Neutral Citation Number: [2020] EWHC 3536 (Comm)

Case No: CL-2009-000709

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

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

Date: 21 December 2020

Before :

The Honourable Mrs Justice Cockerill

- -

Between :

DEUTSCHE BANK AG	**Claimant**
- and -	
	Defendant
(1) SEBASTIAN HOLDINGS INC	
(2) MR ALEXANDER VIK	
	Defendant for costs purposes only

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- -

SONIA TOLANEY QC, JAMES MACDONALD, ANDREW LODDER (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Claimant**
DUNCAN MATTHEWS QC, TONY BESWETHERICK, ANDREW FELD (instructed by **Brecher LLP**) for **Mr Vik**

Hearing dates: 18 March, 30 November, 1 December 2020
Draft Judgment sent to parties: 14 December 2020

Approved Judgment

I direct that 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 Monday 21 December 2020 at 10:30am.

Cockerill J.:

1. I was scheduled to hear argument on this application over three days in mid-March, the first day of the hearing being 18 March 2020. After Mr Matthews QC completed his submissions on Day 1, I received a joint application by the parties to adjourn the hearing part heard, on the grounds of concern for the health of those involved arising from the coronavirus pandemic. As the matter was not by any means urgent and non-essential travel on the part of the legal teams was undesirable, I acceded to that application.

2. The parties agreed that the matter should come back "live", to ensure equality of arms. As it transpired, the events of the pandemic combined with the diaries of those involved meant that we have been unable to reconvene for a live hearing until much later in the year – and that the ultimate resumed hearing (during the last days of "Lockdown 2.0") was remote.

3. The hearing concerned two applications arising out of the long-standing litigation between the Claimant, Deutsche Bank AG ("DB") and the Defendant, Sebastian Holdings ("SHI") and its one time beneficial owner, the Respondent Mr Alexander Vik.

4. It is fair to say that the litigation is fiercely fought. The history of this case runs to 53 screens on the court's CE-Filing system. The claim form was issued in 2009. This hearing is but the latest outcropping of contention between the parties. It arises out of DB's application of 7 May 2019 to commit Mr Vik to prison for contempt of court (the "Committal Application" or the "Application").

5. As often with post judgment committal applications in this court the litigation is somewhat high-temperature, and has been accompanied by a litany of complaints about the terms in which each side speaks of the other.

6. The applications before me have been:

   i) DB's application dated 9 January 2020 to amend the Committal Application ("the Amendment Application"); and

   ii) Mr Vik's cross-application dated 16 January 2020 ("the Strike Out Application") by which he seeks to strike out the Committal Application in whole or in part, together with an Order for costs. Those costs are sought on the indemnity basis in relation to certain now abandoned allegations.

7. I should note here the not insignificant point that, during the hiatus in proceedings, the new regime as to contempt applications came into effect. As a result the new CPR 81 applies. I will however make reference to the earlier rules, as part of the argument addressed them and the parties were agreed both that the new Part 81 expressly does not alter the scope and extent of the Court's substantive powers in relation to committal (new Part 81.1(2)-(3)) and that the overarching principles applicable to civil contempts remain the same under new Part 81 as under its predecessor.

8. I shall come back to the procedural history shortly, but in essence the issues raised by these applications are whether, as Mr Vik contends:

i) The Committal Application should be struck out (originally under old PD 81, paragraph 16.1(3)), by reason of DB's failure to comply with the express obligation under old CPR 81.10(3) to provide particulars of the allegations of contempt.

ii) Alternatively, the Committal Application should be struck out (originally under old PD 81, paragraph 6.1(2)) because it is an abuse of the process of the Court.

iii) In the further alternative, insofar as it is based upon allegations that Mr Vik lied under oath ("the False Oral Testimony Allegations"), the Committal Application should be struck out: (1) as it discloses no reasonable grounds for alleging contempt; and (2) DB required permission (which it did not obtain) to make the application in respect of those allegations pursuant to old CPR 81.12(3) and 81.14.

9. The broad thrust of all these allegations is founded in the caution which this court must exercise in the context of committal proceedings and the importance of compliance with the strict procedural requirements of the process.

10. In essence therefore the focus is on Mr Vik's contentions; it is not in issue that if I do not accede to them it follows that the Amendment Application should be allowed and the Committal Application scheduled for a hearing. Accordingly, although in time the Amendment Application came first, it has made sense to hear the issues compendiously, with Mr Matthews for Mr Vik commencing.

The Background

The original litigation

11. In large measure this background is drawn from the previous judgments in this litigation.

12. SHI is a Turks & Caicos Islands offshore SPV which (until July 2015) was 100% owned and controlled by Mr Vik and used as his "*personal investment vehicle*".

13. This litigation commenced eleven years ago, in 2009, when DB commenced proceedings against SHI in this jurisdiction, claiming c. US$250m pursuant to loss-making derivatives trades. After a substantial jurisdiction dispute which went to the Court of Appeal ([2009] EWHC 2132 (Comm), [2009] EWHC 3069 (Comm) [2010] EWCA Civ 998), SHI denied that claim and brought an US$8bn counterclaim against DB.

14. There was a 14-week trial before Cooke J in 2013. As the Court of Appeal, in a later judgment, noted "*it involved 29 witnesses of fact, 17 expert witnesses, hundreds of thousands of documents hosted on an electronic trial bundle, thousands of pages of closing submissions, and was conducted at a combined cost to both parties of around £100m, reflecting the vast sums at stake*." Parallel substantive proceedings were also conducted in New York.

15. The English trial resulted in a judgment ([2013] EWHC 3463 (Comm)) substantially in favour of DB, with SHI's counterclaim being rejected in its entirety. The Judge held

(again quoting from a summary in a later judgment by the Court of Appeal in [2014] EWCA Civ 1100):

> "substantial parts of SHI's defence and counterclaim were based on dishonest evidence and fabricated documents put forward by Mr Vik, or by SHI's only other factual witness, Per Johansson. Mr Johansson was and apparently still is engaged as a litigation consultant to SHI. Amongst other things, Cooke J found that Mr Vik had invented the alleged oral agreements with DB, and that SHI's vast counterclaim was put forward on a dishonest basis by Mr Vik and Mr Johansson relying on fabricated documents. Cooke J was also critical of SHI's conduct of the proceedings in other respects, in particular its approach to disclosure, its pursuit of hopeless arguments, and as to the evidence of two of its main experts."

16. The judgment marked the start of a series of clear negative findings about Mr Vik's conduct by these courts. Cooke J described SHI's and Mr Vik's conduct as "*reprehensible*" and involving "*impropriety…and dishonesty on Mr Vik's part*". Other descriptions of him over the years have included the following:

    i) "*The whole history of the proceedings …reveals attempts by Mr Vik …to avoid liability, to deceive the court and to conceal the true state of SHI's financial affairs... Mr Vik's conduct is all of a piece and that these actions are all intended to impede enforcement of the judgment against SHI. It is hard to come to any other conclusion.*" (Cooke J in the CPR 71 challenge).

    ii) Mr Vik "*is a man who will do what is necessary to prevent DB obtaining its judgment debt*": [2019] 1 WLR 1737 (CA), Gross LJ at [1].

17. This latter description arose against a background where, nearly 7 years on from the judgment on the merits, SHI has not paid any part of the sums due under this original judgment. Mr Vik asserts that SHI has no assets with which to pay. That is not consistent with findings made in this Court and the Court of Appeal namely that:

    i) [2013] EWHC 3463 (Comm) [1461]: "*all these funds were available to SHI (some US$896 million) prior to transfer and that, moreover, Mr Vik could, at a moment's notice, procure the transfer of those funds back to SHI should he have chosen to do so.*";

    ii) [2014] EWCA Civ 1100 at [36]-[37]: "*there is no evidence to suggest that Mr Vik is not still the sole owner and director of SHI as he was in 2008…. Given the judge's findings as to the manner in which Mr Vik treated SHI and its assets as his own, it is difficult to think that there can be a more appropriate case in which to take into account that he could, if minded to do so, pay the judgment debt. However, it is not in my judgment necessary to go that far. On the basis on which I approach the case SHI could itself pay the judgment debt into court if Mr Vik chose to procure it to do so. That does not involve Mr Vik funding SHI or paying the judgment debt on its behalf. It involves Mr Vik taking steps to restore to SHI what are rightfully its assets*".

18. It has been determined in earlier proceedings that as soon as Mr Vik became aware of SHI's liabilities to DB in October 2008, he began putting SHI's assets out of reach. As this Court and the Court of Appeal have held, these assets remain "*rightfully*" SHI's and capable of being returned to SHI by Mr Vik "*at a moment's notice*".

19. One specific area which has been much in focus before me and where some background is appropriate is a transfer Mr Vik procured in October 2008 of around US$730m of SHI's assets to a company called Beatrice Inc. ("Beatrice"), for no consideration. Mr Vik then transferred Beatrice itself into a Trust ("the Trust") and Mr Vik was for some time Protector of the Trust, exercising almost total control over its assets.

20. This transfer was the subject of evidence at the trial. Mr Vik claimed that the transfers to Beatrice were legitimate loan repayments or capital distributions by SHI. Cooke J did not accept this, holding that Mr Vik's account was "*not susceptible of belief*" [1451] (a finding which was not appealed see [2014] EWCA Civ 1100 [15-16]). He made:

> "an unequivocal finding that on and after 13 October 2008, when Mr Vik had a clear idea that SHI's trading liabilities ran to many hundreds of millions of dollars, he caused US$896m of funds and assets to be transferred from SHI either to himself or to companies closely associated with him or with his family. In particular, very substantial sums were transferred to CM Beatrice, Inc. ("Beatrice"), and to VBI Corporation ("VBI"). The judge found that Mr Vik procured these transfers for no bona fide commercial reason, and that he did so with a view to depleting SHI's assets and making it more difficult for DB to seek recovery of the amounts owed to it by SHI."

21. Cooke J further held that a disclosure statement had been fabricated in a deliberate attempt to mislead the Court about the ownership of Beatrice and that SHI had relied upon a fabricated document purporting to evidence the transfers. Mr Vik has taken issue before me with the assertion that there was a finding that he fabricated the documents in question. Technically he is right, there is no firm finding on this; however it is clear that someone whose interests were aligned with his did so; and it is clear that his explanation as to who might have done that was regarded as unsatisfactory by the judge (at [1454]).

22. After the judgment, there was a period of time when the focus turned to the obtaining of non-party costs orders against Mr Vik, following on from the non-payment of the interim costs order of about £34.5m which had been ordered to be made by 22 November 2013.

23. This was an episode which itself involved disputes about service ([2014] EWHC 112 (Comm)), the substantive order ([2014] EWHC 2073 (Comm)) and security for the costs of an appeal ([2014] EWCA Civ 1100), followed by a substantive appeal ([2016] EWCA Civ 23). During the course of this passage of arms Cooke J held that:

> "the transfer of SHI's assets, on Mr Vik's instructions, has undoubtedly caused or contributed to SHI's inability to meet the costs order of 8th November 2013.

> ... Moreover, there was, as I have found, a strong element of impropriety in making those transfers."

24. At [80, 85] the judge recorded his finding that Mr Vik was the real party to the litigation. Later at [101] he rejected Mr Vik's evidence that a transfer previously said to be a cash distribution was, as Mr Vik contended, a loan repayment.

25. Those conclusions were endorsed by the Court of Appeal, holding at [26]:

> "I have already indicated that I accept it as inherent or implicit in the judge's findings that, as at October 2008, SHI had the right to recover its funds. It has not been asserted that the ability to recover the funds has been lost in consequence of subsequent transactions in the ordinary course of business. It follows that if circumstances have changed such that SHI no longer has the right to recover its funds, that can only be because it has carried out further acts of impropriety with a view to avoidance of payment of the judgment which it anticipated would be rendered against it."

26. Further at [36] the Court of Appeal made the finding noted above as to SHI's ability to pay – and Mr Vik's personal ability to make that happen.

27. Over this period DB identified a number of other assets which it considers that Mr Vik improperly transferred to other connected offshore vehicles, and which are relevant for the purposes of this judgment. These include:

    i) SHI's valuable interest in Devon Park Bioventures LP ("the Devon Park Interest"), which SHI purportedly assigned for no consideration in 2014 to a connected Panamanian company, Universal Logistic Matters SA ("Universal");

    ii) SHI's valuable shareholding in IFA Hotels & Touristik AG ("the IFA Shares"), which Mr Vik transferred through various steps ultimately to Universal; and

    iii) SHI's valuable interests in the Carlyle and Reiten private equity groups (respectively, "the Carlyle Interests" and "the Reiten Interests"), which were transferred to offshore companies connected to Mr Vik's father or Mr Johansson (as apparent from the quotations above, an associate of Mr Vik who gave evidence for SHI at trial).

The CPR 71 Order and hearing

28. Critically for present purposes, DB sought and obtained a CPR 71 Order in July 2015 ("the Teare Order"). The order was fairly broad. Paragraph 1 required Mr Vik to attend Court for cross-examination "*to provide information about [SHI's] means and any other information needed to enforce the judgment*". Paragraph 2 required him to provide, 14 days before that date, all documents in SHI's control going to its means of paying the Judgment Debt and information needed to enforce the judgment.

29. It also had a schedule of documents which had to be produced by Mr Vik and SHI, including:

    i) Various bank statements from identified bank accounts;

    ii) Documents related to certain defined private equity investments;

    iii) Documents relating to the IFA transfer;

    iv) Documents relating to any other investments or assets held by SHI from January 2008 to the date of the order; and

    v) Documents relating to any other transfers of assets or funds to or for the benefit of Mr Vik or companies or entities associated with him from January 2008 to the date of the order;

    vi) An unredacted copy of the agreement to sell SHI's non-cash assets to a company called VBI.

30. Paragraph 3 of the Teare Order required Mr Vik to "*answer on oath all the questions which the court asks and which the court allows the judgment creditor to ask.*"

31. Mr Vik was personally served with the Teare Order (he was in the jurisdiction at the time it was made and served). Seven days after being served, DB says that he transferred ownership of SHI (and some of SHI's documents) to Rand AS ("Rand"), a company controlled by a close business associate. In August 2015, he transferred Protectorship of the Trust in which Beatrice was held to his former sister-in-law. He transferred other of SHI's documents to Mr Johansson.

32. Mr Vik applied to set the Teare Order aside, contending (essentially) that it was an abuse of process because it was being sought for collateral purposes. On 9 October 2015 Cooke J rejected Mr Vik's arguments, upholding the CPR 71 Order and declining to narrow its scope. He noted at [11]:

> "The whole history of the proceedings against SHI, Mr Vik's creature company, as set out in the previous judgments I have given, reveals attempts by Mr Vik and Mr Johansson to avoid liability, to deceive the court and to conceal the true state of SHI's financial affairs."

33. He found (in harmony with the previous findings) that there was a basis for saying that SHI had assets which could be used to satisfy the judgment against it. The judgment again described Mr Vik as the physical embodiment of the company, treating its assets as his own.

34. Pursuant to this Order Mr Vik provided what DB says is seriously defective disclosure – an issue which remains live in the Committal Application. The 26 files he provided are described by DB as comprising a large number of hard copy bank statements, some written agreements, and little else.

35. It is common ground that there was no disclosure of any electronic documents additional to those which had been disclosed as part of the trial process. I am told by

DB that the evidence shows that most of the documents relating to SHI's formidably complex financial affairs were electronic and that Mr Vik conducted most of his business electronically via Blackberry – and certainly he did not seem to deny the latter in his cross-examination under the CPR 71 Order.

36. DB's solicitors wrote on three occasions in the run up to the CPR 71 hearing in November 2015 identifying what they said were gaps in the disclosure but nothing substantial was received by way of response. DB then cross-examined Mr Vik *inter alia* about his disclosure at the subsequent oral hearing on 15 December 2015.

37. His answers at that hearing, both as to substance and disclosure, were regarded by DB as manifestly unsatisfactory. At the end of the hearing DB immediately raised the question of committal for contempt. This was in the context of a passage in the transcript on which both parties relied:

> "MS TOLANEY: I have finished my questions.
>
> ..., my Lord, we submit that Mr Vik has plainly been untruthful in some of his answers today, and, my Lord, I can give you a number of examples of that.
>
> MR JUSTICE COOKE: Well, if you are going to make submissions to the effect that Mr Vik has failed to obey the terms of Mr Justice Teare's Order, I would need that to be properly formulated and although I have done my best to follow the evidence today, I couldn't legitimately come to the conclusion, in relation to that today, having seen many of these documents for the very first time during the course of your examination. So I think any application you wanted to make would have to be formulated and taken up on another day.
>
> MS TOLANEY: My Lord, I completely understand that. I can give you even one example though, ..., and we have got a list of about 20, so, my Lord, it sounds as if your Lordship might be prepared to adjourn consideration and make directions.
>
> MR JUSTICE COOKE: The technical position today is we have had an examination of means of a former director of the company, as to the means of the company in question. If you want to make an application of any kind it seems to be in relation to enforcement or in relation to contempt of court, I think that needs to be properly formulated on notice, and I need to have it spelled out with a skeleton argument and everything else so I have opportunity to consider it against all the documents that I have seen for the first time today.
>
> ... CPR 81,10 subparagraph 3: 'The application must set out ...(Reading to the words)... be supported by affidavits', and so on. I can't deal with it on anything less than that, and I wouldn't contemplate doing so.

> ... Well, the position is that Mr Vik turned up and he has answered questions. He has obeyed the terms of the Order in that extent."

38. To the extent that I need to make any ruling on this, what I glean from this is that Cooke J did indicate that no committal could lie then and there because there was no obvious contempt in the face of the court, in that Mr Vik had turned up and answered questions. He did not however indicate that there had been compliance; what he indicated was that any application to commit would have to be one for breach of the substance of the order, which would require a separate application and particularisation. He expressed a caution about proceeding further which is only natural and prudent in the light of such authorities as *Inplayer v Thorogood* [2014] EWCA Civ 1511 at [45] where the Court of Appeal referred to there being "*no question of upholding findings of contempt against a person who has been deprived of valuable safeguards*". This is a point which was reiterated recently in *Moutreuil v Andreewitch* [2020] EWCA Civ 382.

39. DB then initially sent the Committal Application to Mr Vik in draft in March 2016, to ascertain whether his solicitors would accept service. Mr Vik did not respond in relation to the draft application. Permission to serve out was obtained and Mr Vik then commenced a jurisdiction challenge. The initial permission to serve out was set aside by Teare J on 16 December 2016, on an issue which the Court of Appeal has subsequently flagged for consideration by the Rules Committee. Meanwhile DB sought to serve again, this time on the basis that no permission was needed. On 24 March 2017 Teare J made a declaration, following another application by DB, that DB did not need permission to serve out and granted alternative service.

40. Mr Vik challenged that decision; his challenge was rejected by the Court of Appeal ([2018] EWCA Civ 2011) and was further challenged in an application for Permission to Appeal to the Supreme Court. Mr Vik had obtained stays of service of the Committal Application pending the final determination of his appeal.

41. The Supreme Court finally rejected Mr Vik's application for permission to appeal the Court of Appeal's dismissal of his jurisdiction challenge on 12 March 2019. The stage was then set for the Committal Application.

The Committal Application

42. DB thereafter served the Committal Application on Mr Vik on 7 May 2019. Mr Vik notes that this involved nearly 2 months of delay.

43. The Application Notice was relatively brief. The principal allegations in the Application were:

    i) Failures to provide true information in relation to Beatrice, the Devon Park Interest, IFA Shares and the Carlyle/Reiten Interests (Ground 3(a)); and

    ii) Failures to provide categories of documents, including electronic documents, listed at Ground 3(b).

44. The evidence supporting the grounds of contempt alleged in the Committal Application was contained in the first affidavit of Mr Hart ("Hart 1") a document variously described as "*a clearly structured document*" and "*a model of obfuscation*".

45. Although no CMC was sought at the time of issuance of the application, as was perhaps suggested by old PD 81 paragraphs 15.1 and 15.4, DB thereafter sought to agree a hearing date and timetable for the Committal Application.

46. Agreement proved elusive. DB proposed a 5 day hearing in January 2020; Mr Vik advocated a longer and therefore later date - 7-10 days in March 2020. Directions were given by Teare J on 2 July 2019 ("the Directions Order") for a substantive hearing of the Committal Application with a time estimate of 7-10 days with three days' pre-reading in March 2020, with a CMC listed on 17 January 2020. In the interim Mr Vik was to file responsive evidence by 27 September 2019, and DB to file reply evidence by 20 December 2019.

47. Mr Vik had initially indicated that he might seek to strike out the Committal Application, but did not pursue this course at this point – he says in line with the authorities in this area, in particular with *Taylor v Ribby Hall* [1998] 1 WLR 400 where the Court of Appeal (Mummery LJ) said that it is, generally:

> "preferable to make submissions on delay, prejudice, potential injustice and other factors relevant to the court's discretion and its contempt and supervisory powers at the substantive hearing rather than by a preliminary pre-emptive move to strike out which may be open to the objection that it increases the costs and delay that preliminary procedures are intended to avoid."

48. This is probably a suitable point at which to interpolate that viewed in this light, much of the apparent oddity of the timing of this application, which DB submitted was tactical, arguably falls away.

49. In light of the proposed length of the hearing, Teare J also directed the parties to liaise prior to the CMC to consider narrowing the allegations of contempt, indicating that it might not be proportionate to determine more than a limited number of them.

50. The parties subsequently agreed to extend time for Mr Vik to serve his evidence to 6 November 2019. In seeking the extension and prior to that time Mr Vik did not indicate that he was in difficulties responding substantively to the application. Nor was the suggestion of a strike out revived.

51. That evidence was duly served. It took the point that Mr Vik considered that there were defects in the applications. It also responded in some detail to the allegations – it runs to some 129 pages. Some of the points as to defects are now reflected in amendments which DB seeks to make – both in terms of withdrawing allegations of contempt and in terms of the further particularisation of the application.

52. I should however make clear that Mr Vik's affidavit ("Vik 1") is before me in this hearing under a heavy marker – it is not formally adduced in this hearing (for reasons to which I will revert later) and Mr Vik (as he is entitled to do) objects to reference being made to it in support of any substantive submission. I have however taken the

view (and this did not appear to be highly contentious, with Mr Matthews for Mr Vik accepting that it could be referred to for case management reasons) that the court can have regard to the existence of the affidavit and the overall nature of its contents without infringing Mr Vik's right to silence.

53. In this regard I should perhaps clarify at this point that the basis upon which Mr Vik is entitled to take this position, is that:

i) The defendant to a committal application is, it is well-established, entitled to remain silent and is not a compellable witness. This is set out in *Re L (A Child)* [2016] EWCA Civ 173, [2017] 1 FLR 1135 at [31]-[32] where the court referred to: "*the absolute right of a person accused of contempt to remain silent, which carries with it the absolute right not to go into the witness box*";

ii) The correlate of that right is that the Court is required to manage committal proceedings so as to safeguard that right and a failure to do so will justify the setting aside of an order for committal, even where the failure might not have changed the outcome: see *Hammerton v Hammerton* [2007] 2 FLR 1133 at [14]-[19];

iii) That means that if a respondent serves evidence in advance of the committal hearing that evidence is not taken as having been deployed. The respondent may, right until the last moment, choose not to deploy it. And until it has been so deployed, it is inadmissible: *Templeton Insurance v Motorcare Warranties* [2012] EWHC 795 (Comm) at [(second) 24] (Eder J);

iv) The evidence may, however, be used by the applicant for the purpose of "*gathering preparatory evidence in reply*" (*Re B (A Minor)* [1996] 1 WLR 627 at 635-636B, 638B-G, *per* Wall J). Pending the deployment of the respondent's evidence both his affidavit and any evidence in reply remain "in limbo".

Nothing in new Part 81 affects this line of authorities.

54. Following the extension of time on the part of Mr Vik, DB required a corresponding extension for filing its own evidence in reply to 9 January 2020. When seeking that extension, DB did not give any indication that it intended to apply to amend the Committal Application.

55. On 9 January 2020 (a week before the CMC was due to be heard) DB filed and served its reply evidence including a second affidavit of Mr Hart ("Hart 2") and the Amendment Application. Like Mr Hart's original evidence, that application attracts polarized descriptions. It consists of amendments to the body of the application, some clarificatory, some deletions and some additions, plus a twelve paragraph Schedule of Particulars which provides further detail of the grounds relied on. Given the focus on the wording and content of the application I reproduce at Appendix 1 the redline version of the Amendment Application, minus the schedule.

56. Mr Vik describes it as having "*fundamentally sought to recast the Committal Application*" seeking "*to introduce to the Committal Application an entirely new schedule containing 5 pages of particulars*". His submission is that the Amendment Application is a not so tacit recognition of the faults of the original application: "*they*

had to bow to the inevitable and recognise they had made such a mess of the application that it could not be pursued to the CMC and the hearing in March." He says that against this background the Strike Out Application was simply a sensible means of marshalling his objections to this root and branch change of case and indeed that it was necessary to bring it forward then, as it provided the basis for resistance to the proposed amendments.

57. DB for its part described the purpose of the Amendment Application as being "*to narrow and refine the Committal Application to focus on the main allegations of contempt, on the basis that it was not necessary or proportionate to pursue a small number of its original allegations*" and as acting "*responsibly and proportionately, in accordance with Teare J's direction and in accordance with the general obligation on committal applicants to keep proportionality in mind*".

58. Whichever of these views is correct, the consequence was that this hearing had to be "repurposed" from being the substantive Committal Application to being the hearing of these two applications, amendment and strike out.

Strike out for failure to particularise

59. On 14 January 2020 Mr Vik indicated that he intended to issue a Strike Out Application because many of the points he would wish to raise by way of strike out were effectively "the flip side" of the Amendment Application and would now in any event have to be dealt with ahead of the main hearing.

60. Mr Vik's application was rooted in paragraph 16.1 of old PD 81 (which has been revoked and not replaced). This provides that: "*On application by the respondent or on its own initiative, the court may strike out a committal application if it appears to the court – ... (2) that the application is an abuse of the court's process or, if made in existing proceedings, is otherwise likely to obstruct the just disposal of those proceedings; or (3) that there has been a failure to comply with a rule, practice direction or court order.*"

61. The first point which is made for Mr Vik is that PD 81 Paragraph 16.1(3) was in identical terms to CPR 3.4(2)(c). He says that DB is in substance seeking permission to introduce particulars for the first time so as to cure its failure to comply with old CPR 81.10(3)(a), which rendered the original application liable to be struck out. Accordingly, Mr Vik submits that the Court should have regard to the principles set out in *Denton v TH White* [2014] EWCA Civ 906, [2014] 1 WLR 3926 and that on this basis DB's application must fail.

62. This argument breaks down into two parts. The first is that of failure to particularise. Mr Vik submits that there plainly is such a failure.

63. The second point is the applicability of the *Denton* principles. In support of this submission Mr Vik says that:

    i) Those principles apply in cases where the court is invited to strike out a statement of case for procedural non-compliance: *Walsham Chalet Park v Tallington Lakes* [2014] EWCA Civ 1607 at [44].

ii) Further, as explained in the White Book at paragraph 3.9.23: "*The Denton principles now underscore the court's approach to rule-compliance generally whether or not a particular failure to comply with a rule, practice direction or court order has resulted in the imposition of an express sanction*".

64. The response to this from DB is that the Amendment Application is not an application for relief from sanctions, nor is it analogous to such an application. It is an ordinary application, made in time and in accordance with a direction from Teare J, to amend DB's Application Notice to narrow and further particularise the contempts relied on against Mr Vik.

65. It submits that it is analogous to an application to amend a statement of case, to which the *Denton* framework does not apply. In this context I have been referred to *Ahmed v Ahmed* [2016] EWCA Civ 686 at [16] (in which Moore-Bick LJ held: "*I strongly deprecate attempts to force every application to the court for an indulgence of one kind or another into the straitjacket of relief from sanctions*.")

66. DB further submits that even if the *Denton* framework applies, it does so only insofar as the *Denton* principles reflect the overriding objective in CPR 1.1 and that, even if the *Denton* framework were applied, it would not change the result.

Discussion

67. Although DB preferred to take the Amendment Application first, I prefer to take as a starting point the issue as to whether, and if so to what extent, the original Committal Application was defective.

Particularisation

68. I should make plain at the outset that I do not accept that I should take it that because DB has not abandoned the Amendment Application and has chosen to press on, on the basis of the unamended application, that means that DB accepts that the original notice was defective. That that is not the case is very clear from the DB skeleton. And the logic is faulty; DB are effectively bound to maintain the Amendment Application in case I were to conclude that the original Application Notice was defective.

69. On this first point, even on the basis of the original application, I am not at all persuaded that the amendments should be seen as curing a procedural error in terms of lack of particularisation. That argument proceeds on the assumption that what is required is something with a considerable degree of particularity. Having reviewed the authorities to which I was referred I conclude that in essence the position is, as it is with pleadings, that it should enable the recipient to understand the case which he or she has to meet. That position, which is rooted in the overriding objective, is not changed by new CPR 81.

70. The first place to look is, of course, the rules. Old CPR r. 81.10(3)(a) provided: "*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 including, if known, the date of each of the alleged acts…*".

71. Paragraph 15.5 of PD 81 then stated: "*In dealing with any committal application, the court will have regard to the need for the respondent to have details of the alleged acts of contempt and the opportunity to respond to the committal application.*"

72. The new CPR 81 provides as follows (as relevant):

> "(2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—
>
> (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
>
> (b) the date and terms of any order allegedly breached or disobeyed; …
>
> (h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order";

73. The question is what is meant by "details" in the old PD (in the context also of "in full" in old CPR 81.10 (3)) and by "a brief summary of the facts" in new CPR 81(2)(h).

74. Mr Vik referred me to *Harmsworth v Harmsworth* [1987] 1 WLR 1676 (CA) at 1683A-D (per Nicholls LJ):

> "... 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."

75. I was also referred by Mr Matthews to *Re L (A Child)* at [2016] EWCA Civ 173, [2017] 1 FLR 1135. That was a case where there was said to be a breach of an Order made in 2014 and a breach of a witness summons of a later date in the context of committal proceedings which developed in what one might term a very free form organically from the witness summons hearing. In dealing with the question of contempt at [73]-[75] Vos LJ said:

> "I cannot over-emphasise the importance of any court dealing with an alleged contempt of court, whether a breach of a court order or a contempt in the face of the court, identifying or requiring the party bringing the contempt proceedings to identify precisely the particulars of the contempt with which it is dealing. This is a basic but crucial point. The alleged contemnor is

> entitled to know precisely the particulars of the charge he faces; put in layman's terms, he is entitled to know precisely what he is said to have done wrong. It is simply not fair to proceed with a hearing that leads to a finding that a person has committed a contempt of court by which they are punishable by imprisonment without identifying precisely the allegation which the evidence to be relied upon is directed at proving against him. In this case, there was utter confusion about what the contempt was that was being alleged, and it was described in materially different terms at different times…
>
> The process of committal for contempt is a highly technical one as this case shows. But it is highly technical for a very good reason, namely the importance of protecting the rights of those charged with a contempt of court."

76. Much emphasis was placed on that repetition of the word "precisely" and it was submitted that in this case as in that there was "utter confusion" about the contempt which was being alleged.

77. But the test overall is in essence one set out in that case thus: "*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?*". That is a test which also properly reflects the Article 6 considerations which Mr Matthews rightly emphasised as a very important factor in this context, as noted in old PD 81, paragraph 9: "*In all cases the [ECHR] rights of those involved should particularly be borne in mind ...*".

78. Thus in *Inplayer v Thorogood* [2014] EWCA Civ 1511, Mr Thorogood was not told of the allegations against him until after being found guilty and there was an admitted breach of his Article 6 rights in that he had been deprived of the right to know of the charges.

79. That approach, that of ascertaining whether the application is clear enough to leave the respondent in no doubt as to the substance of the breaches at a point when he has still time to meet them, is supported by the other authorities to which both parties have drawn my attention in relation to the practice in this area.

80. The authorities carefully read indicate that the Application Notice needs only to set out a succinct summary of the Claimant's case, to be read in the light of the relevant background known to the parties; it is for the evidence to set out the detail. So the requirement for particularity must not "*produce a result which unnecessarily makes a mockery of justice*": *Harmsworth*, Woolf LJ at 1685-1686.

81. This is also reflected in *Chiltern District Council v Keane* [1985] 1 WLR 619 at 622D which posits this test: does it give the person in contempt sufficient information? The precise way in which it was put by Donaldson MR was this:

> "Every notice of application for committal 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."

82. That this is the test can be seen from a reading of *Harmsworth,* where this very passage is used as the basis for the portion of Nichols LJ's judgment which I have cited above.

83. This approach is also evident in the judgment of Males J in *The Lord Mayor and the Citizens of the City of Westminster v Addbins Limited, Addison Lee plc* [2012] EWHC 3716 where he stated at [43]: "*In summary, therefore, the application notice must contain sufficient detail of what is alleged to enable the alleged contemnor to meet the case against him, but that requirement must be applied sensibly and the level of detail required to be included in order to satisfy this test will depend on the circumstances of the particular case, including the nature of the acts or omissions alleged.*"

84. This was a judgment which also drew on a further judgment of Woolf LJ in *Attorney-General for Tuvalu v. Philatelic Distribution Corporation Ltd* [1990] 1 WLR 926 at 935B-C which considers further the importance of the interplay of the circumstances of the case and the alleged contemnor's knowledge with the requisite degree of particularity:

> "The essential point which the cases establish is that an alleged contemnor should be told, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes contempt of court. The cases make clear that compliance with this rule will be strictly insisted upon since the liberty of the subject is at stake, but they also show the nature or background of the case is important. Where, for example, a non-molestation order is said to have been breached the complainant will in all probability have witnessed the act complained of personally and in such a case it is not unreasonable to require a particularised summary of the act relied on. It would not, however, be reasonable and would stultify this branch of the law if the same degree of particularity were required in a case where the complainant has not personally witnessed the act complained of and must rely on inference to establish that non-compliance with a court order was caused by the act or omission of the alleged contemnor. In such a case the complainant must make clear the thrust of the case he will present to the court. The alleged contemnor can then prepare to meet that case."

85. Against that background, while it is certainly possible to do as Mr Matthews did, and find cases where the failings of the particular application meant that the judge dealing with those particular facts emphasised "details" or "precisely" in expressing the test, the test truly understood was (and is) that which I have just set out.

86. Its application therefore requires a consideration not just of the application ("*transported to the laboratory for microscopic analysis*" as Lord Bingham said in relation to the exercise of construction of contracts) but of the application in its context, which will take in the nature of the breach alleged, and the alleged contemnor's knowledge of the circumstances in relation to it. In some cases a schedule may be useful. However there is not necessarily, as Mr Matthews submitted, a need for a schedule. In *Harmsworth* Nicholls LJ referred to a schedule "*in a suitable case if lengthy particulars are needed*" (my emphasis).

87. This fact sensitive approach explains not just the occasional outcropping of "specifics" and "preciselys" to which I have referred but also the actual decision in *Harmsworth* which is at first sight somewhat at odds with the passages on which Mr Matthews relied. That was a case where a short list of seven generalised allegations (of harassment of a wife by her estranged husband) contained in a single paragraph was ultimately found to be sufficient. In dealing (quite briefly) with the issue, Nicholls LJ repeatedly referred to the background, the "*context of the litigation*" and "*in the circumstances of the case*".

88. The lack of a need for a fully particularised case is also made clear by the passage in the case where he refers to the need for "*certain basic information*" and Woolf LJ's indication that "*what is not required…is that the notice…should be drafted as though it was an indictment in criminal proceedings. While a respondent is required to be given particulars of what is alleged to be the breach, the particulars do not need to be set out in the same way as separate counts have to be set out in an indictment, nor do they need to give the particulars that you would normally expect to be seen in a count in an indictment*".

89. This reference to an indictment is an interesting one. It arose in that case perhaps because the contempt was close to being a genuinely criminal matter – there was an injunction in family proceedings which was breached by actions which, if proved, would have been criminal in themselves; resulting in the committal application. It arose from a specific submission in that case that details of the breaches needed to be set out "*in a manner equivalent to counts in an indictment or charges in a summons*".

90. That suggestion, as can be seen above, was firmly rejected. But it is perhaps worthy of pausing to consider just what is required for a compliant indictment. Criminal Procedure Rules 10.2(1) (which of course did not exist at the time of *Harmsworth* but which reflect the pre-existing law), provide that an indictment:

> "…must be in writing and must contain, in a paragraph called a "count"—
>
> (a) a statement of the offence charged that—
>
> (i) describes the offence in ordinary language, and
>
> (ii) identifies any legislation that creates it; and
>
> (b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant"

91. As anyone familiar with indictments will be aware, they are frequently short (for example "*Fraudulent Evasion of a Prohibition, contrary to section 170(2) of the Customs and Excise Management Act 1979; Particulars of Offence> John Smith on the 1st Day of January was in relation to class A drugs cocaine, knowingly concerned in a fraudulent evasion on the prohibition on importation thereof imposed by …*"). But what was being said in this case was that the particulars of contempt need not be even as specific as this.

92. For completeness I should deal with *VIS Trading v Nazarov* [2016] 4 WLR 1 which was cited by DB as an analogous case. This case certainly did have a degree of factual similarity with the present case as the allegation of contempt was one of failure to produce documents required by a CPR 71 Order. The allegation was set out in a single paragraph in the Application Notice: "*The first and second defendants' failure to comply in any respect with paragraph 2 of the Order of Singh J dated 21 May 2015 (the "21 May 2015 Order"). Specifically, not a single copy document was disclosed or produced to the claimant by 4·00 pm on 31 July 2015 as ordered by paragraph 2 of the 21 May 2015 Order.*"

93. The Court went on to make a committal order against the First Defendant. However this authority is of relatively little assistance in circumstances where the issue of the adequacy of the particularisation does not seem to have been live and the situation is, on any analysis rather more complicated here because of the aspects relating to Mr Vik's oral evidence.

94. The conclusion which I reach on the authorities under old CPR 81 is entirely supported by the wording of new CPR 81 which requires the "nature" of the alleged contempt to be set out in the application, together with a "brief" numbered chronological summary of the facts alleged. The first part of this of course echoes the requirement in *Harmsworth:* "*a person alleged to have been guilty of contempt is required to be given particulars sufficient to let him know the subject matter of the breach. If that purpose is served then the notice is not defective, at least in that respect.*"

95. I therefore reject Mr Matthews' submission which was in essence that "*in the tab which contains, as it were, the committal application, there you should be able to find the precise details of the breach alleged.*"

96. Nor do I consider that I am prevented from looking at the test posited by the old authorities because of the existence of new CPR 81. That set of rules does not posit a test, but rather a number of procedural requirements. Further it is entirely clear (and was common ground before me) that there was no intention to overwrite the previous law: CPR 81.1(2) says in terms "*This Part does not alter the scope and extent of the jurisdiction of courts determining contempt proceedings, whether inherent, statutory or at common law.*"

97. In essence the new rules set out what is the procedure to arrive at the result required by the test. But exactly how that is to be done will depend on the facts of the case; for example a requirement for chronological details may be otiose. So in this case it was agreed that this is not a case where a chronological summary matters, because all the oral contempts asserted date to the same day and all the documentary contempts also date to one day.

98. Looking at matters on the basis of the test as discerned above, and the wording of new CPR 81, by posing the question: is there in the original application a clear summary, enough to enable the Defendant to understand the case which he has to meet? I conclude that (by a narrow margin) there is. That is a conclusion which requires a degree of "unpacking".

99. Firstly, this is not a case at the extremes. Mr Matthews' submission that this was a case of "utter confusion" akin to the position in *Re L* was misplaced. Any reading of the factual background to the application in *Re L* (which defies a sensible summary) makes clear why that phrase was used in that case. The present situation is very far from that. It is quite clear, for example, which order is said not to have been complied with (one major issue in *Re L*).

100. Nor is this a case of a broad allegation against either no context, or diffuse context, or a case where knowledge of the exact details of the breach lies with the applicant. As to the breaches alleged, certainly on reading the document against the background which I have gained as a newcomer to the case, it is hard to see what the objection can properly be.

101. The submissions advanced for Mr Vik seem to ignore the facts that:

    i) One must in considering this submission bring into the equation that this all arises against the background of the cross-examination, and indeed a history which, as I have outlined above, goes back at least to the trial in 2013.

    ii) One must also bear in mind the ability (or otherwise) of the applicant to provide details. As Woolf LJ noted in *Tuvalu*, the degree of specificity possible may be predicated on the information available.

102. In relation to both these points it is not irrelevant that Mr Vik is embedded in this litigation. He is indeed much better able to understand the points than most of those of us involved in this application. He is also, to put it neutrally, likely to be better placed to know what it is that he might have said but did not, than is DB.

103. Against this background Mr Matthews' submissions, advanced though they were with great skill, took on a somewhat *Through the Looking Glass* character. To take one example (from the complaints about the Amendment Application, but which applies *a fortiori* to the original notice), it was contended that the first complaint both in its original and amended form lacked the requisite degree of particularity.

104. The contention is that:

    i) No particulars were provided of the specific evidence (or "information") that Mr Vik gave at the Part 71 Hearing about the "funds and assets" of Beatrice or the Trust which is said to have been false; nor is there a summary of such evidence; nor is there any identification of the respects in which such evidence is alleged by DB to have been "[un]truthful" or "[in]complete".

    ii) It is not explained about which "funds" or "assets" of Beatrice or of the Trust information was suppressed or withheld and there is no attempt to identify the

> information that it is alleged Mr Vik actually knew at the date of the Part 71 Hearing and which he is supposed to have lied about or to have withheld.

105. The first point was thus the contention made in relation to the evidence relied on that the exact answer said to be a lie should be identified in the Application Notice – a submission advanced at the resumed hearing thus:

> "And if the ground of contempt is breach of an implied obligation, or it's perjury or interference with the due administration of justice, then the brief summary of the facts should identify the question and answer and respect in which it was untruthful…"

106. Against the background of the authorities I have set out above, I regard that submission as being utterly without foundation. To reiterate: what is required is an identification of the type of contempt alleged (breach of order etc) and then a short summary sufficient to enable the respondent to understand and to respond – which point segues into the second complaint.

107. The second complaint is the argument as to particulars of falsity. What was said, in relation to Beatrice was:

> "it is impossible to understand whether the evidence is sufficient to prove the lie or, as significantly, what evidence is required to refute the allegation. For example, when Mr Vik was asked '*Can you tell the court what assets Beatrice currently has*?' and he replied '*no*', is it alleged that that was a lie because Mr Vik could in fact identify the nature and value of each individual asset held by Beatrice? Or the rough type of asset? Or that it had some assets at all? Or because he could have found out some information but impliedly was saying he could not?"

108. In essence it is said that in order to be viable, an Application Notice compliant with the authorities to which I have referred would need to "*identify at the least: (i) what* "*assets*" *and what* "*funds of SHI*" *Beatrice or the Trust* "*had*" *or* "*held*"*, and how so …..; (ii) what fact about those assets or funds (or how they were* "*had*"*) Mr Vik falsely said he did not know*". So, in a case where the complaint is that Mr Vik did not provide information, DB is (in order to enable Mr Vik to understand the case against him) supposed to set out the information which he did know, but did not tell them (which information being the very information they are seeking in order to trace assets to satisfy the judgment). But given that Mr Vik will not provide information as to SHI's funds or as to his knowledge of them, how is it suggested that DB should – or could ever – discharge this burden?

109. I am entirely satisfied that this is not what the law requires. If it were it might well be said that the law had produced "*a result which unnecessarily makes a mockery of justice*"; or, one might say, a judgment defaulter's charter. This is where the authorities dealing with the relevance of background are critical.

110. I should also add that Mr Matthews accepted that more skeletal particulars could be sufficient in what one might term a binary case ("*the very simple case of: you were told*

not to go to the house; you went to the house" paradigm drawn from *Hammerton*) but submitted that this could not be applicable here because "*the obligation on Mr Vik was not binary*".

111. In my judgment this analysis overcomplicates in adding an extra layer to a simple but fact sensitive determination. The test is the test: is enough information given to enable the alleged contemnor to understand what is being alleged? It may well be the case that skeletal particulars are most often sufficient in relatively simple, binary cases. But that does not mean that they cannot be sufficient – when taken in conjunction with the background and the contemnor's knowledge – in more sophisticated cases. Further, as explained further below the allegations made in this case are, in their essence, if not binary, close to it.

112. Coming back to the Application Notice, the first complaint (in both original and Amended Applications) is that Mr Vik deliberately failed to provide truthful and/or complete information regarding his knowledge of the funds and assets of Beatrice and the Trust. That is amplified in the amendment application by explaining that Mr Vik lied by giving evidence "*the substance of which was*" that "*he did not know or was unable to provide information about*" "*what assets*" or "*what funds of SHI*" Beatrice or the Trust "*had*" at various dates.

113. Is there in the original Application Notice a clear summary, enough to enable Mr Vik to understand the case which he has to meet? When one looks at the Application Notice against the relevant background (which includes the original judgment and the cross-examination of Mr Vik - as well as the fact that Mr Vik was told in terms the topics which were to be covered at the examination) the following things are clear as regards the Beatrice allegation:

    i) It is said that in giving his evidence he failed to comply with the Teare Order. That is the allegation of the nature of the breach alleged required by new CPR 81 (see CPR 81(2)(a): "*for example, breach of an order or undertaking or contempt in the face of the court*"). It also captures the date and terms of any order allegedly breached.

    ii) It is then said that Mr Vik's evidence as regards his knowledge in relation to the funds and assets of Beatrice was untrue or incomplete. That is a brief summary of the facts alleged to constitute the breach.

    iii) As for the complaint that there is no particularisation of what evidence given by Mr Vik is said to have been untrue or incomplete, this is self-evidently (in the context of the reason for the CPR Part 71 proceedings) a reference to a fairly brief passage in the cross-examination where Mr Vik was asked what assets Beatrice had then, and what assets it had had as at August 2015. To both answers Mr Vik said that he did not know, and was challenged as to the credibility of that answer given inter alia that the trust was said to be Mr Vik's children's inheritance on which he kept an eye. This is not a case where the evidence given on the identified topic ranged over a number of sub-topics so that there might be confusion if the relevant sub-topic were not identified.

    iv) I should note by way of parenthesis that actually particularising in the formal sense by reference to the transcript would not be as simple as this might suggest.

In the nature of things questions and answers are different in format to particulars, and they also have some reference to what has gone before.

v) What emerges without difficulty, even to a novice in this litigation, is that it is being said that: either Mr Vik lied when he said he did not know, or that he did not give complete information when he said he did not know – or both.

114. Does this (objectively) enable Mr Vik to understand the case which he has to meet? In my judgment it does. It is also perhaps worthy of note that the embargoed Vik affadavit does deal with the allegation, which indicates that (subjectively) Mr Vik does understand the case he has to meet.

115. Further (though this makes no difference to my conclusion and I do not rely on it to reach that conclusion) I consider that Hart 1 provides a straightforward way of cross checking any query. It is not, as was suggested "chaotic". It is drafted with a logical structure, setting out each breach alleged in summary, the evidence given by Mr Vik and in what respects and why that is said to be untrue or inaccurate or incomplete.

116. So in relation to Beatrice, paragraphs 88-9 of Hart 1 identify and quote the evidence which Mr Vik gave at the Part 71 hearing. This makes (with the greatest of respect to the skill with which the point was put) a nonsense of the submission which Mr Matthews made for Mr Vik, that the summaries of what was said were not identical in different places (say as between the summary in the DB skeleton and the schedule provided to me on the resumed hearing). Mr Vik therefore knows (i) that it is said he was lying when he said he didn't know what Beatrice's assets were and (ii) the exact passage of evidence relied on.

117. I should deal specifically with the suggestion that a viable allegation would need to identify at the least: (i) what "*assets*" and what "*funds of SHI*" Beatrice or the Trust "*had*" or "*held*", and how so (c.f. *JSC BTA Bank v Ablyazov* [2011] EWHC 1522 (Comm) at [11] (Teare J)); and (ii) what fact about those assets or funds (or how they were "had") Mr Vik falsely said he did not know.

118. In a sense this comes back to the point which I made earlier, that the suggestion that DB should be able to identify what is missing is somewhat otherworldly. Again it proceeds on the basis of what appears to be a misstatement of the allegation pursued. The allegation is not that Beatrice had x assets but Mr Vik falsely claimed it had y assets. The allegation is that Mr Vik knew what assets Beatrice had but falsely claimed not to.

119. I should of course deal with *JSC v Ablyazov* at [11], on which reliance was placed. That case concerned a very different species of contempt allegation – one where the allegation was failure to disclose a specific asset and wrongful dealing with that asset.

120. In my view Hart 1's fault is really that it errs on the side of over-completeness; it reads as being designed as much or rather more for the judge on the Committal Application (who might be new to the litigation) as for Mr Vik. Caution has also doubtless been exercised to ensure that there can be no suggestion that Mr Vik's Article 6 rights are being infringed or that he is being ambushed.

121. Further there has also obviously been a desire to put forward as complete an evidential picture as possible when a case that Mr Vik was lying is founded in significant parts on inference. Hence, when one gets beyond the actual complaints into the material which explains to Mr Vik and to the judge why it is going to be said that allegations are proved beyond a reasonable doubt, there can be a sense to the outsider of "information overload", and some references may not be completely harmonious. An example is the treatment of Universal, which has a connection with Devon Park and the IFA Shares.

122. There may also be issues as to whether what is alleged is sufficient to give rise to a contempt. An example is the position taken as to the partnership transfers, where part of what is said hinges on "the impression" given by Mr Vik at the cross-examination hearing. There may well be questions as to whether an inaccurate impression is sufficient to ground a complaint of contempt. Similarly one might say that the particulars of untruthfulness on Beatrice hinge on inference. There is the question of the weight to be attached to the fact that Mr Vik knew of the subjects about which he was to be asked and yet did not, or says he did not, ask Mr Broquen, who could have given him up to date information. This is said to provide a basis for an inference that Mr Vik was lying when he said it did not occur to him to ask Mr Broquen.

123. These points may ultimately prove to be good points at the substantive committal hearing (and I note that Mr Matthews anticipates needing considerable time for argument as well as evidence on that occasion). But it seems hard to comprehend that the affidavit could be said not to provide valuable highly detailed particularisation of the brief but tolerably clear summary provided to Mr Vik by the Application Notice.

124. I appreciate of course that the authorities say that the application notice must itself provide the summary. For what it is worth, I do doubt whether what was said there would necessarily give rise to a principle rigidly applicable in all cases. That is because that guidance derives from a case where the Application Notice was woeful and the affidavit lacked structure, simply reciting the facts and asserting a conclusion. I have some doubt whether that would be the result in a case where a better summary was included in the Application Notice and a better affidavit was served. As I say, I have not relied on the affidavit in reaching my conclusion, but the utility of the affidavit would certainly be of relevance when one comes to the next stage, considering the *Denton* principles.

125. The same point could be made about the other headings relating to oral evidence in the Application Notice – and indeed Mr Vik did not seek to suggest that the other heads were required to be treated differently, simply saying in his skeleton "*the same applies*" or that these raised "*much the same point*".

126. I concur with this assessment. It is clear when one looks at the Application Notice against even the partial background which I can glean from the transcript and the earlier judgments (and for which I had no need to refer to Mr Hart's affidavit) that DB seeks to say that:

    i) Evidence in relation to the Devon Park Interest and the IFA Shares – which was in effect that these had been transferred (to Universal) and that Mr Vik had subsequently had nothing to do with them and that he had no connection to Universal – was likewise not truthful or not complete or both.

ii) Evidence in relation to the Carlyle and Reiten Partnerships – which was in effect that they had been transferred respectively to Delagoa Bay Agency Company ("Delagoa") and Sarek Holdings Limited ("Sarek") in late 2008 and were of limited value at the time – was not truthful or complete or both.

127. Again, while the nature and brief facts giving rise to the application are in the Application Notice (in its original form), the affidavit provides ample particularisation. In relation to Devon Park paragraph 110 of Hart 1 sets out the relevant evidence given by Mr Vik which DB contends is false. Subparagraph 110(b) specifically sets out the statement made by Mr Vik that he did not have *"any connection"* to Universal; this is said in terms to be untrue at paragraph 111. The reasons why it is said to be untrue is then explained in some detail before it is explained that "*contrary to Mr Vik's account he did have a clear connection to Universal*". True it may be that that explanation involves a number of descriptions of what is inferred from individual pieces of information which are expressed differently from the phrase "*clear connection*". It may well be that there may be debate about whether the evidence justifies that conclusion, or precisely what the nature of any connection is. But that is not a matter which goes to strike out. Mr Vik has ample material to understand the case advanced – and to meet it if he so chooses. Whether the connection is that of a continuing economic interest, ultimate effective controller – or some other interest direct or through his father – what is being said is that that interest makes his answer in cross-examination untrue.

128. To give a more specific example, which pertains to the amendments, it was contended that the particulars in the new schedule relating to Universal are "hopelessly unclear" because DB says that Mr Vik had "*at least a direct (alternatively indirect) economic interest in the Devon Park Interest*" and was unable to particularise further. The real gravamen of the complaint here was that, it is said, DB cannot hope to prove the allegation to a criminal standard from so slight a base. However that does not make the allegation unclear; and the merits of the allegation – which forms part of a set of particulars of a wider allegation that the evidence regarding both Devon Park and the IFAs was either deliberately untrue or deliberately incomplete - will be a matter for the judge who hears the substantive Committal Application.

129. Or, taking Delagoa – anyone with a knowledge of the background and the events of the cross-examination (such as Mr Vik or a reader of one of the judgments and the relevant order and transcript) would find it entirely unproblematic to see that what DB is saying is that when Mr Vik said that he thought he had transferred ownership of Delagoa to his father in 2008, he was not telling the truth. That is then expanded upon in the evidence to explain that on DB's case the evidence indicates a real possibility that not only was the interest not transferred in 2008, it was not transferred at all.

130. A similar point applies to the disclosure aspect of the application. It is said that the formulation "*Mr Vik either deliberately took steps to put documents beyond his control, or chose not to produce documents within his and/or SHI's control, that were required to be produced by the Teare J Order*" is unclear because "*there is no identification of the documents that Mr Vik is said to have failed to produce*", no identification of the documents that were in Mr Vik's control, or "*in what manner they were within his* "*control*"*, which documents he* "*chose*" *not to produce (or when such choice was made), or what step or steps he is said to have taken (and when)* "*to put [such] documents beyond his control*"." When I raised this issue with Mr Matthews in argument he suggested that at least if there was a suggestion that Mr Vik put documents

beyond his control DB "*have to identify what steps he took to put the documents beyond his control and what documents [DB] are referring to*".

131. This is a complaint which (again) borders on the absurd – and which also brings vividly to mind the kind of excessive applications for further information (not geared to understanding the case which has to be met) on which the court has long frowned. It also is founded upon a surprising misreading of the application, which is a fairly simple inference formulation, based on two alternatives. There is no positive case that Mr Vik put documents beyond his control – because that is not within DB's knowledge. DB says that it can prove beyond a reasonable doubt that Mr Vik had such documents (which is a matter for the committal hearing), and that since he did not produce them, it logically follows that either (i) he chose not to produce them or (ii) he deliberately put them beyond his control, or (iii) both – but whichever of those it is, he breached the order. He does not need to understand more than this.

132. Exactly the same point can be made with regard to Mr Matthews' suggestion that "*if it is said he did not produce documents within SHI's control, that were required to be produced, then it must be identified what documents he failed to produce in relation to that.*" It might also be said that the *Vis* case to which I referred earlier is relevant here, as indicating that the argument advanced for Mr Vik is wrong; there nothing was produced, and a notice saying in essence "*breach because you produced nothing*" was not considered to be lacking.

133. A significant part of the submissions advanced orally was a case that the Teare Order was itself unclear, such that it was not possible to say, briefly "*you failed to comply with paragraph [x] of that order*". It was said:

> "This is one of those multiple types of order which creates exactly that sort of uncertainty and lack of clarity, which is to be distinguished from an order requiring you to leave a house by a particular time, which can easily be alleged and established, clearly, by saying: you didn't leave the house by that time."

134. However in my judgment that Order is far from being unclear - it is broken down into paragraphs which set out in terms what is required and in cases give examples. Nor does the Application Notice elide different parts of the Order. It is always clear which part of the Order is said to have been breached. And of course, it must be borne in mind that the Order has already been unsuccessfully challenged by Mr Vik (albeit through a different counsel team) on five grounds – but not on the basis of any lack of clarity.

135. It is notable that it is not said that at least the first category of documents which Mr Vik was to produce (electronic documents) are themselves unclear. The only answers, which are no answers, are (i) that some electronic documents were produced in disclosure for the trial and (ii) the affidavit is diffuse as to the electronic documents which have been identified as not having been given. As to the former these would have been relevant to liability, not to enforcement and are no answer to this later order for electronic disclosure of documents relevant to enforcement. It remains the case that there is a zero return for electronic documents relevant to enforcement. As to the latter, this only goes to the evidence of non-compliance; and since this has emerged in the course of other enquiries, the slightly piecemeal nature of the presentation is understandable.

136. As for hard copy documents, the complaint was that it could not be right merely to replicate the Teare Order's schedule of categories of documents (for example as to bank statements), as the original Committal Application did, when 26 bundles of documents had in fact been produced in response to those categories. As for this, if the bank statements category were still pursued I would certainly have found some force in this. However ultimately DB took the view that they did not need to pursue that aspect of the original application, and that has been amended out of the draft Amended Application Notice. I need not therefore consider it. The fact that I would have found this category to be susceptible of strike out does not infect the rest of the application which is structurally and conceptually distinct.

137. I should add for completeness that in the light of what the authorities have to say about particulars I do not accept the submission that specific allegations should be identified, not on an inclusory basis, but on an exclusory basis.

138. The only area which has given me real pause for thought, in terms of lack of clarity (and leaving aside the categories no longer pursued) has been the category which in the original version said that Mr Vik had chosen not to produce/put beyond his control documents held by third parties. At first blush there was attraction in the argument that the application did not make clear which third parties were referred to. However on further consideration this is in reality just another manifestation of the same point – that DB does not know which third parties held documents; though as Mr Hart's affidavit explains, DB says that there is an irresistible inference that there were documents held by third parties and as it and the Amended Application Notice make clear, DB considers that it can indicate fairly clearly who some of these are likely to have been as they have now done in the Schedule to the draft Amended Application. But this detail is part of the evidence giving the basis for lack of reasonable doubt. It is not required to set out the complaint.

139. Moreover Mr Vik must understand perfectly well what was being sought because he was asked about it in cross-examination:

> "Q. What about copies of documents held by third parties? So banks who SHI held accounts with? Did you ask them? …
>
> Q. Did you tell him to contact Britannic? They hold the corporate records of SHI, you have said. …
>
> Q. What about the trustees of the CSCSNE trust? Did you speak to them? …
>
> Q. What about the general partners of the private equity funds in which SHI had an interest? Did you speak to them?"

140. I would also add that had there been any uncertainty about the ambit of the substance of the complaint made, that is certainly cured by the way in which the proposed amendments have been formulated. This is a topic with which I deal further under the heading of abuse of process.

141. If there is no issue with the Application Notice as originally formulated, (i) the strike out for failure to particularise falls away and (ii) there is on any analysis no procedural

breach to deal with and the *Denton* principles do not apply to the Amendment Application.

The Denton principles

142. I shall nonetheless deal with this issue briefly. If the *Denton* principles applied, this would presuppose a breach, which I will assume would be categorised as a serious one. It would on this hypothesis probably also be categorised as one for which there is no good reason (because it would have resulted effectively from a failure to put the application together properly in circumstances where there was no shortage of time or resources).

143. However in circumstances where (i) any default would not be gross – in that in the light of the above, if I had come down on the other side of the line as to adequacy of particularisation, the distance between what was provided and what should (at minimum) have been provided is not a very substantial one (ii) the affidavit offers much extra detail in a structured form (iii) the changes are not to substitute but to clarify the case being advanced (see further below on "new" allegations), (iv) Mr Vik has been able to respond to the application, in that he has served detailed evidence which (without trespassing on the specific contents and hence on his right to silence) suggests that even if there is objectively a failure to meet the requisite level of detail he has in fact understood the breaches alleged (v) the amendments have to some extent arisen out of the evidence already served, and (vi) this arises against a background of attempts to enforce a judgment of this court, it would in my judgment plainly have furthered the overriding objective to permit the amendment.

144. I do of course bear in mind the needs (i) for litigation to be conducted efficiently and at proportionate cost; and (ii) to enforce compliance with rules, practice directions and orders, noted in *Denton* at [34]-[36]. I also bear well in mind their importance in this context, given that committal proceedings have an impact on the potential liberty of the respondent. But those factors cannot trump the weighty considerations which I have already listed.

145. This conclusion is therefore one I would reach in any event, simply on an application of the *Denton* principles.

146. However I note that it would also harmonise with the authorities which DB cited on cure/waiver in the specific context of contempt applications. On this it was originally submitted for DB that that old PD 81 paragraph 16.2 permitted the Court to waive a defect in a committal application if there is no injustice, that was effectively Part 81's own relief from sanctions provision (ousting *Denton*), and that in any event there was a residual discretion to cure a defect where no prejudice had been caused. For example, Lord Woolf MR said the following in *Nicholls v Nicholls* [1997] 1 WLR 314 at 326 B-D:

> "….If committal orders are to be set aside on purely technical grounds which have nothing to do with the justice of the case, then this has the effect of undermining the system of justice and the credibility of court orders. … As long as the order made by the judge was a valid order, the approach of this court will be to

> uphold the order in the absence of any prejudice or injustice to the contemnor as a consequence of doing so."

147. On this, it was submitted by Mr Matthews that the abolition of the specific waiver provision of old PD 81 at paragraph 16.2 shows that even if the suggestion that *Denton* did not apply because there was some specific regime in Part 81 ever had any merit in it, it no longer does because it has been abolished.

148. Had it been necessary to do so I would have found that despite the abolition of the specific power under the PD, the Court has the power to cure such defects where there has been no prejudice. That certainly seems to have been the approach taken by Foxton J in the recent case of *Integral Petroleum v Petrogat* [2020] EWHC 558 (Comm) where he held that one allegation of breach was too generalised, but that this had not caused any prejudice and permitted the claimant to amend the Application Notice to add further particulars. A similar approach can be seen in the case of *SK v HD* [2013] EWHC 2436 (Fam).

149. Putting aside the right to silence points which I deal with below, it is hard to see what prejudice there would be to Mr Vik in permitting the Amendment Application, given that (as I conclude below) the amendments are not to raise new grounds, but simply to provide further particularisation. It would be a surprising result if the court had no jurisdiction to permit such an application. One point to note here is that all the cases seem to hinge on or are looked at through the lens of the substantive hearing, and the courts are keen to ensure that a respondent can understand the case he has to meet. To disallow amendments which are designed to improve the situation as regards this point would seem to be nonsensical. Further of course, we are here at the strike out stage, not that of the substantive hearing. On any analysis Mr Vik has plenty of time to deal with the case as set out in the Amended Application Notice.

150. Although, for obvious reasons, I do not need to decide this point I would suggest that whether or not the *Denton* approach will be appropriate when looking at permission to amend a document which is defective may well depend upon the nature of the defect. One can see that if the document is susceptible to strike out for disclosing no reasonable grounds or is an abuse of process, the *Denton* approach to any amendment to cure that defect is a natural one. It may be that (as the *Integral* case and the case of *Ahmed* suggest) it will be less so when a breach of a rule is in focus.

Abuse of process

151. In a sense the abuse of process issues thus become academic, because they were originally deployed in the skeleton argument only as part of "Stage 3" (the relevant circumstances) in a *Denton* analysis which I have concluded does not arise. However I deal with them separately here in part because in the hiatus between the two hearings new authorities – in particular that of *Navigator Equities & Chernukhin v Deripaska* [2020] EWHC 1798 (Comm) - came into being which resulted in rather more emphasis being placed on this argument by Mr Matthews at the resumed hearing, to the extent that it at points appeared as if the argument was primarily one of strike out for abuse of process.

152. It was not seriously in issue that committal proceedings are an appropriate way (albeit a last resort) of securing compliance with an Order, and bringing serious breaches to

the Court's attention: *Sectorguard plc v. Dienne plc* [2009] EWHC 2693 (Ch), Briggs J at [47].

153. Applications to secure compliance are – or can be - thus a proper use of the committal jurisdiction. As Marcus Smith J held in *Absolute Living Developments v DS7 Limited* [2018] EWHC 1717 (Ch) at [36(1)]:

> "…The public interest in seeing such orders obeyed is, inevitably, a strong one. Since a court can be presumed not to make unnecessary orders, where an order of the court remains uncomplied with, it seems to me extremely difficult to say that contempt proceedings in relation to such a contempt can ever be said to be an abuse of process".

154. However Mr Vik says that even allowing for this, the Application is abusive essentially because it:

i) Infringes his right to silence because of the use made of his putative evidence in the Committal Application.

ii) Has been brought on so late – with what is characterised as "inordinate and inexcusable" delay.

iii) Has been approached in a cavalier and oppressive manner. At the resumed hearing this argument expanded somewhat in the light of the *Deripaska* case to which I shall come, verging on an argument that there was an improper purpose in making the application.

iv) Is still defective, despite the proposed amendments.

155. I will deal with each of these items below.

Delay

156. I deal first with delay because, against the background which I have set out at the start of this judgment I have no difficulty whatsoever in concluding that this complaint is misdirected and without merit.

157. It is of course correct that proceedings for contempt of court must be issued without delay.

158. The proper approach to the exercise of this exceptional jurisdiction is explained by Lord Mustill in *Tan v. Cameron* [1992] 2 A.C. 205, 225. The question is:

> "whether, in all the circumstances, the situation created by the delay is such as to make it an unfair employment of the powers of the court any longer to hold the defendant to account. This is a question to be considered in the round …".

159. Mr Matthews pointed to a period of three months between the examination and the service of the draft application, a delay of two months in the making of the application to serve out and a further two months and consequent delay in seeking to serve without

permission, followed by delay after the appeal was refused. He pushed his point so far as to say that there was in reality no delay on the part of Mr Vik, but considerable unexplained delays on the part of DB. He claims that the point is particularly acute because the subject-matter of the application is Mr Vik's alleged state of mind when he gave evidence on a single day close to 5 years ago, about matters covering an 8-year period.

160. In my judgment these submissions, that there has been objectionable delay in this case on the part of DB, are redolent with irony in circumstances where the delay can at least substantially be put down to Mr Vik's attempts to resist the application being brought – and however properly arguable each step taken by him was, such that one cannot properly call it unreasonable - it remains the case that this all proceeds against a background of the unpaid judgment debt. There is also the understandable caution which has attended every step taken by DB against a background where Mr Vik has, with the assistance of a veritable galaxy of legal talent, resisted every step in DB's attempts to bring home and then enforce their claim against SHI.

161. For the avoidance of doubt I do not accept that there was significant delay at any point, nor in the aggregate. At each point the delay is entirely within reasonable bounds. The three months between the examination and the service of the draft application was not unreasonable given the holiday period and the work which needed to be done. The delays around permission are not unreasonable given the sense of allowing Mr Vik to respond before pursuing the application, and the sense of pursuing one route on service rather than two. The Committal Application was served promptly within eight weeks of the Supreme Court's refusal of permission to appeal.

162. As to the loss of the substantive hearing, which Mr Vik says lies at DB's door in delaying the decision to amend, that is hardly a matter of substantial complaint even if it were true; on the basis that it was prompted in part by judicial indications and also by the responsive evidence, that was itself served late, pushing the date close to the CMC. Further, despite Mr Matthews' submissions in this case that this application to strike out has been brought earlier than it need to have been and that no strike out would have happened but for the Amendment Application, I would hesitate to trace such a firm causative link between the Amendment Application and the launching of a strike out application, given the history of the proceedings more generally, where it might be thought that no point had been left untaken.

Defectiveness

163. Nor, as I have already made clear, do I accept that when issued, the application was fundamentally defective, or that DB only sought to set out its allegations in any particularised manner by its draft Amended Application Notice.

164. As for the further particulars which have now been given, I have substantially dealt with these above. The complaints which are made in relation to the Amended Application Notice are essentially of a similar nature to those made in relation to the original Application Notice. I do not accept that the particulars given are impossible or even difficult to understand. I have had no difficulty comprehending them, although new to this litigation. To Mr Vik they must surely be much more simple to follow.

The right to silence

165. Mr Vik's case is that the Amended Application compromises his right to silence because the changes to the case are reliant upon his evidence, which he insists has not been deployed.

166. I am not persuaded by the general complaint, which amounts to saying that DB should not even have thought of the evidence, and could not change its position to the extent of not pursuing a point even if that evidence, if deployed, would show an incontrovertible answer to a particular point. That is plainly an impractical approach and contrary to the Overriding Objective. It would also potentially open those acting for DB to professional sanction if they knew (albeit from a document in limbo) a point was unarguable and still pursued it.

167. However there is force in the submission that the Amended Application should not reference Mr Vik's potential evidence.

168. Four particular complaints are made.

i) Complaint 1: Mr Vik says that paragraph 12(b) seeks to introduce the new allegation that Mr Vik was in contempt by "*continuing to delete documents after the date the Teare J Order was served upon him*" and that is reflected in Hart 2 paragraphs 66-67 which makes extensive reference to Vik 1 to support the allegation.

ii) Complaint 2: Mr Vik says that paragraph 12(a)(i) seeks to introduce the new allegation that Mr Vik was in contempt because he had "*the means of obtaining and producing*" (unidentified) electronic documents. Aside from complaints about particularisation Mr Vik says that Hart 2 paragraphs 68 and 78-82 indicate that DB intends to make a range of allegations that Mr Vik conducted an inadequate search for documents, based on a criticism of Vik 1.

iii) Complaint 3: Mr Vik says that paragraph 7 seeks to introduce the new allegation that Mr Vik lied when he gave evidence "*the substance of which*" was that "*SHI had entered into agreements to transfer or dispose of its interests*" in certain private equity partnerships in 2008. The case was originally put in Hart 1 on the different basis that Mr Vik lied by saying the transfers themselves "took place" or were completed in 2008 and is now put forward as an agreement to transfer. Mr Vik contends that this is a change and that the change is designed to seize upon the evidence that DB anticipates Mr Vik would have given in response to the original allegation, and that it is clear from Hart 2 that it is essentially responsive evidence.

iv) Complaint 4: Mr Matthews for Mr Vik says that paragraph 8(b) advances a new allegation that Mr Vik told a lie by saying "*there was no trading after November 2008*" and that SHI had "*already disposed of these assets*". He says that there is no reference to that alleged lie anywhere even in Hart 1: it has been newly introduced to try to mould the case in light of Vik 1.

169. The answer given by DB to Complaints 1 and 2 is that the Schedule at paragraph 12 does not introduce new allegations but rather particulars of deliberation. While it does involve use of the Vik 1 material it effectively pre-warns Mr Vik of the issues that will arise if he deploys the evidence he has indicated that he will deploy. The question of

whether a breach was deliberate has always been part of the case, both in the Application Notice and in Mr Hart's affidavit. DB also says, in relation specifically to the right to silence, that at least some of this – in relation to non-disclosure of electronic documents – can be sustained without reference to Vik 1.

170. As for Complaints 3 and 4, Ms Tolaney contends the complaint confuses the ground of contempt with the evidence relied upon prove the contempt. Whether that is correct or not is a matter for the committal hearing. What is said is, she says, (i) perfectly easy to understand and (ii) not altered in any material respect by the way it is put. The essence is that it does not reflect the truth and whether the falsity is that there was an actual transfer or an agreement to transfer does not affect their case that the answer which Mr Vik gave was a wrong answer, and that wrong answer was a deliberately wrong answer.

171. I accept the submissions for DB that these are not new allegations, simply new particulars. The allegations remain the same in essence as they have always done. The allegation that there are new grounds is founded in the argument, which I have dismissed above, as to particularisation. However turning to the content of those particulars, overall while I take on board DB's points here, namely that this evidence will not be deployed unless and until Mr Vik deploys his evidence on these points and while it may well be that some of these allegations can be made without reference to Vik 1, I am not as matters stand persuaded that these allegations, or parts of them, can be made cleanly without reference to Mr Vik 1 and the result is that parts of the proposed Schedule (though not any parts of the proposed Amended Application Notice) do therefore infringe Mr Vik's right to silence.

172. I am therefore minded to order that the final form of the Application Notice:

i) Shall not refer to that evidence or to Hart 2, which itself refers to that evidence.

ii) Shall not contain particulars which can only be made good by reference to Vik 1 and/or Hart 2.

173. One way round this would, it seems to me, be to amend the Application Notice in the form proposed but minus the Schedule. The form of Application Notice served in draft has however been notified by this process to SHI/Mr Vik; so they are on notice as to the implications which DB says flow from the evidence which he currently intends to, but is under no obligation to, adduce.

174. At present the problems appear to me to comprehend principally paragraph 12(a)(i) and (possibly given the other evidence) 12(b), although some alteration may be required to the wording of paragraphs 7 and 8 (and possibly 9) also. This is a matter which may require to be dealt with in consequentials. It also seems that to the extent that Hart 2 deals with matters other than replying to Vik 1 (such as updating on other sources of information), it may be prudent to encapsulate that evidence separately, so that it can be before the Court and openly referred to even if Mr Vik does not deploy Vik 1. Again this is a matter which the parties may wish to consider for consequentials.

Oppression

175. The way in which this is put by Mr Vik is that just because enforcing compliance can be a legitimate aim of a committal application, that does not mean that attempts to

obtain compliance or enforce sanction are never an abuse of process. There is no "free pass", so to speak. Here Mr Vik says that there is oppression, which can be inferred to the relevant level and which is compounded out of:

i) Failure to particularise the charges against Mr Vik;

ii) The fact of withdrawn allegations, in particular:

a) The inclusion of unsustainable allegations relating to alleged failures to produce documents (which it is said DB did not seek to verify before advancing);

b) The inclusion of a number of unsustainable allegations about alleged intentional lies which are based on misrepresentations of Mr Vik's evidence;

iii) A number of further mistakes and misrepresentations in the sworn evidence of Mr Hart; and

iv) A lack of proportion in its approach and the "*tendentious and perjorative*" tone of the evidence.

176. I will deal first with the question of the test – namely whether the court looks to find "*predominant purpose*" or "*real and substantial purpose*". The first relevant authority is the *Integral Petroleum* case. In that case Foxton J said at [42]:

> "It can never be proper to seek to use a committal application as a lever to bully a respondent into a settlement. However, the practical consideration that resolving an outstanding committal application will in most cases be necessary to achieve a settlement of the commercial dispute means that the court should not jump too readily to the conclusion that references in the settlement communications to the disposal of the committal proceedings or the timing of the committal proceedings evidence an improper purpose on the claimant's part, or involve the use of the committal proceedings as some form of improper threat."

177. In the next paragraphs he noted the potential issue as to exactly where the line should be drawn and noted that he did not need to decide the issue, but proceeded on the basis of the lower hurdle.

178. The second relevant case is *Deripaska* – a case in which Andrew Baker J did strike out a committal application. Again at [140] he noted the possibility of a difference of view as to the appropriate test, and noted that he did not need to decide the matter.

179. I will do likewise here. I proceed out of an abundance of caution on the basis that Mr Vik would only need to establish "*real and substantial purpose*". As in those other cases, on the facts it makes no difference.

180. I return now to the relevant limbs of the alleged abuse.

181. Plainly from what I have said above, I do not accept the first of these complaints, that of failure to particularise.

182. As to the withdrawn issues, I will not rehearse them at length, but again give examples. So on disclosure one complaint was that DB alleged that Mr Vik suppressed statements for two DNB accounts for August and September 2015 whereas in fact the statements for August 2015 provided by Mr Vik in 2015 stated on their face that those accounts were "Avsluttet" ("closed") on 13 August 2015. Similar points were made about a JP Morgan account which had been notified as closed, and some statements which had actually come into existence after the examination.

183. As regards the False Oral Testimony Allegations which are now no longer pursued, one example given was that DB alleged that Mr Vik lied by saying that he had not known, in 2014, the value of the Carlyle Interests as at that date whereas the transcript records him as being asked about his current knowledge of the values on the date of the cross-examination and in 2014. That is described as an "obvious and egregious misrepresentation".

184. Another example given in oral argument was an allegation being made by reference to what was said to be a description by the Oslo Court of one Mr Bokias as Mr Vik's portfolio manager, whereas in fact that description came from a filing by DB itself, and there was not such finding by the Court.

185. Mr Vik contends that there are numerous serious breaches of a rule which is there for a very important reason, namely the protection of a person accused of contempt, and that they evidence a heavy handed or partisan approach which should weigh as a factor preventing reliance on this application, whether as part of the *Denton* analysis or in the context of abuse of process.

186. At the resumed hearing that argument has been reiterated, by reference to the trenchant comments of Andrew Baker J in *Deripaska* as to the need for the applicant as "quasi-prosecutor" "*to act generally dispassionately, to present the facts fairly and with balance, and then let those facts speak for themselves, assisting the court to make a fair quasi-criminal judgment*".

187. DB says that the errors complained of are few and far between in the context of an extensive and detailed witness statement and were made on the basis of properly arguable constructions of Mr Vik's evidence, with Mr Vik's suggestion that his evidence was being misrepresented by Mr Hart being wrong and inappropriate.

188. I do accept that in some circumstances there might be force in an argument of the type advanced by Mr Vik, whether at the *Denton* stage or in the context of establishing abuse. Plainly in *Deripaska* the facts made these issues acutely relevant and telling. However the degree of force which it possesses will be very fact sensitive; and here the facts render it of little assistance to Mr Vik.

189. I do of course accept that the rule is there to be complied with and that it is important that these things are got right. I also accept that there is a responsibility on the applicant as quasi-prosecutor to as far as possible let the facts speak for themselves, rather than approaching the matter in an overtly partisan way.

190. Having said that, although Mr Matthews of course made very effective play of the points, when one looks at them in context, I conclude that they do represent a very small fraction of the grounds pursued and the evidence set out in the affidavit, and they do not justify the inference of partisanship or impropriety which was sought to be drawn from them.

191. I would add that while I accept that some really are errors which should not have occurred (some appear to have originated in a less than thorough approach to reading the transcript, for example), others are certainly very understandable – the non-comprehension of the Norwegian for "closed", the overlooking of a single letter in the context of the thousands which will have been generated in this litigation. It is probably correct that these sorts of errors are ones which come in part from a lack of the perfect rigour which Andrew Baker J describes. But they are fairly minor failings and certainly do not give rise to real grounds for inferring an improper approach.

192. Further, and perhaps not insignificantly, in this case Mr Vik was offered an opportunity to comment and to correct the application before it was issued – and in effect for years after it was issued, given the lengthy dispute about jurisdiction – and did not avail himself of it. Still further, although much was said about lack of clarity and confusion, it was not apparent to me, from reading the evidence which Mr Vik has served and which he may in due course deploy, that confusion has been the result. Any wasted time in dealing with misconceived allegations can be dealt with in costs in due course.

193. Ultimately the case on oppression was more about the motivation of the application. I do not accept this submission. This is not a case like the *Deripaska* case. That was a case where one might say the personal animus between the parties was plainly present and notorious. This, by way of contrast, is a case where the motivation for the application is clear, patent and legitimate: this is about enforcing the judgment. The fact of the entirely legitimate primary motivation is clear from the history of the litigation – including from Mr Justice Cooke's endorsement of the Teare Order as appropriate. It is also clear from the terms of the order sought – what is sought is not imprisonment, simpliciter; imprisonment is only sought as a suspended sanction if information is not given. The primary focus of the application is therefore enforcement. Of course that would not prevent there being a real and substantial purpose which was not legitimate. But the basis for this inference remains entirely unclear; and how it was said to arise did not emerge entirely clearly even in submissions.

194. There is no conduct here which could not be referable to the legitimate purpose but could only be referable to an intent to oppress. Indeed that is not suggested. Here there is a positive attempt to engage with criticisms – the Amendment Application has dropped various allegations, rather than pursuing them on a "bunker" or oppression mentality, there has been an attempt (unnecessary, as I have found) to provide more focussed particulars where confusion was said to have arisen.

195. As for the number of the allegations, which was relied upon by both sides to contrasting effect, I would say this. Mr Matthews contended that the approach of Marcus Smith J in *Absolute Living* (to say that the number of allegations weighed against a finding on abuse) was not transportable, given that that was a case where an allegation of contempt was accepted to be factually well founded. That point, so far as it goes seems to have some force.

196. But equally the mere fact that allegations are disputed cannot *per se* make the number of allegations abusive. The making of many unfounded allegations would be abusive. The making of many well founded ones will be most unlikely to be. In the hinterland where the strength of those allegations is untested I would be hesitant to say that the number of allegations is abusive unless it were possible to say, at least tentatively, that there were grounds to consider that they or a number of them would be ill founded. Aside from the allegations which have already been dropped, I do not see that as being the case here. The allegations made appear to be well arguable, based on the material which I have seen for the purposes of this application.

197. An argument was also made that the mere fact of pursuing a contempt application rather than a resumed Part 71 examination is oppressive, and evidence of the animus which Mr Vik seeks to establish. I do not see this argument as helpful to Mr Vik.

198. In response to my suggestion in submissions that this was asking DB to bang their head against a brick wall a few more times Mr Matthews responded that on the contrary, the animus can be inferred because DB had not exhausted the potentialities of the Part 71 procedure. For example he said that no questions were asked about missing bank statements, which could have been done and that there are "*many of these topics which could perfectly well have been raised in cross examination*" but were not.

199. The problem with this argument is that is as in concrete terms made entirely by reference to the bank statements, which is the one substantial topic which DB has now withdrawn. The other areas where DB could supposedly have taken the cross-examination further have not been identified and explained. The reality is that DB have sought answers once already through the Part 71 process. Anyone reading the transcript will see that Mr Vik then returned answers on a number of key issues which left DB no further forward.

200. DB's position (made clear now) is that in numerous key respects Mr Vik did not answer questions he could have answered. If Mr Vik could not answer those questions at all, there is no point in a further Part 71 process. If he could have, but did not, he can make good that lack at any time, without waiting for the committal hearing. In fact DB have held back from a full throttle committal; what it seeks is essentially a Part 71 examination reinforced by the "stick" of the committal sanction. I conclude that DB's approach is neither disproportionate nor oppressive, nor does it provide any evidence of intent to oppress Mr Vik.

201. Finally there was a suggestion that the costs of dealing with the Committal Application were themselves oppressive. Mr Vik complains about Hart 1, described as "a huge and discursive document" which has forced Mr Vik to incur significant costs. This point goes nowhere. Either the Committal Application is entirely good, in which case Mr Vik cannot be heard to complain about the costs of it; or it may be wholly or partly misconceived. But in either of those events that it is a matter which can perfectly well be dealt with in costs.

202. On proportionality, Mr Vik also submits that the plan to cross-examine him at the substantive hearing for 3 days is disproportionate when this is all about an allegation that he lied under oath during a single day of cross-examination, and the end game is to then obtain an order requiring Mr Vik to attend for yet further cross-examination on pain of imprisonment.

203. Mr Vik pointed to the comments of Vos J in *JSCA BTA Bank v Ereshchenko* [2012] EWHC 1891 (Ch) at [159]:

> "Both parties to this application have treated the committal application somewhat like a state trial. I formed the view early on in the hearing that they had got it rather out of proportion. A committal of this kind needs to be clear – beyond a reasonable doubt. Finely balanced judgments about a witnesses' state of knowledge at particular times against the backdrop of years of complex documentation have no sensible place in such an application."

204. This was approved by the Court of Appeal ([2013] EWCA Civ 829) which said at [42]:

> "[the question of whether the respondent lied when saying he had made all reasonable enquiries] is subjective and depends upon the respondent's state of mind when he made the statement. It is not to be overridden by a policy position that a respondent must not be allowed to "get away" with making an objectively inadequate compliance with the order. To show that not all reasonable enquiries have been made may be enough to justify a supplementary order designed to reinforce the original obligations. It does not by itself justify a finding of criminal contempt, based on dishonesty."

205. Mr Vik also contends that there are obvious parallels with the position in *Newson-Smith v Al Zawawi* [2017] EWHC 1876 (QB) at [82]-[85], where Whipple J refused permission for contempt proceedings to be brought where there had been delay, there was a risk that the application was brought "*out of a vindictive desire to harass the Respondent*" and to pressure him to pay the judgment debt "*even though the Respondent is not liable for it*", where it was doubtful that the proceeding would serve the public interest, and where the Part 71 proceeding had already taken up significant time, much of it attributable to the applicant's own delays.

206. All of these are good points in their place, but their place is not here.

i) This is massive litigation where the successful claimant is trying, and has been trying for years, to trace assets in the face of determined resistance by SHI and Mr Vik. While other avenues have been pursued, they have not to date borne fruit.

ii) As I have already indicated I can entirely understand that DB took the view that there is no scope for a supplemental order – every stone barring committal has been turned. A supplemental order would have no further teeth to persuade Mr Vik to do better (to the extent that he has not given answers to date).

iii) This is a practical application. While it is avowedly made in *terrorem* – in the hopes that the available sanction will focus Mr Vik's mind – it is not one made simply with the aim of sending him to prison. It does not bear the hallmarks of the vindictive application.

iv) If there has been delay it is more substantially at Mr Vik's door, as the history above indicates.

207. I would also add that the cases relied on are very different in terms of their factual background to the present case: *Newson* was a much smaller judgment debt, which seemed to weigh heavily in the balance in the proportionality analysis; *BTA* was an application for committal before the substantive trial had taken place and any findings of dishonesty made.

Strike out of the False Testimony Allegations

208. The final part of the dispute on these applications related to what Mr Vik calls the "Strike out of the False Testimony Allegations". The essence of this is that it was said that DB has effectively pursued the wrong application and that, for the application it should properly have pursued, DB required the court's permission.

209. I place this summary in the past tense, because this was an area where the change in CPR led to a shift between the original and resumed hearings. At the original hearing, this point was pursued with some force. However on resumption Mr Matthews rightly conceded that new Rule 81.3(5) which now governs the requirements of permission stood in his way. That rule states:

> "(5) Permission to make a contempt application is required where the application is made in relation to—
>
> (a) interference with the due administration of justice, except in relation to existing High Court or county court proceedings;
>
> (b) an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement."

210. It was not suggested that the present case falls within either of the two grounds in r.81.3(5) on which permission is now required. That conclusion is supported by the judgment of Trower J in *Cole v Carpenter and others* [2020] EWHC 3155 (Ch) at [25].

211. Mr Matthews however noted the possibility of an anomaly in that, despite the literal reading of the new rules suggesting otherwise, it was not intended that the new Part 81 would change the circumstances in which permission is required. He relied on the consultation paper produced by the Civil Procedure Rule Committee for the new Part 81, which stated:

> "The new rule …attempts to capture, in fewer words than in the current version, the cases in which permission is currently required."

Be that as it may, it is difficult, as Mr Matthews rightly accepted, to read the new rules as requiring permission in any circumstances other than the two described in subparagraph (5).

212. In those circumstances I do not need to deal with the argument as originally advanced. However since full argument was addressed to it, and because, if there were an anomaly

it would be right that I identify it for consideration, it is appropriate that I at least cover the issue briefly.

213. Mr Vik points to the wording of the Application, which is brought on the basis that Mr Vik failed to comply with the Part 71 Order and in particular to the part which says that he "*intentionally failed to provide truthful and/or complete information*" at the Part 71 Hearing.

214. That, it is said, amounts to an allegation that Mr Vik lied under oath, which is an allegation of contempt by interfering with the due administration of justice. Contempt of that nature is regulated by Section III of CPR Part 81 (as opposed to Section II, which deals with such contempts as failure to comply with an Order). In relation to contempt by interfering with the due administration of justice the rules (old CPR 81.12) provided:

> "(1) This Section regulates committal applications in relation to interference with the due administration of justice in connection with proceedings-
>
> (a) in the High Court;
>
> (b) in a Divisional Court (GL);
>
> (c) in the Court of Appeal;
>
> (d) in an inferior court (which includes the County Court); or
>
> (e) which are criminal proceedings,
>
> except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court."

215. The essence of the point is that, as Mr Matthews put it in submissions:

> "Mr Vik complied with the order by giving plentiful documentation and turning up and answering questions for a day that were put to him. And if the complaint is that what is said was not true and, above all, deliberately so, then it's the contempt to pervert the administration of justice route, rather than simply breach of Mr Justice Teare's order, which needs to be the correct approach."

216. The distinction is said to be that in the case of a contempt application under this head there is a dual *mens rea* element: it is necessary to prove both that: (1) the alleged contemnor knew that his words were not true or did not honestly believe them to be true; and (2) he intended, or knew that it was likely that, the administration of justice would be interfered with as a result.

217. By contrast, it is said that absent pursuing contempt on this basis there was no requirement that Mr Vik do more than attend court and answer the questions put to him. If he did that much, if DB wished to raise a complaint about the answers given, the

proper means for doing so is by way of an application for contempt for interference with the due administration of justice or an indictment for perjury.

218. If that is right, the result is that DB would under the old rules have made the wrong application, those allegations would fall to be struck out and DB would need to start again with a permission application in relation to them.

219. Mr Matthews directed my attention to cases which he said demonstrated that this was the appropriate way to deal with what are said to be lies told pursuant to a CPR Part 71 examination. The first was *Newson-Smith v Al Zawawi* [2017] EWHC 1876 (QB). That case similarly concerned allegations of contempt in the context of Part 71 Proceedings. Mr Matthews submits that this judgment illustrates the correct approach that should have been taken in the present committal proceedings. At [4]-[6], Whipple J addressed the alleged grounds of contempt and the application of Part 81:

> "4. The applicant alleges that during the CPR 71 proceedings, the respondent interfered with the due administration of justice by making false statements. The applicant now seeks permission pursuant to CPR 81.12(3) to initiate committal proceedings for contempt of court against the respondent.
>
> 5. The applicant argues the respondent has interfered with the administration of justice, and is in contempt, in the three following ways:
>
> a) he knowingly or recklessly made false and misleading statements in purported compliance with the order for disclosure in the CPR 71 proceedings (Ground 1);
>
> b) he knowingly or recklessly put forward a false case in his oral and written evidence to the Court (Grounds 2 and 4);
>
> c) he knowingly or recklessly made false and misleading statements in witness statements attested by a statement of truth (Grounds 2 and 3)."

220. Whipple J then went on to consider the test to be applied at the permission stage, being a test concerned with the public interest. At [7], Whipple J also noted the additional *mens rea* element required in an application under r.81.12:

> "7. I would add the following observations, specific to this application. First, to establish a contempt, the false statement must have been made with the intention that, or at least in the knowledge that it was likely that, the administration of justice would be interfered with as a result, see *Tinkler v Elliot* [2014] EWCA Civ 564 at [44]:
>
> '*in order for an allegation of contempt to succeed it must be shown that… in addition to knowing that what you are saying is false, you had to have known that what you are saying was likely*

> *to interfere with the course of justice*' citing *Edward Nield v Loveday* [2011] EWHC 2324 (Admin)."

221. Mr Matthews relied on two further cases – the judgment of Vos J in *JSC BTA Bank v Ereshchenko* at [132(iii)], and the judgment of Scott V-C in *Malgar v R E Leach* [2000] FSR 393 – as authority for the additional *mens rea* requirement for contempt by interference with the due administration of justice. The relevant passage from the former case is:

> "iii) The *mens rea* necessary to prove criminal contempt of the kind alleged by the Bank is accepted to be in two parts: -
>
> a) First, that Mr Ereshchenko deliberately gave false evidence without any honest belief in its truth on the occasions specified.
>
> b) Secondly, that Mr Ereshchenko had the intention, by giving that false evidence, to interfere with the course of justice.
>
> There have been various expressions of these requirements, but both parties referred to the useful dictum of David Richard J in *Daltel v. Makki* [2005] EWHC 749 (Ch) at paragraph 81. There was a debate as to whether the second requirement followed as a matter of course once the first was proved. It seems to me that this will depend on the facts of the case. I shall assume, for the purposes of this case, that each requirement is separate, though, of course, the facts establishing one limb will in all probability also be relevant to the proof of the other."

222. The latter case concerned an application for permission to bring committal proceedings for contempt of court by making false statements in documents verified by statements of truth, pursuant to the then r.32.14. At 396, Scott V-C stated explained the difference between the two types of contempt in focus here:

> "… under CPR rule 32.14 a private individual can only bring committal proceedings with the permission of the court. The reason for that is the nature of the proceedings. These are not proceedings where the alleged contempt consists of the breach of an order obtained by an individual in protection or furtherance of his own private rights. It is a case of an allegation of public wrong, not private wrong. Interference with the course of justice is plainly a public wrong and it is right therefore that there should be a public control over the launching of proceedings for this species of contempt."

223. Mr Vik submits that DB's approach is dependent upon the Court accepting the (novel) proposition that paragraph 1 of the Part 71 Order should be read as including within it a freestanding obligation to provide truthful information and that such a construction is unsustainable because that construction is at odds with the ordinary meaning of the words used in the Part 71 Order which require the object of the order to:

i) "*attend court … to be questioned by the judgment creditor before a judge… to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order*".

ii) "*answer on oath, all the questions which the court asks and which the court allows the judgment creditor to ask*".

224. Mr Matthews submits that it cannot sensibly be said that those words purported to regulate the content of Mr Vik's answers when being questioned, still less Mr Vik's state of mind with regard to his answers when giving them. He adds that the Court should be wary of reading words into the Part 71 Order, as DB does. Orders bearing a penal notice must be clear and should be strictly construed with any ambiguity resolved in favour of the respondent: *BTA Bank v Ablyazov* (No. 10) [2015] UKSC 64 [2015] 1 WLR 4754 at [19] (Lord Clarke).

225. It is argued that the requirement to swear and answer questions under oath renders it wholly unnecessary to introduce a further (unexpressed) obligation into the obligation to attend and provide answers and that the power to sanction untruthful answers operates via the Court's powers in respect of contempt for interference with the due administration of justice. That is because such allegations raise finely balanced judgments as to a witness' state of mind which itself engages questions of proportionality and public interest. Reference was made to passages in the authorities which touch on the care which a court must exercise when that is the case: *Ereshchenko* at first instance at [159] and in the Court of Appeal at [74]; *Newson-Smith* at [82]-[85]; *Malgar* at 396.

226. I was also referred to the *dicta* in the authorities to the effect that lies told under oath should only rarely (or in special circumstances) be dealt with by way of contempt at all, as opposed to by way of criminal proceedings for perjury (which would be required to meet a public interest threshold). Thus Miller on Contempt of Court (4th ed.) at paragraph 4.78:

> "… it would be wrong for a court to treat a witness as being in contempt simply on the basis that it is convinced he is lying .... If the position were otherwise the alleged contemnor would be deprived of both a jury trial and the safeguard against conviction of the Perjury Act 1911, s. 13. This latter safeguard would be lost also if, being unable to prove perjury, the prosecution was allowed to charge an attempt to pervert the course of justice – a course which the Privy Council has held to be impermissible."

227. It was also submitted that the logic of DB's stance is that an allegation of lying in the context of Part 71 is not only punishable by contempt in every case, but it is not even subject to the minimum threshold of obtaining permission.

228. DB's response to this is to say that this entire argument relies on the same mischaracterisation of DB's allegation as has been dealt with earlier. Mr Vik is alleged to have breached an order by failing to provide information. He is not alleged to have committed perjury by lying under oath. Mr Vik would equally be in breach of the CPR 71 Order if he had failed to provide the required information in unsworn evidence.

229. Moreover, DB submits that since the prospect of an actual criminal trial on indictment is vanishingly unlikely, Mr Vik's submission is (in effect) that his failure to provide the information required is unenforceable.

230. Ms Tolaney QC submits that it is well-established in a number of authorities that it would be a civil contempt falling within Section II of Part 81 (i.e. a breach of a court order) for a defendant who was ordered to swear an affidavit setting out information in his possession to supply false information in that affidavit. The same, it is said, should apply to sworn oral evidence under a Part 71 Order.

231. First, and principally, Ms Tolaney relies on the decision of Arnold J in *Hydropool Hot Tubs Limited v Roberjot* [2011] EWHC 121 (Ch). In that case which pre-dates the previous iteration of CPR 81, Arnold J was considering allegations of contempts committed in the context of affidavits sworn by one of the Defendants pursuant to an Order of Kitchin J that required the Defendant to provide certain information. At [37-39] Arnold J discussed one of the breaches in terms which made it clear that he considered that there could be a civil contempt in giving a false account in an affidavit (if proved). Later on the point was specifically raised that one allegation was an allegation of contempt by giving a false statement in a document verified by a statement of truth and so permission was required (and had not been obtained) under r.32.14. Arnold J rejected this submission and held that permission was not required for this contempt allegation:

> "58. In my judgment CPR rule 32.14 has no application to an allegation of contempt by knowingly swearing a false affidavit. The purpose of rule 32.14 is to enable proceedings for contempt to be brought in respect of false statements made in a document verified by a statement of truth, such as a statement of case, a disclosure statement or a witness statement. The requirement for such documents to be verified by a statement of truth was a procedural innovation introduced by the CPR. As Sir Richard Scott VC (as he then was) pointed out in *Malgar Ltd v R.E. Leach (Engineering) Ltd* [2000] FSR 393 at 395-396, a means for policing statements of truth was necessary and that is what rule 32.14 provides. In doing so, the CPR did not make any substantive change in the law of contempt. Whether the making of a false statement in a document verified by a statement of truth amounts to a contempt depends on the general law. He suggested that it would do if, but only if, the maker of the statement knew that it was false and the false statement was likely to interfere with the course of justice.
>
> 59. As Scott VC also pointed out, however, knowingly to swear a false affidavit has always rendered the maker liable to be prosecuted for perjury. This is because the affidavit includes a jurat. It is therefore the equivalent of testimony on oath. Although Scott VC did not say so, it has long been the case that knowingly giving false evidence, including swearing a false affidavit, is also a contempt of court: see Arlidge, Eady and Smith on Contempt (3rd ed) at 10-159 to 10-161. Nowadays it is unusual for false evidence to be the subject of contempt

> proceedings rather than a prosecution for perjury, but in principle the sanctions for contempt remain available in an appropriate case.…
>
> 62. As he submitted, swearing a false affidavit is properly categorised as a criminal contempt rather than a civil contempt. The High Court retains an inherent jurisdiction to punish criminal contempt by the summary process of committal in civil proceedings, albeit that this is a jurisdiction to be exercised with great caution: see Halsbury's Laws (4th ed), volume 9(1), para 491. Accordingly, counsel for *Hydropool* submitted that there was no procedural obstacle to *Hydropool* relying upon this contempt. I accept that submission. Although the court will often refuse to commit a person purely for swearing false evidence, in the present case this contempt is (a) closely linked with the other, civil contempts relied on by *Hydropool* and (b) admitted by the Defendants. In these circumstances I consider that it was appropriate for *Hydropool* to bring the matter before this court: compare *Attorney-General v Smith* [2008] EWHC 250 (Admin) at [7]-[8] per Latham LJ."

232. Ms Tolaney further submits that the reasoning in *Hydropool* has been applied in a number of subsequent cases. First, in *International Sports Tours v Shorey* [2015] EWHC 2040 (QB), which bears many similarities to *Hydropool: International Sports* concerned an allegation of knowingly swearing a false affidavit, which was also said to have been a breach of an order requiring the affidavit to be produced, and which was said to have fallen foul of the requirement for permission in r.32.14. Green J (considering Section VI only; not either Section II or III) expressed some doubt as to whether the distinction between applications founded upon affidavits and those founded upon witness statements could be maintained; however, he accepted that a distinction does exist in the rules and applied *Hydropool*, holding at [43] that permission was not required under Section VI.

233. The next in the line of cases cited was *Aviva Insurance Ltd v Randive* [2016] EWHC 3152 (QB), in which Slade J stated at [1] that permission is not required for an application founded upon an affidavit.

234. Ms Tolaney also referred briefly to the decision of Murray J in *Aspinalls Club Limited v Han Joeh Lim* [2019] EWHC 2379 (QB), which concerned allegations of contempt on the grounds that information given in evidence in response to the disclosure provisions of a freezing order had breached that order. I agree that this decision is an illustration of a case addressing breach of an order under CPR 81.4.

Discussion

235. Ingenious as the argument advanced on Mr Vik's behalf is, I am not persuaded by it. I agree that it has its roots in either the same or a very similar approach to picking apart the Application as that which I have found unconvincing at an earlier stage of the analysis.

236. As Mr Matthews tacitly acknowledged in saying that there must be some limit on the examinee's ability to make any answer he liked, without exploring where and how that line could be drawn in any principled way, his argument carries with an unacceptable tail. That tail is that someone in Mr Vik's position can attend a CPR Part 71 examination and make a mockery of it, either by providing answers which are dishonest, or inconsequential or by claiming not to recall anything, and there is no remedy as such; merely the option of either hoping that the CPS will pursue the matter through the criminal courts, or treating the matter as impinging on the administration of justice. There is no difference in reality between that course and not attending at all, and the suggestion that each should bear different consequences in the application of Part 81 is overly technical and artificial.

237. That is illogical in the context of a part of the CPR which is specifically designed to assist the judgment creditor in locating assets against which it can enforce the judgment debt which it is entitled to have paid. The purpose of CPR 71 is stated in CPR Part 71.1 thus: "*for the purpose of enabling a judgment creditor to enforce a judgment or order against him*".

238. I conclude that it is the case that committal for contempt can lie in appropriate circumstances from a breach of the CPR Part 71 Order itself – beyond the failure to attend which is plainly contemplated as the primary likely failure. If this were not so it would be open to a judgment debtor effectively to render the protection which this Part is designed to give to a creditor nugatory by deliberately stonewalling via a contrived absence of recollection or via incomplete answers.

239. If the court offers, as it does, a remedy for failure to physically attend, it would make no sense that the only remedy for a failure to mentally attend would be if the requirements for contempt in the context of interfering with the administration of justice were met.

240. So far as concerns the submission that any order bearing a penal notice must be clear and should be strictly construed, with any ambiguity resolved in favour of the respondent I conclude that this is met. It must have been clear beyond any doubt to Mr Vik that in attending court to answer questions he was required to provide truthful answers.

241. I should add that I do not consider that the transcript of the hearing before Cooke J, and his reaction to the suggestion of contempt, on which considerable weight was placed, assists Mr Vik, essentially for the reasons I have given earlier in this judgment.

242. Turning to the question of the nature of the allegation I agree with DB that the complaint, and the ground of contempt relied on is in essence that Mr Vik is in contempt by breaching the Part 71 Order. It is not an allegation of lying to the court. The breach alleged is functional – directed to the evidence gathering process - and not formal and moral, directed to the administration of justice. That distinction underpins the justification for the public interest test in the other context. As Scott V-C observed in *Malgar*, interference with the course of justice is a public wrong and there should be a public control over the launching of proceedings for this species of contempt. That is therefore a significantly different concept from committal proceedings for the furtherance of an individual's private rights.

243. An order under Part 71 is firmly within the latter spectrum. It is an order that seeks to aid the enforcement of a judgment debt; committal proceedings to enforce that order are therefore for the furtherance of the private interests of the judgment debtor in trying to recover the judgment debt.

244. I therefore conclude that there is no anomaly created by the changed procedural requirements as regards committal. Even if this matter had proceeded in March, I would still have concluded that this argument failed.

245. It follows that SHI/Mr Vik's application to strike out the Committal Application fails and is dismissed. I will also grant DB permission to amend the Application Notice if so advised.

APPENDIX 1

(1) The (claimant) ~~(The defendant)~~, Deutsche Bank AG (DBAG)

(2) intend(~~s~~) to apply, in the above proceedings (Claim No. CL-2019-000709) for an order (a draft of which is attached) pursuant to CPR 81.4 that for his contempt Mr Vik stand committed to HMP Prison Pentonville for a period of six months from that date of his apprehension, and that a Warrant for Committal shall be issued to that effect, with the Warrant for Committal to remain in the Court Office at the Royal Courts of Justice and the execution of ~~such order~~ it be suspended for a period of six months on condition that Mr Vik complies with ~~on~~ the terms set out in the Schedule to that order, after which the sentence and Warrant of Committal be discharged unless prior to that date an application has been made by DBAG to lift the suspension.

(3) because Mr Vik has been guilty of contempt of Court in failing to comply with paragraphs 1 and 2 of the Order of Teare J dated 20 July 2015 (the Teare J Order). Paragraphs 1 and 2 of the Teare J Order required Mr Vik to produce certain documents and to attend Court to provide information as to the means of the First Defendant, Sebastian Holdings Inc (SHI), of paying the judgment debt owed to DBAG pursuant to the Order of Cooke J dated 8 November 2013 (the Judgment Order). The specific acts of contempt upon which DBAG relies are, in summary that;

i) Mr Vik failed to comply with paragraph 1 of the Teare J Order in that, at the hearing before Cooke J on 11 December 2015, he deliberately failed to "*provide information about [SHI's] means*" and/or "*any other information need to enforce the [Judgment Order]*". In particular, Mr Vik intentionally failed to provide truthful and/or complete information regarding his knowledge in relation to:

   a) the funds and assets of C.M. Beatrice Inc (Beatrice), a company which received assets of significant value transferred out of SHI, and the CSCSNE Trust, to which ~~SHI's interest in~~ the shares in Beatrice were ~~was~~ transferred;

   b) SHI's interest in Devon Park Bioventures L.P, (the Devon Park Interest);

   c) the alleged sale of SHI's interest in IFA Hotels and Touristik AG (the IFA Shares) to VBI Corporation in 2012; and

   d) the transfers SHI's interests in certain private equity funds (the Partnership Interests) and

ii) Mr Vik failed to comply with paragraph 2 of the Teare J Order in that he deliberately did not, by 14 October 2015, "*produce…all document in [SHI's] control which relate to [SHI's] means of paying the amount due under the* [judgment handed down by Cooke J on 8 November 2013] *and the* [Judgment Order]"in that Mr Vik either deliberately took steps to put documents beyond his control, or chose not to produce documents within his and/or SHI's control, that were required to be produced by the Teare J Order. In particular, Mr Vik failed to:

a) Produce electronic documents responsive to paragraph 2 of the Teare J Order, in particular electronic documents:

i) relating to Devon Park Interest;

ii) relating to the IFA Shares; and

iii) relating to the Partnership Interests; and

b) Produce documents held by third parties (including but not limited to transfer instructions) which are responsive to paragraph 2 of the Teare J Order, such third parties being for these purposes:~~;and~~

i) banks with whom SHI held accounts, namely HSBC, HSBC Guverzeller, DNB Merrill Lunch and J.P Morgan;

ii) Zimmerman & Gauch; and

iii) Mr Per Johansson

~~c) comply with the specific requirements to produce all documents specified in the list attached to the Teare J Order (the List) including:~~

~~i) "*statements covering the period 1 January 2008 to date detailing all transactions upon them from each and all of SHI's bank accounts…*" (see paragraph 1 of the List);~~

~~ii) "*documents relating to the private equity investments detailed at Paragraph 7.22 to 7.43 of the Gutteridge Report (as defined in Hart 10)…*" (see paragraph 2 of the List);~~

~~iii) "*documents relating to the SHI's shareholdings in IFA Hotels & Touristik AG…*" (see paragraph 3 of the List); and~~

~~iv) "*documents relating to any other investments or assets held by SHI…including, in particular, all documents relating to the disposal of such investments or assets and any consideration received for them*" (see paragraph 4 of the List).~~

iii) The specific ground of contempt on which DBAG relies are further particularised in the Schedule to this Application Notice.