Kea (and hence Sir Owen who now owns Kea personally), and in particular Mr Graham, genuinely believe that Mr Watson has repeatedly broken Court orders and that this application is the best way of advancing Kea's legitimate interests in order to advance the prospect of being able to collect its judgment debt. The only inference I draw or need to draw is that they have advised their client that it is both legitimate and appropriate to bring the application, and that their client has accepted that advice. I am not prepared to infer, because it seems to me patently not the case, that the only reason Farrers are pursuing this is in order to gratify Sir Owen's desire for revenge. In those circumstances I do not think it is relevant to know, nor am I tempted to speculate, whether Sir Owen would gleefully rejoice to see Mr Watson committed to prison, or merely wants Kea's judgment debt paid.

302. Mr Grant also said that the hearing which ultimately took 17 days was oppressive to Mr Watson. I do not accept this. The length of the application, extended by a number of perfectly proper points that were argued at length on Mr Watson's behalf, was largely, as this judgment illustrates, a result of the complexity of Mr Watson's affairs; and while it has undoubtedly been an expensive and protracted process, that is not least, as I said at the outset of this judgment, because of Kea's desire to ensure that Mr Watson had, as I am confident he did have, every opportunity to defend himself in a fair hearing.

303. Ms Jones submitted that in circumstances where Mr Watson has a judgment against him for a very substantial amount of money, on the basis of findings of deceit and breach of fiduciary duty, of which he has not voluntarily paid one penny; has

required Kea to bring legal proceedings against third parties, including Sky Walker Tower LLC, Ivory Castle and Mr Gibson and Volaw, and to use enforcement procedures to obtain payment from even relatively minor interests; has taken advice as to how to protect his trusts against the judgment and then lied about that advice; and has (so Kea believes) sought to hide his interest in assets which Kea believes to be very valuable, there is nothing oppressive or disproportionate in Kea spending the amount of time and money which it has on committal proceedings which seek to ensure that Mr Watson will indeed comply with court orders so as to make future enforcement actions possible. I agree.

Sentencing

304. I received no submissions on sentencing, both counsel recognising that it would be necessary to convene a further hearing if I found any of the contempts proved. I will hear from counsel when this judgment is handed down as to the appropriate way forward. I am grateful to them and their solicitors, and particularly to Mr Grant and his junior Mr McLeod who had had no previous exposure to this long-running and horrendously complex case, for all their assistance.

SCHEDULE

AMENDED PARTICULARS OF CONTEMPT

Count 1

Eric John Watson in breach of paragraph 8 of the order dated 28 April 2016 failed to use his best endeavours to file and serve by 4pm on 26 May 2016 the additional information requested in item 118 of the Schedule to the Fourth Statement of Toby Graham dated 3 March 2016 **("Item 118"),** in particular by failing to provide each and every piece of the following information relating to the tracing of the sum of £12,143,133 to which Kea has a proprietary claim **("the Munil Money"),** which would have been available to Mr Watson using his best endeavours and which fell within the terms of Item 118:

(a) that Mr Watson had purchased a property in Sweden at Sotenas Smogenon, Brunnsgaten 25, 456 51 Smogen with the traceable proceeds of the Munil Money and that Mr Watson and Ms Lisa Henrekson each held a 50% interest in that property [and when he subsequently provided that information failed to disclose that he had raised ~~(or had agreed and was about to raise)~~ a mortgage over the said a property in Sweden that had been purchased with traceable proceeds of the Munil Money, the proceeds of which in the sum of SEK6m Mr Watson had paid to himself to his account ending 501 with JP Morgan (Suisse) SA];

(b) that traceable proceeds of the Munil Money (namely £3m from the sale to Ivory Castle Limited of a 10% interest in Voltaire Capital Limited, and a £1m part repayment of a loan by Munil Development Inc **("Munil")** to the Richmond Trust) had been used in early 2015 to fund loans to Mr Rob Hersov and Braithwell Investments Limited **("Braithwell")** which had in turn been loaned on to Cullen Group Limited, EJ Group Limited **("EJ Group")** and Bendon Limited **("Bendon"),** pursuant to various loan agreements and associated security deeds dated 15 and 17 April 2015 which gave each of Braithwell, CGL and EJ Group rights into which the Munil Money could be traced;

(c) that traceable proceeds of the Munil Money had been advanced to Tim Connell on 18 March 2016 in the sum of $1,800,024.85 ~~and (following a repayment) on 20 June 2016 in the sum of $1,740,025.04~~ pursuant to a loan agreement entered into between Munil and Mr Connell on about 4 February 2016;

(d) that the advance to Mr Connell was to be used to purchase shares in GEMFX (UK) Limited, now Stater Global Markets Limited; and/or

(e) that traceable proceeds of the Munil Money, namely $475,024.63 had been paid to Justin Davis-Rice on 26 April~~4 June~~ 2016 pursuant to a loan agreement between Mr Davis Rice and Munil dated 21 April 2016 and used to purchase shares in Long Island Iced Tea Corp from Mr Connell.

Count 2

Eric John Watson in breach of paragraphs 6 and 7 and Schedule 2 Parts 1 and 2 of the order of 12 November 2018 **("the November Order")** (alternatively paragraph 16.1 of the order dated 13 September 2018 **("the September Order"))** failed to provide any or all of the following documents relating to Long Harbour business:

(a) documents falling within paragraphs (44) of Schedule 2 to the November Order which he

received in connection with an attempted restructuring of the Long Harbour businesses in 2017; and

(b) the LHHL Shareholders' Agreement in contravention of paragraph 16.1 of the September Order and paragraphs (7) and (8), of Schedule 2 to the November Order.

Count 3

Eric John Watson in breach of paragraph 14 of the September Order failed within 28 days of service of the said order or at all to provide in an affidavit the value and details of all of his assets (as defined in paragraph 14 of the said order) worth over £100,000 and further failed to include in the said affidavit the value and details of all individual assets individually worth over $50,000 which were held by trusts identified by Mr Watson in answer to paragraph 14 of the September Order. In particular Eric John Watson failed to provide:

(a) details of and/or values as of October 2018 of all assets in excess of $50,000 held by the trusts listed in exhibit EJW-10 to Mr Watson's Second Affidavit other than the Valley Trust;

(b) values as of October 2018 of Mr Watson's interests in:

(i) Layaway Travel Australia;

(ii) Unfiltered Media Limited;

(iii) Esaw Limited; and/or

(iv) properties in Fiji held within the Tower Trust and the Peak Trust.

(c) details and/or values of his interests in litigation funding businesses which are assets of trusts falling within paragraph 14 of the September Order, including:

(i) Chancery Capital Advisors LLP or other entities associated with Chancery Capital Advisors LLP; and/or

(ii) a business known as "Alexa";

(d) the location or value or details of a loan receivable from "FOH Online Corp" in the sum of USD2,143,212;

(e) the value or details of an apparent loan receivable from Hart Acquisitions LLC in the sum of $7,210,535;

(f) details and values of other assets held by Mr Watson which are unknown to Kea or which Mr Watson alleges are held by persons other than Mr Watson.

Count 4

Eric John Watson in breach of the order of 12 November 2018 (**"the November Order"**) failed by 4pm on 21 December 2018 or at all to provide either and/or both of:

(a) a list and explanation of all of his interests (as defined in the said order) held by his mother, Joan Pollock, particularly the sum of NZ$3.5m transferred from Valley (NZ) Limited to an account in the name of J M Pollock on 8 May 2018 as required by Schedule 1 Part 2 Paragraph (12); and

(b) bank statements as required by Schedule 2 Part 2 Paragraph (47) of the said order.

Count 5

Eric John Watson in breach of paragraph 7 and Schedule 2 Part 2 paragraph (9) of the November Order failed to provide by 21 December 2018 or at all all instructions or requests for advice to, and all advice received from, Grant Thornton since 30 April 2014 in relation to the affairs of or any tax or estate planning in relation to any of Mr Watson's interests (as defined in the said Order) (including such instructions, requests and advice contained in emails).