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Case No: QB-2019-001430

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

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

Date: 5 July 2024

Before :

MR JUSTICE MELLOR

- -

Between :

CRAIG WRIGHT	**Claimant/ Respondent**
- and –	
PETER MCCORMACK	**Defendant/ Applicant**

- -
- -

CATRIN EVANS KC and **BEN SILVERSTONE** (instructed by **Reynolds Porter Chamberlain LLP**) for the **Applicant/Defendant**
ADAM BARADON KC and **JACK CASTLE** (instructed by **Harcus Parker Limited**) for the **Respondent/Claimant**

Hearing date: 2nd July 2024, Draft to the parties 4th July

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APPROVED JUDGMENT

Remote hand-down: This judgment will be handed down remotely by circulation to the parties or their representatives by email and release to The National Archives. A copy of the judgment in final form as handed down should be available on The National Archives website shortly thereafter but can otherwise be obtained on request by email to the Judicial Office (press.enquiries@judiciary.uk).

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Mr Justice Mellor:

INTRODUCTION

1. On 2 July 2024 I heard Mr McCormack's application for a Worldwide Freezing Order ('WFO') against the Claimant, Dr Wright, together with ancillary relief in the form of orders for disclosure of assets and leave for the WFO to be enforced or recognised in the courts of Australia, the Seychelles, Antigua and Singapore.

2. Mr McCormack's application is brought in the context of Dr Wright's defamation claim against Mr McCormack ("the Defamation Claim") which was tried before Chamberlain J (in the Media and Communications List of the King's Bench Division) between 23.05.22 and 25.05.22, with the trial judgment handed down on 01.08.22 ("the August 2022 Judgment").

3. Due to my familiarity with various aspects of the 5 actions brought in the Chancery Division involving Dr Wright and his claim to be Satoshi Nakamoto, the President of the King's Bench Division gave permission for me to sit as a Judge of the King's Bench Division in the Media & Communications List to determine Mr McCormack's application.

4. At the conclusion of submissions (at around 3.30pm) I announced that I proposed to grant a WFO substantially in the terms of the draft Order presented to me, in the sum of £1.548m, with my reasons to follow in this written judgment. Without prejudice to Dr Wright's position that no WFO was appropriate, his Counsel had helpfully proposed certain revisions to Mr McCormack's draft. What was outstanding was the terms of the undertaking from Mr McCormack which concerned the steps he would take to recover the sums in costs which make up £1.548m odd.

5. That sum is composed of (a) costs in the Defamation Claim to which Mr McCormack is already entitled under the Order of Chamberlain J dated 21.12.22 ("**the Chamberlain Order**") and (b) two sets of further costs in the Defamation Claim as to which Mr McCormack contends he has a strong case that he will establish an entitlement in consequence of the fundamentally fraudulent nature of the Defamation Claim pursued by Dr Wright.

Principles Applicable to the grant of a WFO

6. These were not in dispute. Both sides were content to refer to my exposition of the principles in my COPA WFO Judgment at [2024] EWHC 743 (Ch) at [19]-[43], which I do not repeat here, but have well in mind.

7. In terms of the requirements for the grant of a WFO, I heard an unusual amount of argument focussed on whether Mr McCormack had a good arguable case for recovery of costs making up £1.548m via the three routes by which it is proposed that Mr McCormack will be able to recover those costs. Mr Baradon KC for Dr Wright made a spirited attempt to persuade me that Mr McCormack did not have the necessary good arguable case for recovery of these costs. One of his key complaints was that Mr McCormack's side had not properly or fully

explained the claim or claims he would bring to recover the costs. As I explain below, his focus on the minutiae risked losing sight of the big picture. In order to explain the big picture and some of the minutiae, I must first set out some of the background and the relevant chronology, starting with the Defamation Claim.

RELEVANT CHRONOLOGY

The Defamation Claim – overview and trial

8. The Defamation Claim concerned (a) 14 tweets published by Mr McCormack (who is a podcaster on matters relating to Bitcoin and other cryptocurrencies) between 29.03.19 and 29.08.19 and (b) a YouTube video, on which Mr McCormack appeared, posted on 18.10.19 (these are referred to compendiously below as "**the Publications**"). By the date of trial, it was agreed that the meaning of 13 of the 14 tweets was that Dr Wright "*had fraudulently claimed to be Satoshi Nakamoto, that is to say the person, or one of the group of people, who developed bitcoin*"; and that the meaning of the further tweet was that Dr Wright "*had fraudulently claimed to have written the Bitcoin White Paper*". In his judgment at trial (the '**August 2022 Judgment'**), Chamberlain J held that the meaning of the words complained of in the YouTube video was that "*there were reasonable grounds for questioning or inquiring as to whether the Claimant had fraudulently claimed to be Satoshi*".

9. Dr Wright issued proceedings on 17.04.19 (the claim was subsequently amended to complain of the publications which post-dated 17.04.19). Mr McCormack originally pleaded defences of truth (under s 2 of the Defamation Act 2013 ("**DA 2013**")), publication in the public interest (under s 4 DA 2013) and abuse of process. However, in November 2020 Mr McCormack abandoned those defences as he could not afford the costs of legal representation for a trial of those issues. Accordingly, the sole general defence to the Defamation Claim which Mr McCormack maintained at trial was his denial that any of the Publications had caused serious harm to Dr Wright's reputation, such that liability did not accrue under s 1 DA 2013.

10. In the August 2022 Judgment, Chamberlain J rejected this defence (having made clear at §6 that "*the identity of Satoshi is not among the issues I have to determine*") and therefore concluded that Dr Wright had established a cause of action in defamation in respect of each of the Publications: §§132-140.

11. However, Chamberlain J awarded Dr Wright only nominal damages, in the sum of £1. That was on the basis that Dr Wright had advanced a deliberately false case, and put forward deliberately false evidence, on the question of serious harm to reputation, until days before the start of trial. That case and evidence concerned an allegation that Dr Wright had been invited to various academic conferences and then dis-invited as a result of the matters stated in the Publications. Having maintained that allegation over the course of several years in the proceedings, Dr Wright abandoned it just a few days before the start of trial, shortly after Mr McCormack's legal team had found witnesses who demonstrated its falsity: see §§44-111, §140 and §§141-147 of the August 2022 Judgment. Chamberlain J's findings on Dr Wright's fraudulent case and

evidence did not, however, prevent him from reaching the inferential conclusion that each of the Publications had caused serious harm to Dr Wright's reputation on other grounds – namely, the gravity of the allegations and the extent of publication.

The consequentials judgment following trial in the Defamation Claim

12. On 21.12.22, Chamberlain J handed down his judgment on issues consequential on the August 2022 Judgment ("**the December 2022 Judgment**"). On costs, Chamberlain J ordered that Dr Wright should pay Mr McCormack's costs of the action to be assessed on the indemnity basis, save for the costs which had been the subject of the Order of Master Dagnall dated 30.07.20 ("**the Dagnall Order**") and paragraphs 12 and 13 of the Order of Julian Knowles J dated 19.11.21 ("**the Knowles Order**") or of a deemed no order as to costs under CPR r.44.10 ("**the CPR 44.10 Orders**"): see §4 of the Chamberlain Order. The Dagnall Order and the Knowles Order are of particular relevance to the present application, and it is therefore necessary to summarise elements of the background to those Orders.

13. The Dagnall Order related to a successful application by Dr Wright for an extension of time for the giving of disclosure. Mr McCormack was ordered to pay Dr Wright's costs of that application.

14. The Knowles Order related to various applications and issues addressed at the PTR. At §§12-13 of that Order, Julian Knowles J ordered that Mr McCormack should pay Dr Wright's costs of (a) amendment and strike-out applications made by Dr Wright, (b) re-amending the Reply and (c) responding to the abandoned and/or struck-out elements of the Defence, including the costs of pleading the Reply and disclosure on Mr McCormack's substantive defences of abuse of process, truth and public interest.

15. In his submissions on costs following the August 2022 Judgment, Mr McCormack had argued that the costs orders in Dr Wright's favour in the Dagnall and Knowles Orders – which had been made before Dr Wright's dishonesty on the serious harm issue had come to light – should be set aside under CPR 3.1(7) or the inherent jurisdiction, or reversed under CPR 44.11. This was rejected by Chamberlain J in the December 2022 Judgment, for reasons given at §§58-70.

16. At the centre of the Judge's reasons for refusing to set aside the Dagnall and Knowles Orders under CPR 3.1(7) and/or the inherent jurisdiction was that Dr Wright's dishonest conduct related solely to the issue of serious harm. At §§65-67, Chamberlain J therefore declined to set aside those orders on the bases that (a) "*[t]he Dagnall and Knowles Orders did not depend to any significant degree on the nature of Dr Wright's case on serious harm*", (b) "*it is therefore not possible to say that the dishonesty I identified in my judgment was causative of the decisions in either case*" and (c) "*Dr Wright succeeded in establishing serious harm despite abandoning his case about the invitations and disinvitations to academic conferences – i.e. this is not a case where the fraud undermined the claimant's ability to establish the cause of action at all*".

17. Separately, Chamberlain J rejected Mr McCormack's application that the costs orders in the Dagnall and Knowles Orders should be reversed under CPR 44.11 on the basis that that rule applies only "*when a trial judge is conducting a summary assessment of costs or when a costs judge is conducting a detailed assessment*": December 2022 Judgment, §69. As set out below, if Mr McCormack were now to rely on CPR 44.11 in order to seek the reversal of the Dagnall and Knowles Orders, he would do so in the context of the detailed assessment proceedings in the Defamation Claim, such that that objection would not be applicable.

Developments following the December 2022 Judgment

18. Dr Wright was granted permission to appeal ("**PTA**") in respect of the August 2022 Judgment, and that appeal was dismissed by a judgment of the Court of Appeal of 26.07.23 ([2023] EWCA Civ 892). Dr Wright's application for PTA to the Supreme Court was refused by Order dated 21.12.23.

19. Meanwhile, on 28.04.23, Dr Wright commenced detailed assessment proceedings in respect of the Dagnall and Knowles Orders. The bill of costs which Dr Wright served for those proceedings totalled £3,379,651.56. Those detailed assessment proceedings were subsequently subject to an agreed stay pending the determination of Dr Wright's application for PTA to the Supreme Court. No further formal steps have been taken in those proceedings following the refusal of PTA by the Supreme Court.

Developments resulting from the COPA Trial

20. Over the past year I have been involved in some detailed case management of some 5 actions brought in the Chancery Division involving Dr Wright and his claim to be Satoshi Nakamoto. That included my conduct of the Joint Trial in the COPA v Wright (IL-2021-000019) and Wright v BTC Core (IL-2022-000069) claims. The Joint Trial was a substantial trial of about 6 weeks and at the conclusion of submissions, having come to a very clear view, I announced the result: I made declarations that Dr Craig Wright is not Satoshi Nakamoto, was not the creator of Bitcoin nor the author of the Bitcoin White Paper or the original version of the Bitcoin software. Subsequently I explained my reasons in my written judgment [2024] EWHC 1198, handed down on 20th May 2024 (which has been referred to on this Application as '**the May 2024 Judgment'**).

21. Following my announcement of the result (and before I had handed down my written judgment), I granted a WFO in favour of COPA in the sum of £6m, for the reasons explained in my judgment at [2024] EWHC 743 (Ch) (the '**COPA WFO Judgment'**). This triggered a series of applications from the other groups of defendants to actions brought against them by Dr Wright such that, before Mr McCormack's application, I had granted several WFOs against Dr Wright. Each of the applications built on the evidence served in previous applications, although the situations I had to consider kept changing, due to the following.

22. Subject to certain wrinkles concerning the dates when payments to the Court Funds Office ('**CFO**') were cleared, Dr Wright's response to each WFO was to pay the sum the subject of the WFO into the CFO and in time to avoid triggering

the asset disclosure obligations in each Order. This pattern of behaviour was obviously relevant to whether there existed a real risk of dissipation and I must assess this afresh in the context of this application.

THIS APPLICATION

23. Before I outline some of the detail, there is one big point which should not be lost sight of. As Ms Evans KC submitted, the dishonesty on which Mr McCormack now relies is of a wholly different nature and significance to that which was relied on at the time of the December 2022 Judgment. By contrast to the position as of the December 2022 Judgment, it is now clear (as a result of the May 2024 Judgment) that Dr Wright has engaged in a thoroughgoing fraud by identifying himself as Satoshi, including by the use of at least 32 documents which were relied on in the Defamation Claim and which were found to have been forged by Dr Wright in the May 2024 Judgment. Ms Evans KC contends, correctly, that that fraud was the entire premise for the Defamation Claim because the proposition that Dr Wright had acted fraudulently in identifying himself as Satoshi was the very allegation complained of in the Defamation Claim. Accordingly, all of the costs incurred in the Defamation Claim stemmed from Dr Wright's lie that he was Satoshi. Further that lie went to the heart of Dr Wright's cause of action in defamation since, had Dr Wright's fraudulent conduct (including his extensive use of forgery) been known from the outset, Mr McCormack would have had a complete defence to the Defamation Claim.

24. Moving to the detail, on 04.06.24, Dr Wright (by his solicitors, Harcus Parker), sent a letter to Mr McCormack (by his solicitors, RPC) in which Dr Wright offered to "release any and all entitlements to his costs of the [Defamation Claim]". Mr Cowper-Coles says it was that letter which triggered this application. The offer was said to be subject to the condition that the three WFOs which were then "technically extant" would be formally discharged (as Harcus Parker anticipated would occur by 07.06.24). Those WFOs have now been discharged.

25. It follows from the position set out in Harcus Parker's letter that Mr McCormack now has a present entitlement to payment by Dr Wright of the costs specified in §4 of the Chamberlain Order (i.e. Mr McCormack's costs of the action, assessed on the indemnity basis, less the costs covered by the Dagnall and Knowles Orders and the deemed no order as to costs orders). Mr Cowper-Coles estimates that those costs total about £840,000 inc. VAT. Prior to Harcus Parker's letter the position was significantly different in that, on assessment, the costs to which Mr McCormack was entitled would have had to be set off against the (far larger) costs which Dr Wright claimed under the Dagnall and Knowles Orders (subject to Mr McCormack's right to argue that those costs orders should be set aside, reversed or reduced).

26. By a letter to Harcus Parker of the following day (05.06.24), RPC contended that Mr McCormack had had to incur substantial legal costs and had suffered financial losses and emotional harm as a result of Dr Wright's fraudulent and abusive claim. The letter sought compensation from Dr Wright for those costs, losses and harm, failing which Mr McCormack would give consideration to

various other remedies (including applying for a WFO and bringing fraud proceedings against Dr Wright).

27. The present application was issued on 07.06.24 and was subsequently informally notified to me. Having reviewed the application, on 14.06.24 I directed that it should be heard on notice and the application was served on Harcus Parker on 15.06.24. I directed the application should be heard on 20.06.24 but that date was not convenient to Dr Wright's Counsel. Upon suitable undertakings from Dr Wright, the parties agreed to defer the application until 02.07.24.

28. Initially the application was supported by the First Affidavit of Mr Cowper-Coles ('**Cowper-Coles 1**') which included all the material I had previously reviewed on the preceding WFO applications. Following the correspondence between the solicitors, Mr Cowper-Coles made a sixth witness statement on 28.06.24 ('**Cowper-Coles 6**') responding to some of the points made in correspondence and the text of that witness statement was subsequently reproduced in his second Affidavit. No evidence was served on behalf of Dr Wright.

The costs position following the Consequentials Judgment.

29. Before I outline the claims to costs which make up the sum of £1.548m, it is necessary to mention the costs budgets filed and approved in the Defamation Claim.

30. At the CCMC on 12.03.20 (when Mr McCormack's defence of truth was in issue), Dr Wright presented a costs budget to trial of some £3.466m (of which about £1.2m in costs had already been incurred by Dr Wright). Master Davison described this as not only "*hugely in excess of any budget that I have seen in a defamation case*" but also "*the biggest budget that I have ever seen personally in any category of work*". In the event, Dr Wright's costs budget was approved in the total sum of approximately £2.619m. Mr McCormack's costs budget was agreed and approved in the sum of £1.3m (plus VAT).

31. Although I understand that Mr McCormack received some support for his legal costs, it was by no means anywhere near complete. Indeed, for a period between late 2020 and early 2021, Mr McCormack was representing himself.

32. As Ms Evans KC submitted, Mr McCormack faced two major deterrents. The first was the threat of and then the institution of the Defamation Claim – which would have been a sufficient deterrent for most individuals. Once the Defamation Claim had commenced, there were still two major deterrents for Mr McCormack. The first was the presumption that the allegedly defamatory statements were false, so that Mr McCormack bore the burden of proving the truth of his publications. The second was Dr Wright's disproportionate expenditure on costs.

33. With the benefit of hindsight, it can be seen that the Defamation Claim was part of the mendacious overall campaign by Dr Wright and his backers to establish Dr Wright as Satoshi Nakamoto and, ultimately, (cf the Tulip Trading claim) to

obtain access to all or part of the large quantity of Bitcoin attributed to Satoshi, worth many billions. In this regard, Dr Wright was using the law of defamation both here and in Norway (so far as Mr Granath was concerned) to silence anyone who dared to contend that Dr Wright was not Satoshi or to question his claim. The power of the cause of action in defamation is exponentially increased in the hands of someone like Dr Wright who has the backing of a billionaire, Mr Calvin Ayre, and who signals his intent to spend disproportionate sums in costs in litigation in this jurisdiction.

A. GOOD ARGUABLE CASE

The three categories of costs.

34. Mr McCormack's total claim for costs of the proceedings (including repayment of costs) amounts to £1.674m odd, the sum being based on a breakdown of costs exhibited to Cowper-Coles 6. This total is made up of the following three categories of costs:

    i) Mr McCormack's costs covered by §4 of the Chamberlain Order, to which he is currently entitled by virtue of that Order (subject to assessment on the indemnity basis) ("**the Chamberlain Costs**"). Mr Cowper-Coles estimates that (in full) those costs total about £840,000.

    ii) Mr McCormack's further costs of the proceedings (i.e. those in respect of which there is currently no costs order in favour of Mr McCormack; namely, the costs relating to the Dagnall, Knowles and CPR 44.10 Orders) ("**the Further Costs**"). Again, these are estimated to total about £807,497.26.

    iii) Recovery of the costs already paid by Mr McCormack to Dr Wright pursuant to the Knowles and Dagnall Orders, totalling £108,500, minus £81,022 in costs already paid by Dr Wright to Mr McCormack in respect of Dr Wright's appeal to the Court of Appeal.

35. The sum sought in the WFO application was £1.548m odd. This sum was calculated based on the quantification exercise adopted by COPA in their WFO Application (see my March Judgment at [18]) and was calculated as follows:

    i) 85% of Mr McCormack's total costs of £1,674,497.26 (i.e. a proportion of his costs amounting to his reasonable estimated recovery on assessment) = **£1,423,322.67**.

    ii) Plus a further **£125,587.29** (calculated as half of the difference between Mr McCormack's total costs and the 85% figure given above). This was justified on the basis that it was necessary to take into account interest on costs, the further costs in making this application and the possibility that Mr McCormack may recover more than 85% on assessment and/or may recover more by way of a claim in fraud against Dr Wright.

36. For Mr McCormack, Ms Evans KC submitted that the only possible issue was as to the quantum of costs to which Mr McCormack will be entitled on

assessment. In that regard, Ms Evans KC invited me to have regard to the following factors regarding the likely recovery:

i) First, that the costs will be assessed on the indemnity basis.

ii) Second, that the Defamation Claim was extremely hard-fought litigation by an opponent willing to dedicate apparently limitless financial resources to the proceedings.

iii) Third, the costs incurred by Mr McCormack pale in comparison with those incurred by Dr Wright: whereas the entirety of Mr McCormack's costs amounted to £1.6m, Dr Wright claimed costs of £3.3m for just the part of the claim covered by §§12-13 of the Knowles Order. Although I fully recognise that those paragraphs cover a range of matters, it seems highly likely that those costs were very largely attributable, as I understand the position, to Mr McCormack's abandonment of his defence of truth, being far more heavy in terms of disclosure, anticipated evidence and general procedural wrangling than, for example, the defences of abuse of process and public interest.

iv) Fourth, the approach adopted by Mr McCormack to quantum for the purpose of this application (as set out at §35 above) accords with that advocated by COPA in their WFO application against Dr Wright, and which I adopted at [18] of the COPA WFO Judgment.

v) Finally, Mr Cowper-Coles drew my attention to some further support in [13]-[15] of his First Affidavit.

37. The essence of Dr Wright's opposition to the application came in the first response to the application in a letter dated 27.06.24 from Harcus Parker in which they indicated that this application would be opposed on the basis that:

i) Mr McCormack has "*failed to articulate a cause of action and explain the scope of their* [sic] *recoverable damages*";

ii) there is a "*tension in [Mr McCormack's] case*" because he seeks a freezing order in respect of costs covered by the Chamberlain Order while also seeking to advance a fraud claim, the effect of which would be to "*unwind*" the Chamberlain Order; and

iii) Mr McCormack has "*failed to say what, if any, steps he is going to take other than relying on paragraph 4 of the Chamberlain Order*". Similarly, in their Skeleton Argument for Dr Wright, Counsel submitted there was a fundamental flaw in that Mr McCormack has failed to demonstrate any intention to obtain judgment for the sums by reference to which he seeks a WFO.

38. These points were addressed in Cowper-Coles 6, where he contended that:

i) Mr McCormack has repeatedly explained the legal basis for his entitlement to the costs / damages in respect of which a freezing order is sought.

ii) The "*tension*" described in Harcus Parker's letter is non-existent. The relief sought in any fraud claim would be (i) the setting aside of the orders made in Dr Wright's favour which had been procured by fraud (namely the Dagnall and Knowles Orders) and (ii) an additional award of damages to compensate Mr McCormack for the loss and distress suffered as a result of Dr Wright's fraud (including the libel costs incurred by Mr McCormack). He suggested there could be no reasonable or principled basis for arguing that, if such a claim succeeded, Mr McCormack should be deprived of the costs orders which he has already secured in the Defamation Claim.

iii) The third criticism is unfounded: Mr McCormack has set out the basis on which he has a good arguable case for an entitlement to the sums in respect of which he seeks a freezing order. He has also explained the procedural routes by which those sums will be recovered. In any event, given the objection raised, Mr Cowper-Coles set out in his sixth witness statement, at §9, some further detail as to the procedures which Mr McCormack intends to invoke and the remedies he intends to seek.

iv) Mr Cowper-Coles explained the current plan was that Mr McCormack intended first to seek a payment on account of the costs in the Chamberlain Order and to proceed with detailed assessment of all libel costs, including seeking to set aside the Dagnall and Knowles Orders under CPR 44.11; and then to pursue a fraud claim against Dr Wright for all residual damages.

v) Ms Evans KC made clear that there would not be any double recovery. She submitted that if Mr McCormack succeeded in the detailed assessment proceedings in obtaining an order for all his costs incurred in the libel claim, he would not be able to recover those same costs again in a fraud claim but he would be entitled to recover damages for the additional damage and distress caused by Dr Wright's fraud in bringing and pursuing the libel claim to trial.

39. By an email sent on 29.06.24, Harcus Parker indicated that Dr Wright would also resist the application on the following further basis:

> "*…we do not accept that your client is entitled to apply for a freezing order prospectively. What I mean by this is that whatever your client's entitlement might be, whether to costs or damages, he must take the necessary step or steps to give effect to that entitlement. To illustrate in relation to paragraph 4 of the Chamberlain J order, you have said that your client is entitled to apply for a payment on account and/or commence detailed assessment proceedings but it is clear from paragraphs 8 and 9 of your statement that whilst he might intend to take these steps he is not proposing to do so any time soon.*

> *This is not how the freezing injunction jurisdiction works, at least not my understanding of it. A freezing injunction is not available on a freestanding basis and the price of one is an undertaking to take the step or steps needed to convert a cause of action into a judgment (or, in the case of an entitlement to costs, an order for a payment on account and/or a costs certificate following detailed assessment proceedings). If your client is not going to do this imminently – give the undertaking and then take the steps – his application should be dismissed on this ground alone.*"

40. The premise for this contention is not accepted by Mr McCormack. Ms Evans KC submitted there was no basis for saying that Mr McCormack will not take steps to recover from Dr Wright the sums to which he is entitled "*any time soon*", as alleged by Harcus Parker. On the contrary, Cowper-Coles 6 is clear that Mr McCormack intends to commence his pursuit of those sums by way of a payment on account of costs and detailed assessment proceedings (to be followed by a civil claim) and there is every reason for him to do so as soon as possible, given the considerable sums involved. Without prejudice to that position, Mr McCormack would be willing to undertake to seek a payment on account of costs and/or commence detailed assessment proceedings within a reasonable period after obtaining the WFO (should it be made). It is likely to take a few weeks for a bill of costs to be completed, at which point detailed assessment proceedings can then be started.

41. Further and in any event, Ms Evans KC made clear that Mr McCormack relies on the Court's broad discretion to grant relief under s 37 of the Senior Courts Act 1981 ("**SCA 1981**"). Therefore, if, contrary to Mr McCormack's primary position, the Court were to hold that it did not have jurisdiction to grant a freezing order in respect of the Further Costs under the WFO principles discussed above, Mr McCormack would contend that such an order can properly be made under s 37 of the SCA 1981: see §25 of the COPA WFO Judgment.

The Further Costs

42. Mr McCormack accepts that he does not have a present entitlement to the Further Costs but submits he has a very strong case (exceeding a good arguable case) that he will establish an entitlement to those costs, by obtaining one of the following orders, which I will discuss in turn:

    i) First, an order, in detailed assessment proceedings, (my emphasis) by which the Dagnall, Knowles and CPR 44.10 Orders are reversed, with costs to which those Orders relate awarded to Mr McCormack on the indemnity basis under CPR 44.11 on the ground of Dr Wright's misconduct;

    ii) Second, an order, by a Judge in the Defamation Claim, by which the Dagnall, Knowles and CPR 44.10 Orders are set aside on the ground of fraud under CPR 3.1(7) and/or the inherent jurisdiction, and the costs to which those Orders relate are awarded to Mr McCormack on the indemnity basis; and

iii) Third, an order, in separate proceedings or by way of an (out of time) appeal, by which the Dagnall, Knowles and CPR 44.10 Orders are set aside as having been procured by fraud and Mr McCormack is awarded damages to compensate for the loss and damage he sustained as a result of that fraud (including all of the costs to which those Orders relate).

43. Most of the argument revolved around these three routes.

44. As to the CPR 44.11 route, it was acknowledged that this power would have to be exercised in detailed assessment proceedings. However, the pursuit of a detailed assessment pursuant to the terms of the Chamberlain Order *might* (as I discuss below) give rise to obstacles to recovery of (a) the other costs and (b) damages.

45. On the second route, involving CPR 3.1(7) (which provides that a power of the court under the CPR to make an order includes a power to vary or revoke the order), Ms Evans KC submitted as follows:

i) First that the general principles as to the exercise of the discretion to vary orders under CPR 3.1.7 are set out at §39 of *Tibbles v SIG Plc* [2012] 1 WLR 2591, including that "*the jurisprudence has laid down firm guidance as to the primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated*": §39(ii).

ii) Second, she acknowledged that the court will generally be unwilling to exercise this discretion in relation to final (as opposed to interim) orders: the interest in finality will generally require a very compelling case: see §63 of the December 2022 Judgment. However, she submitted that there are instances in which final orders for costs have been set aside on the ground of changed circumstances (particularly where the court has previously been misled), relying on the following.

iii) In *Latimer Management Ltd v Ellingham Investments Ltd* [2007] 1 WLR 2569 (cited in *Tibbles* at §35) an order for costs made at trial against the first defendant was varied, under CPR 3.1(7), so as to make the second defendant liable for those costs. This was on the basis that there had been a material change of circumstances and that the court had been misled as to the correct factual position in making the original order.

iv) In *Owners of the Ariela v Owner and/or Demise Charterers of the Kamal XXVI and Kamal XXIV* [2009] EWHC 3256 (Comm), a split trial of liability and quantum had been ordered. The defendant had originally been ordered to pay the claimant's costs of the liability trial. Subsequently, at the quantum trial, Burton J held that the losses claimed by the claimant were dishonestly and grossly overstated. The defendant applied to set aside the previous costs order, and also brought a claim to set aside the order on the ground of fraud: §3. At the hearing of the application and claim (which were consolidated), Burton J set aside the

previous order that the defendant should pay the claimant's costs of the earlier liability trial on the ground of the claimant's dishonest damages claim. He held at §20:

> "*Ariela's primary claim is to set aside the Liability Costs Order. I am satisfied that, provided there are the grounds to do so, such order can be set aside, whether it is a true consent order (viz Huddersfield Building Co Ltd v Henry Lister & Son Ltd [1985] 2 Ch 273 and Qayoumi v Qayoumi)…or simply an order made by the Court on the basis of no objection being made to it (Siebe Gorman & Co Ltd v Pneupac Ltd [192] 1 WLR 185 CA esp per Lord Denning MR at 189). In the one case, the Court will interfere in order to set aside the equivalent of a contract if there are grounds to do so, and in the other the Court will exercise its own discretion similarly. The issue is whether, as in Flower v Lloyd (supra), there has been fraudulent concealment from the Court, or, as in S v S (supra), "the Court and the parties [or one of them] have been misled as to the existing circumstances, and would not have made the order if the true state had been known".* (emphasis added)

v) For essentially the same reasons as those applicable under CPR 44.11 (see §42 above), Mr McCormack contends that Dr Wright's fraudulent conduct, which vitiates the entirety of the Defamation Claim, justifies (a) the setting aside of the Dagnall, Knowles and CPR 44.10 Orders and (b) awarding to Mr McCormack the costs to which those Orders relate.

vi) For these reasons, Ms Evans KC therefore submitted Mr McCormack has a very strong case that he will establish an entitlement to the Further Costs on this additional ground.

46. On behalf of Dr Wright, Mr Baradon KC addressed the first two routes together, submitting that both concern appealing or setting aside the Knowles Order. Whilst complaining about the allegedly inadequate way in which they were presented, Mr Baradon KC submitted as follows:

i) First, that it was unclear why Mr McCormack refers to an application to reverse the Dagnall and Knowles Orders pursuant to CPR 44.11 when Chamberlain J has already ruled that the provision (on Court of Appeal authority) does not allow for that (at [2022] EWHC 3343 (KB) [69], in his judgment dismissing Mr McCormack's previous application to set aside the Dagnall and Knowles Orders).

ii) Regardless, even if successful, neither route would of itself result in a comprehensive costs order in Mr McCormack's favour, as opposed to merely extinguishing Dr Wright's entitlement to the costs identified in the relevant order.

iii) Nor, of course, would either route entitle Mr McCormack to damages, whether in the sums he has demanded or otherwise.

iv) Both must be premised on the assumption that Mr McCornack would obtain permission to make an application or appeal out of time, or by reason of change of circumstances. It is not obvious that he would. For example, it is not obvious what relevant and admissible evidence Mr McCormack could contend was 'new' (and at present he does not appear to contend that there is any such evidence). Further, as noted above, Mr McCormack elected to drop the defence of truth, to which any evidence would go, for his own reasons. Additionally, a late challenge to the Knowles Order (without more) risks being seen as a collateral attack on the substantive trial judgment on liability, and/or an illegitimate attempt to run a substantive defence to liability, after final judgment, which Mr McCormack abandoned before trial.

v) It also bears observing that Mr McCormack's ongoing failure to take action makes increasingly distant the prospect that he will be permitted to make any relevant application. A retrospective application to extend time for appeal engages the criteria for relief from sanctions (as recorded in *Civil Procedure 2024* paragraph 52.15.4 (Vol.1 p.1862), and delay is clearly a relevant factor under CPR 3.1(7), if that provision can be invoked at all (as opposed to bringing a fresh action or appeal: see *Vodafone Group plc v IPCOM GmbH & Co KG* [2023] EWCA Civ 113; [2023] RPC 10 at [35] – [54] (Lewison LJ), [66] (Asplin LJ) and [67] (Arnold LJ) and the notes in *Civil Procedure 2024* paragraph 3.1.17.6 (Vol.1 p.88)).

vi) Both routes assume that Mr McCormack will succeed in showing that if he had run a defence of truth, he would have succeeded at all stages of the litigation. That does not follow: the costs awarded to Dr Wright were in respect of procedural disputes not substantive determinations.

vii) Both also rely on the findings in the COPA proceedings, but those are not findings in these proceedings, nor in any proceedings to which Mr McCormack is privy.

47. The third route is a claim in fraud or an appeal out of time in respect of the Dagnall, Knowles and CPR 44.10 Orders.

48. On this route, Ms Evans KC submitted that the essential principles governing claims to set aside judgments for fraud were set out by Aikens LJ in *Royal Bank of Scotland plc v Highland Financial Partners LP* [2013] 1 CLC 596 at §106 (approved by the Supreme Court in *Takhar v Gracefield Developments Limited* [2020] AC 450), as follows:

> "*The principles are, briefly: first, there has to be a 'conscious and deliberate dishonesty' in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be 'material'. 'Material' means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or*

> *concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence*."

49. A similar approach is open to the court when considering an appeal against an order which was procured by fraud (although in certain circumstances the court will require the issue to be determined by way of fresh proceedings rather than by remittal / on appeal): *Dale v Banga* [2021] EWCA Civ 240; *Ras Al Khaimah v Azima* [2021] 1 CLC 715.

50. On the present facts, each of the elements for setting aside an order on the ground of fraud (by fresh proceedings or an appeal) is satisfied. There has been "*conscious and deliberate dishonesty*" by Dr Wright in relation to the entirety of his case and evidence in the Defamation Claim (namely, his assertion that he is Satoshi, which was the whole foundation for the claim, and his deployment of fraudulent and forged evidence in support of that assertion). Further, that dishonesty was "*material*" in that the subsequent evidence of Dr Wright's dishonesty (i.e. that referred to in the May 2024 Judgment in the COPA and BTC Core Claims) would have "*entirely changed the way*" in which the Court approached and came to its decisions on costs in relation to the Dagnall, Knowles and CPR 44.10 Orders.

51. On that basis, Mr McCormack has a very strong case for obtaining orders, in fresh proceedings or by way of an appeal, by which the Dagnall, Knowles and CPR 44.10 Orders are set aside on the ground of fraud and damages are awarded to Mr McCormack to compensate for the loss and damages consequential on that fraud (including the Further Costs incurred by Mr McCormack in defending the proceedings).

Dr Wright's contentions

52. Counsel for Dr Wright submitted that the third route suggested by Mr Cowper-Coles is an undefined "civil fraud" claim against Dr Wright. Though, they said, it appears that this is intended to address the shortcomings of the first two routes (in particular that neither leads to an order of all of Mr McCormack's costs of the proceedings), they suggested it is not clear what actually is meant by it. They suggested that it may be that Mr McCormack has been vague about his proposed case because of the problems he faces in any claim in "*civil fraud*", citing the following:

    i) If it is intended to refer to a claim in the tort of deceit, it is not clear when or from what the deception of Mr McCormack is said to arise, or what Mr McCormack's reliance on any false statement is. Mr McCormack has stated in evidence that he never believed that Dr Wright is Satoshi Nakamoto.

ii) If (though this would seem contrary to Cowper-Coles 6, §9.3) it is intended to refer to a new action setting aside the Chamberlain's trial judgment and order for fraud, it is not obvious that Mr McCormack will succeed, and his evidence in any event does not address the right matters. The classic exposition of the requirements were summarised by Aikens LJ in *Royal Bank of Scotland Plc v Highland Financial Partners LP* [2013] 1 CLC 596 at [106], which merits reading in full. It sets out three limbs: (i) 'conscious and deliberate dishonesty'; (ii) materiality, in *"that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision"*; and (iii) *"the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence"*. Even assuming that Mr McCormack would establish limb (i), it is not obvious that he would establish limbs (ii) or (iii) or in any event be permitted to proceed with such a claim.

iii) First, by reason of Mr McCormack's election, the truth of whether Dr Wright was Satoshi was not put in issue in the proceedings (see the trial judgment of Chamberlain J at [6]), and the trial judgment expressly did not consider whether Dr Wright was Satoshi.

iv) Second, it is not obvious what relevant evidence Mr McCormack could contend was 'fresh', if he were to attempt the undertaking at all. Here, his deliberate decision not to investigate or rely on evidence going to truth would also weigh strongly against any attempt to seek to set aside a judgment on the grounds of fraud: *Takhar v Gracefield Developments Ltd* [2019] UKSC 13; [2020] AC 450 at [55] (Lord Kerr JSC with whom Lord Hodge, Lord Lloyd-Jones and Lord Kitchin JJSC agreed) and [66] (Lord Sumption JSC, with whom Lord Hodge, Lord Lloyd-Jones and Lord Kitchin JJSC agreed)); and *Finzi v Jamaican Redevelopment Foundation Inc* [2023] UKPC 29; [2024] 1 WLR 541 (PC) at [76].

v) Third, the present case is unusual because the new claim would turn on the very allegation which Mr McCormack advanced but then decided not to attempt to prove in the proceedings: that Dr Wright's claims to be Satoshi were fraudulent. The cause of action in a new claim would thus be the same as the defence which Mr McCormack originally pleaded in the instant proceedings, then abandoned. In other words, the new claim would relitigate an issue which could have been dealt with in the original action, using material available in the original action. This is capable of amounting to an abuse of process (*Finzi* at [70]–[72]. Compare also *Chiswick International Holdings Ltd v Hotblack Holdings Ltd* [2023] EWHC 2098 (Comm) at [51] – [53]).

53. Counsel for Dr Wright also contended that Mr McCormack's refusal to commit to a route to recovery has the further consequence that the Court risks granting relief on a false premise, relying on the following submissions (and I emphasise that the following sub-paragraphs are just submissions made by Counsel for Dr Wright):

    i) Mr McCormack's fall-back position (as stated at Cowper-Coles 1, §12 is that "At the very least … a freezing order over the total amount of the Chamberlain Order plus interest is warranted as there is no dispute those costs are owed to Mr McCormack". Counsel suggests that statement is not correct on the basis, so it is said, that Mr McCormack has declined to give any sensible breakdown of the relevant costs, so their quantum is not admitted. More fundamentally, it exposes a fundamental contradiction in Mr McCormack's position: if he does intend by some means or other essentially to unwind these proceedings on the basis of fraud, the Chamberlain Order will (necessarily) cease to exist. It is unprincipled to base an application for a WFO for a substantial sum on an order for costs that, on Mr McCormack's own position (such as it is), might also be swept away. (For the same reason, it would be unsafe to support Mr McCormack's cross-undertaking in damages on the enforceability of the Chamberlain Order (cf. Cowper-Coles 1, §20). However, Dr Wright does not seek fortification of the cross-undertaking.)

    ii) Similarly, at Cowper-Coles 1, §11 Mr McCormack seeks to justify and calculate the sum which he would have the court freeze by reference to an entirely unexplained assertion that he seeks an interim payment on account of £1,401,801.89. He has made no application for any such payment, nor (as he must accept) does there exist any order in support of which such a payment could be ordered. Such an order seems most likely to be made upon the set aside of all of the orders made in these proceedings, including the Chamberlain Order, and the making of a new costs order. Cowper-Coles 6, §9.1 tacitly accepts (but does not correct) the fallacy in this position.

Analysis

54. When assessing whether any of Mr Baradon KC's arguments have any merit, it helps, in my judgment, to keep the big picture in mind: Dr Wright's Defamation Claim was founded on a lie – his fraudulent claim to be Satoshi Nakamoto – supported by a series of forged documents. Mr McCormack's principal defence of truth was correct, albeit he was forced to abandon it due to costs pressure. In short, the Defamation Claim should never have been threatened, commenced or pursued. In these circumstances, our law would be in a sorry and sad state if a litigant in the position of Mr McCormack is not able to recover his costs of having to fight that type of litigation (subject only to deduction of costs attributable to any unreasonable conduct of the litigation on his part) on the fraud being exposed.

55. With this in mind, it can be seen that Mr Baradon KC's carefully constructed submissions descend into the minutiae which enables the big picture to be

entirely ignored. It is true that his submissions assisted me to identify what I characterise below as the 'safest' way forward and whilst a number of his submissions might have merit in different factual circumstances, his submissions failed to address or take account of the big picture. In his oral submissions, we had a leisurely tour through the authorities, but, to my mind, almost no principles were identified which are applicable to this particular situation.

56. I acknowledge entirely the force of the finality principle, but in these circumstances I am unable to detect any public interest in the finality of the Chamberlain Judgment and Order being upheld in the face of the wholescale fraud perpetrated by Dr Wright and his backers in his claim to be Satoshi Nakamoto which was the foundation for the Defamation Claim. This, in my judgment, is a very plain case for the setting aside of the Chamberlain Judgment and Order due to fraud and one in which Mr McCormack should recover his costs of the Defamation Claim.

57. I should explain one further aspect of the costs pressure on Mr McCormack. At the time of the CCMC, it was apparent that Dr Wright intended to spend disproportionately on costs in order to defeat Mr McCormack's defence of truth. It is, however, relevant to understand the immense effort and resources which were required to expose Dr Wright's fraud in the Joint Trial in the COPA and BTC Core claims. It was a joint effort on the part of COPA and the individual defendants to the BTC Core claim, known as the Developers. Their combined costs were in the region of £10m.

58. This is an aspect of the case which Mr Baradon KC's submissions completely ignored. He spoke of Mr McCormack's 'election' to abandon his defences as if it was a completely free choice. It is, in my judgment, essential to understand the costs pressure which forced Mr McCormack to take that course. It is that costs pressure which means that any action which Mr McCormack is now able to take to recover his costs of the Defamation Claim and any damages he sustained cannot possibly be characterised as an abuse of process (cf the submission recorded at 52.v) above).

59. I should also deal with one argument directed by Mr Baradon KC at the Dagnall and Knowles Orders in particular. Mr Baradon KC was keen to characterise the Knowles and Dagnall Orders as merely procedural in nature (and therefore not suitable for reversal in favour of Mr McCormack).

60. In the Dagnall Order, Master Dagnall ordered Mr McCormack to pay Dr Wright's costs of his application to extend time for the giving of disclosure. This Order takes on a different complexion in the light of what occurred in the COPA action, where Dr Wright made late and very late disclosure of documents by which he sought to prove that he was Satoshi on numerous occasions. It turned out that the reason why these late tranches of disclosure were not produced at the date originally set for disclosure was because they did not then exist – Dr Wright was busy forging documents down to and, indeed, during the Trial.

61. Ms Evans KC submitted that, of the documents which I found to be forged by Dr Wright in my COPA Judgment, 32 were produced on disclosure in the

Defamation Claim. For present purposes, the point is that an extension of time for Dr Wright to give disclosure was intimately bound up with his production of forged documents.

62. As for the Knowles Order, its effect is very much bound up with the substantive merits of this situation. In addition to what I have set out above, it is relevant to note the following features of the case:

    i) First, Chamberlain J. ruled that Mr McCormack was the winner of the litigation.

    ii) Second, Mr McCormack's defence of truth had, prior to its abandonment, given rise to very substantial costs – a significant part of the estimated £3.3m on Dr Wright's side and a significant part of the £807k odd on Mr McCormack's side. As I have already indicated, I consider it would be an affront to justice if Mr McCormack was not able to recover those costs.

63. That leads me to the mechanics of how Mr McCormack's costs can be recovered. As I mentioned in the course of submissions, I got the distinct flavour that Mr McCormack's legal team favour pursuing the first two routes (or at least parts of them) before launching a new action for fraud so that they can recover substantial sums in costs in order to fund the pursuit of that new action. Indeed that was the plan as explained in Cowper-Coles 6. As I also mentioned in the course of submissions, I foresee there may be dangers in pursuing that plan. Pursuit of either or both of the first two routes (even in part) might be said to constitute affirmation of the outcome of the Defamation Claim. I envisage that Dr Wright would then argue that affirmation constituted an obstacle to the bringing of a claim to set aside the Judgment and Order resulting from the Defamation Claim on the basis that the result was procured by fraud. I make no ruling on the point, not least because these possible situations have only been briefly sketched out and because I have not heard argument on the point, but one can foresee the point being taken on behalf of Dr Wright.

64. However, it seems to me that all these potential problems could be avoided. Although Mr Baradon KC sought to cast doubt even on the recoverability of the Chamberlain Costs, I cannot envisage any circumstances in which Mr McCormack would not be able to recover those costs (whichever route is taken), nor was there any concrete suggestion to that effect. In other words, his claim to those costs (subject only to a detailed assessment) seems unanswerable. That being the case, this situation is ripe for an order for an interim payment on account of those costs. On hand down of this judgment, I am prepared to entertain short submissions (which could be in writing) on the timing and amount of any interim payment which may be sought by Mr McCormack. If Dr Wright takes the course of paying £1.548m into Court in order to ensure the WFO ceases to have effect, the interim payment could be paid out from the funds in Court.

65. An interim payment should allow Mr McCormack's legal team to formulate his full claim (a) to set aside the Defamation Judgment on the ground of fraud and

(b) for damages. This, it seems to me, is the safest route to recovery of costs in the sum of £1.548m (or thereabouts).

66. The final point to make is that I agree that Mr McCormack is likely to make a high recovery of his costs on the indemnity basis, particularly in view of the costs incurred by Dr Wright, so it is appropriate to adopt the 85% recovery figure.

67. In conclusion, and notwithstanding all the objections posed by Mr Baradon KC, I was entirely satisfied that Mr McCormack has a good arguable case (indeed a very strong case) for recovery of costs in the sum of £1.548m.

B. IS THERE A REAL RISK OF DISSIPATION?

68. Mr McCormack relied on the principles governing the requirement to show real risk of dissipation referred to at §§28-29 of my COPA WFO Judgment (citing in particular the judgment of Popplewell J in *Fundo Soberano de Angola v Jose Filomeno dos Santos* [2018] EWHC 2199 (Comm) at §86).

Mr McCormack's case that there is a real risk of dissipation

69. The evidence as to Dr Wright's assets and the real risk that they will be dissipated is contained at §17-19 of Cowper-Coles 1. This evidence drew in large part on that set out in the affidavit of Mr Sherrell adduced by COPA in their application for a WFO against Dr Wright. Based on that evidence, I held in my COPA WFO Judgment that there was a real risk of dissipation (see §§30-43), concluding that it was "*rare to see such a powerful case on the risk of dissipation*" (§43).

70. Ms Evans KC submitted that, if anything, the evidence of that risk has increased since the COPA WFO Judgment. Ms Evans KC drew attention to the submissions made by Leading Counsel for COPA at the Form of Order hearing on 07.06.24, that "*the correspondence [with Dr Wright's solicitors] indicates that Dr Wright may either be deliberately evading service or at least is peripatetic and is very difficult to locate*". The apparent difficulties in effecting personal service on Dr Wright (which prompted COPA's application to dispense with the requirement for personal service) amplify the concerns that Dr Wright would seek to take steps to frustrate enforcement of orders against him by dissipating his assets.

Dr Wright's case that there is no risk of dissipation

71. By contrast, Dr Wright denies that he is a dissipation risk, and submits that Mr McCormack has not done enough to convince the Court that he is. Indeed, Counsel for Dr Wright went so far as to submit that Mr McCormack does not himself believe Dr Wright to constitute a dissipation risk. This is suggested by (again these sub-paragraphs are submissions made by Counsel for Dr Wright):

    i) Mr McCormack's delay in bringing his application. It is clear from Mr McCormack's tweets that he knew of the declarations in the COPA proceedings on 14 March 2024, and was aware of the WFO obtained by

COPA not later than 28 March 2024. Yet it took him almost 3 months to bring his application. His reference to costs orders in Dr Wright's favour does not explain this delay. The essence of Mr McCormack's case is that those orders must cease to have effect.

ii) Mr McCormack's decision not to seek any freezing relief in respect of his £2m damages claim – a claim which significantly outstrips by value his demand to costs, and which Mr McCormack appears to understand has a longer lead-time to judgment. This is difficult to reconcile with any real concern that Dr Wright will not meet a judgment liability.

iii) As identified above, Mr McCormack has declined to take, or undertake, any step that will actually lead to judgment on any of his demands for payment.

72. Counsel for Dr Wright also submitted:

i) that this all invites the conclusion that the trigger for the present application was that Mr McCormack became aware that Dr Wright was paying large sums into court to dispose of WFOs, and at the same time settling the underlying claims to costs, and

ii) that, as to Dr Wright's reliability, Mr McCormack's evidence (in the form of Cowper-Coles 1) draws almost exclusively on others' historic evidence, adduced in other proceedings, particularly an affidavit of Philip Nathan Sherrell of Bird and Bird in the COPA Proceedings. The hearsay evidence constituted by Mr Sherrell's own affidavit is not itself before the Court. The evidence in support of Mr McCormack's Application does not make any serious effort to test or update it. More recently, as the Court well knows, Dr Wright has consistently and reliably engaged with the other litigation and the other parties to the litigation in which he has been involved, discontinuing all claims and settling most of the rival claims to costs (even on the unsettled claims he has admitted his liability to pay indemnity costs), making timeous payments into court, and consenting to prompt payments out of court to opposing parties.

Delay

73. I can deal with the allegation of delay here. It seems to me there are two aspects to it. The first concerns when the application was issued. Mr Cowper-Coles gave sworn evidence that the trigger for this application was Harcus Parker's letter of 04.06.24 (see §24 above). I agree that Mr McCormack's legal team worked swiftly to prepare this application, which was issued 3 days after Harcus Parker's letter.

74. The second and related point concerns the complaints that Mr McCormack's team had not properly articulated how the costs would be recovered. I have some sympathy for Mr McCormack's team on this aspect and it is clear that their plan, as outlined by Mr Cowper-Coles was, once again, influenced by costs pressures.

75. Insofar as delay is relied on as a reason against the making of the WFO, there is nothing in the point.

Analysis of the risk of dissipation

76. In my COPA WFO Judgment at [28]-[43], I analysed the substantial evidence filed on the COPA WFO application in support of the contention that there existed a real risk of dissipation. All of that evidence is reproduced in Mr Cowper-Coles' First Affidavit and the same analysis applies. The eight factors cited by COPA constituted cogent evidence of a risk of dissipation. However, I must reassess the overall risk in the light of some subsequent developments and the principal additional factors are as follows.

77. First, as already mentioned, in response to each WFO granted against him (or his company Tulip Trading), Dr Wright has paid the requisite sum into Court in order (a) to ensure the WFO in question ceases to have effect so that (b) he does not have to give the disclosure ordered of his assets.

78. As I have previously observed, it may be said that that militates against a risk of dissipation. However, there are indications in the evidence that the sums paid into Court from Dr Wright's account in connection with the first two WFOs of £6m and £1.089m were paid into his account by a third party. As I observed in my short ruling on the second application, in one sense the risk of dissipation is supported precisely because Dr Wright and/or his backers have so arranged affairs that whether a payment is made lies in their gift. In other words, they decide whether a payment should be made and that means that if Dr Wright or his backers decide a payment should not be made, there is a very real risk of a judgment or order going unsatisfied.

79. Second, it is apparent that Dr Wright wishes to avoid giving disclosure of his assets and he has avoided giving any disclosure by paying the requisite sums into Court. One consequence is that the evidence of assets available to meet various costs orders remains extremely shadowy.

80. Third, in large part, Dr Wright kept his distance from the various applications for WFOs, albeit for this one he mounted a spirited opposition. Nonetheless, once again he did not file any evidence, so he has not attempted to allay any of the concerns prompted by his previous outspoken public pronouncements (summarised in my COPA WFO Judgment in March).

81. Fourth, I bear in mind the possible oppression caused by repeated WFOs. It takes some time for each Order to cease to have effect, only for another WFO to be granted either on top of an existing Order or shortly after the previous Order has ceased to have effect. I have given careful consideration to the risk of oppression on Dr Wright. However, I observe that if he had been more forthcoming about his ability to pay the costs orders ranged against him and how he has been able to fund the payments into Court made so far, that might have been sufficient to put a stop to the repeated Orders.

82. Fifth, in the absence of engagement on his part, I am left to assess the risk of dissipation on the evidence put before me and in the circumstances which

present themselves. Undoubtedly a curious situation has developed, but as before, I am reminded that the authorities require the risk of dissipation to be assessed on an objective basis, and objectively, his boasts of having rendered himself judgment proof remain a powerful factor in favour of a conclusion that there remains a real risk of dissipation, along with the other factors I mentioned in my COPA WFO Judgment.

83. Sixth is the fact that Dr Wright appears to have left his previous residence in Wimbledon some weeks ago now. The last information available (which was at the time of the COPA WFO) was that he was in the UTC +7 timezone. I have not been given any further information as to his whereabouts or whether he has left the UK for good.

84. Viewing all the relevant circumstances objectively, I conclude there remains a real risk of dissipation.

C. JUST AND CONVENIENT?

85. Not surprisingly, Counsel for Mr McCormack submitted it was just in all the circumstances to make the WFO sought, relying on the strength of his case for recovery of the costs and the clear evidence of the risk of dissipation.

86. Counsel for Dr Wright invited the opposite conclusion, on the basis of three submissions:

    i) first, that there are strong indications that Mr McCormack seeks a WFO for reasons other than its proper purpose;

    ii) second, that, in any event, Mr McCormack has exhibited no intention to secure a relevant judgment or order; and

    iii) third, because Counsel for Dr Wright are instructed that Dr Wright will comply with any order relating to the costs of these proceedings made in Mr McCormack's favour.

87. On that third point, that is about the weakest form of reassurance that it is possible to give and I give it no weight, against all the evidence to the contrary effect. The second point I have already dealt with under delay. Upon my enquiry, the first point was explained as follows. The contention being made on behalf of Dr Wright (albeit hesitantly) was that Mr McCormack did not seek the WFO to secure the fruits of a judgment because he had not demonstrated a sufficient intention to proceed to obtain such a judgment in any reasonable time frame. Once again, this was founded on the submission that Mr McCormack has failed to specify what path to judgment he will take. I was invited to be unpersuaded that the various paths suggested would actually work.

88. For the reasons already indicated, none of these points carry any weight. For the avoidance of any doubt, I completely reject the first submission.

A cross-undertaking

89. Although Ms Evans KC submitted that it is very unlikely that Dr Wright would suffer any loss as a result of the making of the WFO sought, Mr McCormack has offered a cross-undertaking in damages. As set out at §20 of Cowper-Coles 1, this takes the form of an undertaking to release Dr Wright from payment of Mr McCormack's costs pursuant to §4 of the Chamberlain Order, in the event that Dr Wright were to suffer loss in consequence of the WFO. Again, Dr Wright has not challenged the contentions underlying this part of the application.

90. In all the circumstances I am in no doubt that it is just and convenient to grant the WFO, not least because Mr McCormack should not, it seems to me, face a risk of the costs orders he secures going unsatisfied.

Alternative Service

91. In the end, there was no dispute about the inclusion of provisions as to alternative service of the WFO on Dr Wright's solicitors.

Points on the wording of the Order

92. I am very grateful to the parties for their efforts in agreeing most of the provisions of the draft Order presented to me. The disputes which remained concerned certain deadlines, foreign enforcement and the terms of the undertaking as to further action by Mr McCormack.

93. So far as the deadlines are concerned:

    i) In paragraph 7(4), the deadline is 14 days.

    ii) In paragraph 7(1), the deadline is 21 days.

94. So far as foreign enforcement is concerned, Counsel for Dr Wright contended that Mr McCormack had not addressed the guidelines established by the CA in *Dadourian v Simms* [2006] EWCA Civ 399, and drew attention to Guideline 5 in particular. This was not the subject of any real focus in submissions. However, I consider I am in a position to reach an informed decision in the circumstances of this case. First, the trigger for the COPA WFO was the transfer by Dr Wright of his shares in RCJBR Holding plc to DeMorgan PTE, a company organised under the laws of Singapore. Second, Dr Wright's links with Australia, the Seychelles and Antigua are all discussed in my COPA Judgment and touched upon in my COPA WFO Judgment (see my reference to his use of offshore structures in [38]). Mr Cowper-Coles gives specific evidence about the existence of assets owned by Dr Wright in each of those territories. In the circumstances of this case, I consider it is essential for Mr McCormack's team, if it should prove necessary, to be able to have the WFO recognised and enforced in the foreign jurisdictions mentioned in the Order.

95. So far as the terms of Mr McCormack's undertaking as to further action, this was under further discussion between Counsel but I also indicated that it could be finalised in the light of consideration of this Judgment in draft.