



Neutral Citation Number: [2024] EWHC 2588 (Comm)

Case No: CL-2023-000005

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

IN AN ARBITRATION CLAIM

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

Date: 4 October 2024

Before :

The Hon. Mr Justice Bryan

Between :

Madison Pacific Trust Limited

Claimant

- and -

Sergiy Mykolayovch Groza and

Defendants

Volodymyr Serhiyovch Naumenko

Nathan Pillow KC and Mubarak Waseem (instructed by Hogan Lovells International LLP)
for the Claimant

Nicholas Cherryman (instructed by M.B. Kemp LLP) for the Defendants
(solely in relation to an application to adjourn)

Hearing date: 4 October 2024

APPROVED SANCTION JUDGMENT

MR JUSTICE BRYAN:

A INTRODUCTION AND APPLICATION TO ADJOURN

1. The subject matter of the hearing today, and this judgment (the “Sanction Judgment”), is the consideration of the appropriate sanction to be imposed upon Sergiy Mykolayovch Groza (“Mr Groza”/“D1”) and Volodymyr Serhiyovch Naumenko (“Mr Naumenko”/“D2”) in respect of their respective contempt of court.
2. At a hearing on 30 August 2024 I found that each of Mr Groza and Mr Naumenko was guilty of contempt of court by breaching the Order of Jacobs J, dated 19 April 2024 (the “Disclosure Order”) – reported at [2024] EWHC 2307 (Comm) (the “Contempt Judgment”).
3. In the Contempt Judgment (at [206]), I adjourned issues of sanction and costs to the present hearing so as to provide the Defendants with an opportunity to provide any mitigation that they might wish to advance. In the accompanying Orders against each of Mr Groza and Mr Naumenko (the “Contempt Orders”), I directed that the Claimant, Madison Pacific Trust Limited (the “Claimant”) by 9 September 2024 file and serve a note setting out the legal principles on sanction in contempt matters, that by 23 September 2024 each Defendant file and serve any submissions in relation to sanction or mitigation, and that by 30 September 2024, the Claimant (if so advised) file and serve any reply to the submissions filed by each defendant. I also directed that this hearing be a public hearing, listed with the names of the parties, and shall be a hybrid hearing at which each defendant has permission to attend remotely, and that all further documents in these contempt proceedings may be served on each defendant by the method set out in paragraph 14(b) of each Contempt Order (which I was, and remain, satisfied would ensure that all documentation would be received by each of Mr Goza and Mr Naumenko).
4. On 2 September 2024, Hogan Lovells (the solicitors acting on behalf of the Claimant) wrote by email to both Mr Groza and Mr Naumenko at their respective email addresses (the “Hogan Lovells Letter”). The Hogan Lovells Letter referred to the hearing on 30 August before me and set out details of the outcome of that hearing. At paragraph 2, the Hogan Lovells Letter then addressed the forthcoming sentencing hearing in these terms:-

“2. The Sentencing Hearing.

2.1. A further court hearing has been scheduled before Bryan, J on 4 October 2024 at which the court will determine the appropriate sanction for your contempt (the sentencing hearing). The sentencing hearing will be conducted within the 'hybrid' format like the 30 August hearing allowing you the option to attend either in person or remotely via Microsoft Teams. We will also make arrangements for an interpreter to be present at that hearing.

2.2. We encourage you to attend the hearing or to instruct English lawyers to represent you.

If you do not attend and are not represented the hearing may, once again, proceed in your absence and the court may impose sanctions upon you which could include a term of imprisonment or a fine. In determining the appropriate penalty the court will consider the seriousness of your contempt, along with any mitigating motivating factors as well as the sanctions appropriate to encourage you to comply with the disclosure order”. (emphasis added)

5. The Hogan Lovells Letter went on to set out (at paragraph 2.3(b)) the directions, that I have already identified, including the timescale by which the Defendants had the opportunity, but not the obligation, to file and serve written submissions in mitigation. The time by which to do so, namely 4 pm London time on 23 September 2024, was both emboldened and underlined.

6. The Hogan Lovells Letter then continued at paragraph 3 as follows:

“3. Purging your contempt-complying with the disclosure order. You have the opportunity to purge your contempt before the sentencing hearing. This typically involves making a full and unreserved apology to the court, accompanied by actions that demonstrate compliance (or a genuine intent to comply) with a disclosure order. If you fully purge your contempt the court may take this into account when determining the sentence, which could result in a reduced sanction”.

7. Paragraph 4 then dealt with the right to appeal, and the fact that I had extended the deadline for any appeal until 4 pm on Friday, 25 October 2024. I did so in fairness to the Defendants, in circumstances in which they were then unrepresented, so that time only began to run from the date of the sanctions hearing.

8. At paragraph 5 the Hogan Lovells letter noted that a transcript of the hearing was also being supplied, and in due course the Defendants were served with the Contempt Orders that I am satisfied each defendant received. The Hogan Lovells Letter concluded by reiterating what had been stated at paragraph (as quoted above), in these terms:-

“5.3. As explained in our previous correspondence these committal proceedings are very serious and we advise that you take legal advice from an English-qualified solicitor **as soon as possible**”.

We remind you that under CPR81.4(2)(i) you have the right to apply for legal aid which may be available without any means test”.
(emphasis added)

9. Further to each Contempt Order, on 9 September 2024, the Claimant served its Note on the Law and Principles in respect of Sanction for Contempt of Court (the “Claimant’s Note”). On 23 September 2024 Mr Groza provided a letter to the Court which (in English) runs to 9 pages (the “Groza Letter”). In the Groza Letter Mr Goza stated, at the outset thereof, that he was:

“...writing regarding [the Contempt Order] holding me in contempt of court, specifically for failing to disclose information that I was required to provide pursuant to [the Disclosure] Order of 19 April 2024. I am writing this letter personally, **without the assistance of my Ukrainian lawyers**, to assure the court that I am personally doing everything that I can to remedy this situation”.
(emphasis added)

10. Mr Groza stated that,

“At the outset I would like to sincerely apologise to the Court for my absence on the last hearing. Over the past year, I have undergone complex medical treatment (including rehabilitation and regular check-ups) and two major surgeries in Zurich, Switzerland, which has severely limited my ability to participate in the trial. Unfortunately, at the time of the last hearing, I was also in hospital and therefore had to request a postponement of the hearing in order to be able to present my case properly.”

11. Mr Groza then expressed himself in the following terms:

“I understand, unfortunately, that the Court refused to adjourn the hearing, nor did it generally agree with my position that the disclosure order was issued without merit and that the Claimant’s actions in obtaining and maintaining the order was fraudulent. Notwithstanding this outcome, I respect any order of the Court, however positive or

negative it may be to me. By this letter, I wish to confirm my full willingness and intentions to fulfil all disclosure obligations.”

12. Mr Groza then went on to assert that he had already compiled a substantial portion of the information and documents that he was required to provide pursuant to the Order of Jacobs J, and was promptly submitting the relevant explanations with the documents for the Court’s and the Claimant’s review. He said, however, that due to his health problems and the “banal lack of proper communication with the staff who could have provided such necessary information – communication that is lacking only due to the Claimant’s own actions” he had been unable, to date, to collect all of the information (whilst asserting that he was taking all possible steps to gather the necessary information), and asserting that he needed until the end of November to do so. Mr Goza requested an adjournment of the sentencing hearing “until such time as I am able to gather all necessary information”. The Groza Letter then continued at length purporting to address various aspects of the information the subject matter of the Disclosure Order (although without addressing, still less providing any justification for, the failure to comply with the Disclosure Order in the first place).
13. At the end of the Groza Letter, Mr Groza asserted that he was doing everything within his power to comply with the Disclosure Order, and that he had already provided the information that was within his possession, asking that the Court give him until the end of November to gather the remaining information and not pass sentence, “before I have had an opportunity to fully comply with all orders of the Court”.
14. The Groza Letter was then signed by Mr Groza (but without any Statement of Truth or equivalent). Below that was appended the signature of Mr Naumenko, preceded by the statement, “I, Vladimir Naumenko, confirm that I have duly read the above information provided by Mr Groza. I fully confirm its content and agree the above facts and events”. Mr Naumenko therefore associated himself with the contents of the Groza Letter (albeit that he did not himself express any apology or remorse - to accompany the purported apology and purported expression of remorse from Mr Groza in the terms quoted above).
15. On 30 September 2024, the Claimant served its “Reply to the Defendants’ Mitigation Submissions”, i.e. to the Groza Letter, (the “Claimant’s Reply Submissions”). In the Claimant’s Reply Submissions, the Claimant opposed any adjournment, and submitted

that the Groza Letter failed to address the reasons for the initial breach of the Disclosure Order or provide any proper justification for why the information was not provided subsequently either prior to the committal application, or prior to the committal hearing, or at all. It was also submitted that, upon examination, the Groza Letter contains little by way of mitigation, and does not demonstrate any true remorse on the part of Mr Groza, or genuine desire to “remedy [the] situation” or purge his contempt.

16. It is clear from the fact of, and terms of, the Groza Letter that both Mr Groza and Mr Naumenko are aware of the Contempt Judgment and the Contempt Order, and I am satisfied that each of them has had a proper opportunity to provide any available mitigation, and to attend this hearing if they so chose.
17. On the afternoon of 2 October 2024, my clerk emailed Mr Groza asking whether or not he would be attending, and further emailed both Defendants yesterday afternoon with the hearing details and again asking whether they would be attending. Neither Mr Groza nor Mr Naumenko responded to those emails.
18. For reasons that will shortly become apparent, it is notable that the second of those emails was timed at 4.12 pm yesterday. In any event, I am satisfied that each of Mr Groza and Mr Naumenko was aware of today's hearing and therefore was in a position to attend if he wished to do so.
19. At the start of the hearing, I was informed by Mr Pillow KC, on behalf of the Claimant, that at 07.45am this morning, and for the first time, the solicitors' firm M.B. Kemp LLP emailed the Claimant's solicitors, Hogan Lovells, with a letter (the “Kemp Letter”) in which they informed Hogan Lovells that they had been instructed to act on behalf of Mr Groza and Mr Naumenko for the purpose of seeking an adjournment of today’s sanction hearing and stating:

“As explained in the letter dated 23 September sent by Mr Groza and Naumenko to the court, our clients wish to comply with the disclosure order of 19 April 2024 made by Jacobs, J and seek additional time to the end of November 2024 to that end”.

20. At paragraph 2 of the Kemp Letter it was stated that:-

“We are instructed that our fees and related disbursements are being paid by Fortier Law SA, a Geneva-based law firm representing the defendants in the related arbitration proceedings”.

21. The UK arm of Fortier Law SA (Fortier Law UK) previously acted in this action, as further addressed below. It has not been suggested to me that M.B. Kemp LLP has had any prior involvement in the matters the subject matter of either this action or the contempt proceedings. Indeed, the application before me today proceeds on the very basis that they were newly instructed at some point yesterday, 3 October 2024.
22. The Kemp Letter timed at 07.46 am this morning was not copied to the Court. It should have been. It was not accompanied by any affidavit, or any witness statement in support of the application for an adjournment, and no evidence whatsoever was produced to explain why English solicitors and counsel, were only instructed yesterday. In this regard, Mr Nicholas Cherryman of counsel, who has appeared before me today on behalf of the Defendants, tells me that he was instructed during the course of the afternoon yesterday, and that M.B. Kemp LLP were instructed “earlier in the day”, although he does not have any instructions as to when, precisely, they were instructed. He did not have any instructions as to why neither Mr Groza nor Mr Naumenko (most obviously in response to my clerk's email at 4.12 yesterday afternoon) or M.B. Kemp LLP (following their instruction earlier in the day) did not contact the Court yesterday to inform the Court that by this stage both solicitors and Counsel had been retained on behalf of Mr Groza and Mr Naumenko, and would appear at the hearing to seek an adjournment.
23. I would have expected the Court to be informed as soon as solicitors were instructed, and as soon as Counsel were retained. That did not happen. In fact, the first that the Court knew about the retention of M.B. Kemp LLP, and the instruction of counsel, was at 09.09.26am this morning when an email was sent from an associate in the firm M.B. Kemp LLP to my clerk in which it was stated, “We have recently been instructed to represent the Defendants... We should be grateful if the attached Skeleton Argument could be presented to Bryan J prior to this morning’s hearing at 10.30AM”. As thereby foreshadowed, that email was accompanied by a Skeleton Argument signed by Mr Cherryman (the “Defendants Skeleton”).
24. The Defendants Skeleton repeats the request for an adjournment that had been made in the Groza Letter on 23 September 2024. The request is made on the basis that the Court

has a discretion to adjourn proceedings, a professed willingness of the Defendants to engage in disclosure, what is said to be very recent instruction of English solicitors, and what is asserted to be “limited prejudice to the Claimant – in fact, compliance with disclosure would assist the Claimant”. The Defendants pray in aid the overriding objective in CPR 1.1 of dealing with cases justly and at proportionate costs, which includes ensuring that the parties are on an equal footing and can participate fully in proceedings including by lawyers, and it also being pointed out that the issues at play at the sanctions hearing are very serious, with potential committal and the liberty of the Defendants at play. The Defendants’ Skeleton refers to the fact that the Defendants have said in the Groza Letter that they are willing and intend to comply with the Disclosure Order, and it is said that an adjournment would give a further opportunity to the Defendants to provide the outstanding disclosure and potentially purge the contempt and would be relevant in assessing what, if any, sanctions to impose.

25. It is candidly recognised that the primary purpose of contempt proceedings is both punitive and coercive. It is said that granting an adjournment would facilitate compliance which is in line, it is said, with the Court’s objective to ensure orders are obeyed. It is said that the Defendants have only very recently instructed M.B. Kemp LLP and counsel to represent them, and time is required for the legal team to review the materials, advise the Defendants on their position regarding the contempt proceedings and potential sanctions, and take instructions and prepare relevant disclosure and any necessary affidavit or witness statements. It is said that the Claimant will not suffer “significant” prejudice by the adjournment sought and “any delay would be outweighed by the benefits of compliance with the Disclosure Order”.
26. In what is something of an understatement, given the passage of over a month since the Committal Orders, and the ordered timetable for the making of mitigation submissions (which have been received in the form of the Groza Letter) and which was designed to ensure, and I am satisfied has ensured, that the Defendants had, and have had, a fair and proper opportunity to make any submissions by way of mitigation, and purge their contempt, the Defendants Skeleton ends as follows,

“The Defendants’ English legal advisors acknowledge that this application is made late in the day, and apologise for the late filing of this skeleton. This was a result of the very late instruction of solicitors and counsel”.

27. The application to adjourn was made in the Groza Letter (on 23 September 2024 and as ordered) and was opposed in the Claimant's Reply Submissions (on 30 September 2024 as ordered). The instruction of solicitors and counsel is late because the Defendants failed to instruct the same (at the latest) immediately after the Committal hearing and Contempt Judgment, or immediately following the Hogan Lovell Letter of 2 September 2024 in which Hogan Lovells expressly drew attention to the timetable that I directed, when the next hearing was to take place, and strongly urged the Defendants to take advice from English solicitors.
28. The notification of appointment of solicitors and counsel coming, certainly to the Court, not much more than an hour before the sanction hearing commences (and earlier the same morning to the Claimant's representatives) has all the hallmarks of a last minute ploy to secure an adjournment when the Defendants have had every opportunity not only to make any mitigation they wish to make, but also to purge their comment. Instead I am satisfied, so that I am sure, having regard to the Groza letter and the Claimant's Reply Submissions thereto, that the Defendants, and each of them, remain in continuing contempt and breach of the Disclosure Order.
29. I am grateful to Mr Cherryman for the quality of his Skeleton Argument and oral submissions before me on what was a challenging application for an adjournment in the context of its timing and absence of any supporting evidence.
30. During the course of his submissions, I pressed him for any evidence that there was, on behalf of the Defendants, as to why it was that Mr Groza and Mr Naumenko did not instruct English solicitors at the very latest immediately following the Hogan Lovells letter, or in good time before 23 September 2024. His response was that he did not have any instructions, or associated evidence, in that regard. I also asked him why it was that there was no witness statement or affidavit which one would normally expect where an adjournment was being sought, and where, even if time was short, it is common (in the context of freezing orders and associated applications) to produce supporting evidence in a very short order after solicitors or counsel are instructed, including, if necessary, overnight. Again, he said that the only evidence that is before the Court is that which is set out in the Groza Letter and, on the basis of the instructions he had, he had no further evidence to put before the Court.

31. Despite the lateness of the instruction of solicitors and the lateness of the involvement of Mr Cherryman, I did hear his submissions *de bene esse*. The strict position, of course, was that I had given directions for when submissions had to be made by, and if there were to be further submissions, then the permission of the Court would need to be granted. In the event, I took the pragmatic course of considering everything that is set out in the Defendants Skeleton Argument and in Mr Cherryman's oral submissions before me this morning.
32. Mr Cherryman candidly and realistically identified that this was, in his words "a last chance saloon" in terms of seeking more time. I asked him again why it was that English solicitors had only been instructed yesterday. He was unable to provide any evidence before me as to why that was. I am driven to what I am satisfied is the logical conclusion that it was a conscious decision on the part of Mr Naumenko and Mr Groza only to instruct solicitors at the very last minute, not least in circumstances where they were well aware of the possibility of instructing English solicitors immediately following the Contempt Judgment (and had done so in the past, and had been advised to do so as early as 2 September 2004 by Hogan Lovells in the Hogan Lovells Letter. As I will come on to, this is not the first time that late applications have been made by Mr Groza and Mr Naumenko.
33. There were two central planks to Mr Cherryman's submissions. The first one was that both M.B. Kemp LLP and Mr Cherryman were only instructed yesterday, and that time would be needed for them to assimilate all the material and to give advice to the Defendants. I bear that submission well in mind, but, of course, the reason why they were only instructed yesterday, and the reason why they would need to read into the matter is solely to be laid at the door of Mr Groza and Mr Naumenko because they have not instructed English solicitors earlier, and chose to instruct English solicitors who had not previously been involved in the action..
34. The other plank of the submission was to suggest that no real prejudice would be suffered by the Claimant, if the sanction hearing was adjourned, and this was suggested in the Defendants Skeleton Argument and was repeated orally before me, it being suggested that the Claimant would benefit if Mr Groza and Mr Naumenko come true to what was said in the Groza Letter and they purge their contempt and provide the necessary

information (information which should have been supplied many months ago under the Disclosure Order).

35. Again, however, the force of that submission (even if what is said by Mr Groza were taken at face value) is severely blunted by the fact that both Mr Groza and Mr Naumenko have had every opportunity to provide the requisite information, pursuant to the Disclosure Order, at any time prior to the contempt proceedings, at any time prior to the contempt hearing, and at any time since the hearing on 30 August and the service of the Contempt Orders and Hogan Lovells Letter but have singularly failed to do so.
36. I put to Mr Cherryman that there was another highly relevant aspect to the question of prejudice, namely the other side of the coin, which was the position of the Claimant. The Claimant was found entitled to have a freezing injunction against the Defendants which contained the normal provisions in terms of disclosure so as to police the freezing injunction. It was subsequently considered that further disclosure and information was necessary which led to the disclosure application and a Disclosure Order. Another judge of this Court, Jacobs J, considered it appropriate to make the Disclosure Order. The whole purpose of the Disclosure Order is for the Defendants to provide further information to facilitate the policing of the freezing injunction, set against the backdrop of a case in which that same judge had considered that the present case as being one of the clearest cases in relation to the risk of unjustified dissipation of assets that he had seen.
37. I am satisfied that as every day goes by, whilst the Defendants are failing to comply with their obligations under the Disclosure Order, there is continuing prejudice being suffered by the Claimant, both in relation to the identifying of assets and also in identifying what has been done in relation to assets, and having the ability to take steps to follow such assets with a view to retrieving them.
38. Far from the Claimant suffering little prejudice if an adjournment was granted, Mr Pillow was to submit to me with, I am satisfied, very real justification, that the Claimant would suffer very real prejudice if there was an adjournment which would far outweigh any prejudice to the Defendants who, of course, it is said, have only themselves to blame for only instructing English solicitors at very much later than the eleventh hour. In this regard the Defendants stand to be punished today for their existing contempts and coerced into purging their contempts by appropriate sanction today.

39. Mr Pillow made six points in opposition to the application to adjourn (some of which inevitably overlap with others). which is resisted, The first point is that the present application to adjourn is but the last example of a pattern of behaviour on the part of the Defendants, and a history of tactical manoeuvring at the last minute. Mr Pillow submits that the first matter to note is that the Groza Letter itself, on 23 September 2024, is itself an admission of continuing non-compliance with the Disclosure Order, not least because it is predicated on the basis that further information will be provided hereafter and further time is needed (until the end of November) to provide such information.
40. Mr Pillow submits that the very timing of instructing English solicitors immediately before the hearing is nothing less than an attempt to derail these proceedings, and that I can properly infer that it is a deliberate decision on the part of Mr Groza and Mr Naumenko to instruct English solicitors at the last minute to achieve that aim. I agree, and draw that inference.
41. As Mr Pillow points out, the drawing of that inference is fortified by the fact that the Defendants have previously instructed an English law firm, Fortier UK, which is the UK branch of the Swiss firm Fortier SA, which is referred to in the very letter of last night of M.B. Kemp LLP.
42. Fortier UK were instructed, and were on the record, at the time of the Defendants' failed attempt to suggest that the Court did not have jurisdiction to proceed to contempt proceedings, albeit that they very soon thereafter came off the record (thereby preventing the Defendants being served by service upon Fortier UK).
43. The Claimant makes the point, with some force in my view, that if the Defendants had wished to instruct English solicitors in good time before this hearing they could, of course, have instructed solicitors who were already familiar with the matter up to the time of the contempt proceedings, and who would, in short order, if promptly instructed, have been up to speed long before now, and in all probability long before 23 September 2024, and the time for service of any submissions by way of mitigation. Instead the Defendants chose to instruct new English solicitors and new counsel who were unfamiliar with matters, and chose to do so the day before the sanctions hearing which had been fixed for over a month.

44. I am satisfied that the proper inference to draw (absent any evidence to the contrary adduced on behalf of the Defendants) is that this was a deliberate decision on the part of the Defendants. Indeed, that was why I pressed Mr Cherryman as to whether there was any evidence, or any explanation, as to why it was that M.B. Kemp LLP and Mr Cherryman had only been instructed and retained yesterday. As I have already noted, Mr Cherryman did not have any instructions, or associated evidential material, to shed any further light on that which is the backdrop against which I infer that it was a deliberate decision not to instruct English solicitors and counsel until the very last minute, as part of what I am satisfied was tactical manoeuvring designed to maximise the chances of obtaining an adjournment.
45. Mr Pillow submitted, rightly, in my view, that this is but the last example of a longstanding pattern of behaviour, firstly of non-engagement in the litigation at all until the last minute, and, secondly, of last-minute engagement with a view to derail whatever was about to happen when it was clear that the matter would take place. In this regard, he prays in aid the previous history of this action, including a root and branch challenge to the worldwide freezing order in early 2024 with solicitors Hill Dickinson and leading counsel instructed, and following that when that challenge failed, the withdrawal of Hill Dickinson and those counsel, followed by a failure to engage in the disclosure application that was to come on before Jacobs J on 30 April, until the very night before when a nine-page letter was (belatedly) served.
46. A more recent example of such conduct, is the involvement of Fortier UK, which I have already mentioned, who were instructed in the context of a challenge to the jurisdiction to bring committal proceedings in July 2024, but who were soon off the record thereafter, following the acknowledgement of service. An even more recent example, and one which I address in the Contempt Judgment itself, is the fact that the late afternoon before the committal hearing before me on 30 August an 80-page statement was served by Mr Naumenko (“Naumenko 5”), at 4.15 pm, and that statement, which was relied upon by Mr Naumenko and inferentially also Mr Groza, was not even served upon the Claimant. In fact, it was the Court that forwarded it on to the Claimant, it being clear that the Claimant was not even being told about the evidence that was going to be relied upon by the Defendants at the hearing. Yet further, it was only at 10.20am on the Friday morning

the next day, some ten minutes before the hearing commenced, that 121 exhibits to Naumenko 5 were provided to the Claimant.

47. As I addressed in my Contempt Judgment, and as I found, that was transparently an attempt to derail the contempt hearing. Notwithstanding the measures that had been put in place to make that committal hearing a hybrid hearing, and the Court being satisfied that each defendant had every opportunity to attend that hearing, both Mr Groza and Mr Naumenko did not attend that hearing, and on any view Mr Naumenko was voluntarily absenting himself from that hearing, whilst Mr Groza had not provided any appropriate medical evidence that would have justified any adjournment of that hearing (notwithstanding knowing what would have been required of him in that regard).
48. It is readily apparent from the matters that I have identified that the adjournment application in the Groza Letter itself, and the subsequent very late instruction of M.B. Kemp LLP and counsel is nothing other than the very latest example, of what is an established pattern of behaviour, and a history of tactical manoeuvring, with a view to either derailing particular hearings, or of putting off the evil day when matters have to be addressed substantively.
49. Mr Pillow points out that not only is this further development with the instruction of Counsel and solicitors made very late, but it is also made without any evidence in support whatsoever (as I have already noted), and it is submitted (with some force in my view) that the only thing that seems to have made any difference as to the stance of the Defendants is the recognition of the serious sanctions they face, coupled with a recognition that sanctions would be addressed today, absent them being able to put off the evil day by knocking the sanctions hearing into the “long grass” of a subsequent hearing “after the end of November”.
50. Neither Defendant has attended in the jurisdiction today. I gave them the facility to attend remotely. My understanding is that Mr Groza has attended remotely (at least for the adjournment application) but that Mr Naumenko has not. There is no evidence to suggest before me that there is any good reason by Mr Naumenko not to attend, either in person or remotely today, and I conclude that he has chosen to voluntarily absent himself from the sanction hearing.

51. The second point made by Mr Pillow is that there would be no prejudice (in the sense of, no relevant prejudice) in the sanction hearing proceeding today. Firstly, there is no relevant prejudice because any consequences for the Defendants are the consequences of the Defendants' own deliberate acts in not instructing English solicitors and counsel earlier, and even when belatedly instructing English solicitors not instructing English solicitors that are familiar with the action.
52. The second point why reason why there is no relevant prejudice suffered by the Defendants is because each of Mr Groza and Mr Naumenko have been given a fair opportunity to put in any submissions in mitigation, and have done so in the Groza Letter. Mr Cherryman, in his written submissions and oral submissions before me today, has been unable to identify any prejudice suffered by the Defendants if an adjournment is not granted that can be separated from any consequences of the Defendants' own deliberate acts in not instructing anyone any earlier.
53. In contrast, Mr Pillow submits, rightly in my view, that very considerable prejudice would be suffered by the Claimant if an adjournment is granted in circumstances where I am satisfied, so that I am sure, that the Defendants remain in continuing breach of the Disclosure Orders, and in continuing contempt, and the position remains, and continues day on day, that the Claimant continues to be prejudiced by the failure of the Defendants to provided the requisite information that the Defendants were long ago ordered to provide.
54. If one weighs up the balance of prejudice between the Defendants if an adjournment is not granted and the Claimant if an adjournment is granted, I am satisfied that the balance of prejudice is overwhelmingly in favour of the Claimant and not adjourning the proceedings. There has not, in fact, been any evidence before me which would justify a conclusion that the Defendants have suffered any prejudice to date, or would suffer any further prejudice, if the proceedings were not adjourned. They have had a lengthy period of time in which to put in any written submissions on their behalf, and have availed themselves of that. As Mr Pillow points out, the time period concerned of over a month before this hearing and over three weeks before they had to put their mitigation submissions in, is very much longer than would often be the case in the context of committal proceedings, and proceeding to the sanction hearing itself after a finding of

contempt. They have had every opportunity to put in whatever information they wish to put in.

55. Mr Pillow's third point is that today's hearing is for sentence of contempts that have already been committed. As addressed in the Contempt Judgment, the Defendants have been found to be in breach of the Disclosure Order and to have committed contempt, and they stand to be sentenced today in respect of such existing breaches that have already been established. On any view, that punitive aspect of the sentence for existing breaches is fully formed and ready for determination today. Equally the Defendants have been made aware in the Hogan Lovells Letter, that they could take steps to purge their contempt, and that if they did so that might reduce the coercive part of the sentence, yet they have not done so (as addressed further below in Schedule 1 in relation to the sanction hearing itself).
56. Mr Pillow submits, again with considerable force, that it is in the interests of justice to proceed to sentence in respect of proven contempts of court. Mr Pillow notes that the Court will no doubt be considering both a punitive element and a coercive element if the Court considers that only an immediate custodial sentence is appropriate for the seriousness of the offending, and that, therefore, if such a sentence were to be passed, and further information is provided hereafter, and further attempts are made to purge contempt hereafter, that would be relevant to the coercive element, and any application to the court to remit in whole or part any coercive element. That is a reason to proceed to sentence today rather than to adjourn – any coercive element can only facilitate future compliance relevant, and allow the Defendants to come good on their promise to provide further information.
57. An aspect of Mr Pillow's submission in this regard is essentially that this is the wrong application by the Defendants at the wrong time. Had the Defendant needed more time to comply with the Disclosure Order they should have applied at that time. Equally, if they wished to purge their contempt, they should have done so promptly and immediately following the Contempt Order. That would have included, if they wished, taking prompt legal advice from English solicitors and counsel, and following that through in good time in advance of the hearing with the purging of their contempt and provision of all requisite information.

58. Mr Pillow also submits that essentially the burden should not be on the Claimant, as it effectively would be if an adjournment was granted, to incur all the costs of coming back again and responding to whatever further information, if any, is provided. Rather the burden should have been, and should be, upon the Defendants to apply promptly, and to purge their contempt promptly.
59. The fourth point made by Mr Pillow, which is aligned with his second point, is that not only is there no prejudice on the part of the Defendants if matters proceed, but that there is very considerable prejudice on the Claimant if the hearing today does not proceed in respects additional to the prejudice suffered by the Claimant as a result of the continuing failure by the Defendants to provide information (which has already been addressed above).
60. The considerable further prejudice relates to costs. The Claimants have suffered, and are continuing to suffer, very considerable cost consequences as a result of the Defendants' conduct to date. The evidence before me is that the Defendants have failed to pay any of the costs orders that have been made to date, which include a costs order of some US\$800,000 in relation to the Defendants' unsuccessful discharge application in February 2024, and another costs order against the Defendants for US\$170,000 in respect of the failed resistance to the disclosure application before Jacobs J. There will then be an application before me today, for the Defendants to pay the costs of the contempt hearing and this hearing, which amount together to some US\$284,000. Whilst no such order has yet been made, one can obviously bear in mind the fact that the applicable principles in relation to the contempt hearing are that costs follow the event (quite apart from contractual provisions in place which the Claimant says entitles it to indemnity costs), and so that is an order of costs of whatever magnitude I ultimately order, that the Defendants will also have to bear.
61. However even if one only looks at the past position in relation to costs, there is the best part of a million dollars plus interest that has not been paid by the Defendants to date, and if there is an adjournment, then there will, of course, be costs thrown away today, and inevitably further very substantial costs will be incurred by the Claimant hereafter in circumstances where the Defendants have only themselves to blame for the situation they face with this very late application, and even later instruction of solicitors and counsel. The Claimant should not be exposed to continuing prejudice in relation to costs, with

costs thrown away, and yet further costs incurred (with no more prospect of payment than at present) if an adjournment was granted.

62. Mr Pillow's fifth point is that there is, in fact, no evidence at all to give rise to any belief that giving the Defendants more time would make the slightest bit of difference. As Mr Cherryman realistically accepted, there is no additional evidence before me today in relation to the adjournment application than there was in the Groza Letter itself, either in relation to why there should be an adjournment, or in relation to whether or not further time will allow further information to be provided. I have already noted that there has been a complete lack of explanation or evidence as to why it is that English solicitors and Counsel were only instructed last night, and a lack of explanation as to why no further information has been provided since the Groza Letter, or to even begin to justify why (at least) a further eight weeks is now needed.
63. The fact is that the Defendants have had a very, very considerable amount of time to provide the information sought to date. Their reaction contemporaneously was to deliberately not provide the information, as I address in the Contempt Judgment. Thereafter, even when faced with a committal application they did not provide the information necessary, and indeed went on the attack suggesting there was not even jurisdiction for there to be committal proceedings. Even when they were found in contempt of court on 30 August 2024, that did not provoke them into promptly purging their contempt, or even providing prompt provision of any further information. If the Defendants genuinely wished to purge their contempt they did not have to wait until 23 September 2024 to do so. The direction that was given in relation to the 23 September 2024, was in relation to any mitigation, and whilst purging your contempt might be relevant to mitigation, the obligation to purge one's contempt is a continuing one, and could, if there was any genuine desire to purge contempt, start with information provision immediately after 30 August 2024. That simply did not happen.
64. Mr Pillow further submits, again with some force in my view, that when one examines the detail of the Groza Letter, as addressed by reference to the paragraphs and subparagraphs of the Disclosure Order, as is addressed at length in the Claimant's Reply Submissions to which I have had full regard, it is clear that attempts to date have not in any way, shape or form amounted to compliance with the Disclosure Order. There are shortcomings in the information that has been provided. Some of the purported new

information in the Groza Letter had already been provided previously, and so is not even new information, and there are paragraphs and subparagraphs of the Disclosure Order which have not been grappled with at all in the Groza Letter. There is nothing, in terms of evidence, to lead to the conclusion that if given more time there will be a sudden conversion whereby the Defendants will purge their contempt. Mr Pillow submits rightly, in my view, that one has to be, at the very least, circumspect with the assertions in the Groza Letter, and the expressions of apology, not least in circumstances where the Groza Letter contains no explanation whatsoever as to why the Disclosure Order was not originally complied with, nor why it was not complied with before the contempt proceedings, or, indeed, at any time to date.

65. Mr Pillow rounds off his fifth submission by saying that there is no basis for saying that the leopard would necessarily change his spots between now and the end of November by suddenly purging his contempt when history shows that there has been a consistent failure to comply with the disclosure obligations under Disclosure Order, and even faced with a sanction hearing neither Defendant has yet purged their contempt.
66. The sixth point that is made, is made in relation to Mr Naumenko. It is pointed out that much of the Groza Letter, certainly so far as Mr Groza's health is concerned, does not apply to Mr Naumenko, and even if there was any weight in what is said by Mr Groza in that regard (and the Claimant does not accept there is, given that there is no proper evidence of those health conditions and what they have impacted upon) those points cannot apply to Mr Naumenko.
67. Yet further, I found that there was no good reason why Mr Naumenko did not attend the hearing on 30 August 2024, and as I have already noted, Mr Naumenko has not attended today, even on the hybrid CVP link. Given the lack of any explanation for that (and I asked Mr Cherryman, and he was without instructions in that regard) I infer that Mr Naumenko has voluntarily absented himself from the sanction hearing, and, indeed, from his own application to adjourn proceedings.
68. I do not consider that in the context of contempt proceedings, and a sanctions hearing, it is appropriate simply to leave matters to solicitors and counsel rather than to attend oneself, not least in circumstances where the solicitors are not yet even formally on the record (as confirmed to me by Mr Cherryman) and the court was only notified of the

presence of the solicitors and counsel at 9.09 this morning. There could have been no expectation on the part of either Mr Naumenko or Mr Groza that I would necessarily hear from Mr Cherryman. Indeed, the very first submission that Mr Cherryman made was to ask that he be heard. I was prepared to hear him *de bene esse*, but that is no reason why the Defendants should not have attended the sanction hearing personally. That is a further reason why I consider one has to take with some circumspection the suggestion that Mr Naumenko intends to fully comply with the order and purge his contempt in circumstances where he did not even have the courtesy of attending remotely today.

69. Turning to Mr Cherryman's oral reply submissions, I am satisfied that Mr Cherryman did all he could possibly do on behalf of his clients, but ultimately there was little, if anything, that could be said in reply by way of riposte to the force and weight of Mr Pillow's submissions. As Mr Cherryman candidly acknowledged at the start of his reply submissions, "There is not much I can say. The history is the history". That is right, and the history speaks for itself.
70. The absence of any evidence explaining why solicitors and counsel only came along at this late stage, and in the absence of any evidence as to why matters were not dealt with earlier means that there is little, if anything, that can be said by way of riposte to Mr Pillow's submissions. Ultimately Mr Cherryman was left to fall back on saying that he relied upon the Groza Letter of 23 September as a good faith attempt to engage in these proceedings.
71. I bear that point well in mind so far as it goes, but, of course, it is set against a backdrop of a continuing contempt on the part of both Mr Groza and Mr Naumenko, the continuing contempt of failing to provide information to date, and the history of tactical manoeuvring and tactical applications at the last minute to either adjourn hearings or to bring lawyers on at the very last moment.
72. Set against that background, and for the reasons I have identified, the Groza Letter has to be viewed with some circumspection. Nevertheless at the time the Groza Letter was served, the Groza Letter was clearly intended to include all the matters that he (and Mr Naumenko) wished to put before the Court by way of mitigation. It is a long letter. It is an eloquent letter, and it is one which was served on time, and in accordance with my directions order. I am satisfied that if there were good points to be made by Mr Groza

and by Mr Naumenko (each of whom is very familiar with the issues in this action having lived through this litigation), by way of mitigation, they could and would have included them in the Groza Letter. If they chose not to take any legal advice at that time, that was their choice, but they have not been deprived of the opportunity of setting out any mitigation that is available to them. Equally, if an adjournment is not granted, then I will, of course, hear anything additional that Mr Cherryman wishes to say, and if Mr Cherryman is not instructed in respect of the sanction hearing itself, I will, of course, give Mr Groza a fair opportunity to say orally anything additional that he wishes to say (and to respond to whatever said on behalf of the Claimant by Mr Pillow). What I do not have is any evidence that the Defendants would have further mitigation that they have not been able to adduce to date, but would be able to adduce with more time. At most they are proffering the prospect of future compliance when they have not complied to date, and are in continuing contempt. That is no reason for an adjournment.

73. I am satisfied that the Claimant continues to suffer very real prejudice as every day goes by when the Defendants continue to fail to comply with the Disclosure Order the very purpose of which is to police the freezing injunction.
74. The application for an adjournment entirely ignores the fact that the sanction hearing is to determine the appropriate sanction for the existing contempt and existing breach of the Disclosure Order that occurred many months ago. It also ignores the fact that the Defendants have had over a month to purge their contempt but (to look forward to the subject matter of the hearing itself) the Claimant denies that they have done so (a denial that I foreshadow I consider has considerable force). It is against that backdrop that assertions as to willingness to comply are to be judged and an open ended adjournment application to a date “after 30 November 2024”, or at the very least for a further eight weeks, stands to be judged.
75. The application is also to be judged set against the background that I have already determined that each of Mr Groza and Mr Naumenko have committed a contempt of court in the Contempt Judgment. Any assertions in the Groza letter that some (or even adequate) disclosure has been belatedly given (which is denied by the Claimant) does not impact upon the breaches already committed and the contempts that have been found. This hearing is to determine the issue of sanction and costs for such existing breaches and found contempts.

76. Those parts of the Groza Letter that argue that adequate disclosure has now been given are, as the Claimant rightly points out, too little, too late, and irrelevant so far as breach is concerned (being at most relevant to mitigation if such arguments were well founded, which I will be considering in the course of the sanctions hearing).
77. I do not consider that the suggestion that there may be (belated) compliance is a good reason to adjourn the hearing for a considerable period of time, not least given that the Defendants have been given every opportunity to advance any mitigation they may have (and to purge their contempt), even if the promise of belated compliance was credible, which I do not consider it to be. Mr Groza and Mr Naumenko had every opportunity to comply with the Disclosure Order at the time, but consciously chose not to do so, as I have already found, and had every opportunity to do so after the contempt application was made and before the contempt application was heard, and then upon, or immediately after the Contempt Order was made. They have never done so, nor did they instruct English solicitors promptly or at all following the contempt judgment, and the Hogan Lovells Letter of 2 August 2024 until the very eve of the hearing, and even then without solicitors having yet come on the record.
78. There is no explanation why, if Mr Groza (or Mr Naumenko) genuinely “respect[ed] any order [of] the Court” and really had a “full willingness and intention to fulfil all disclosure obligations” he (or they) did not do so in response to the Disclosure Order and by the original 13 May deadline; or by the time of the contempt hearing on 30 August.
79. As I will address in due course below, and based on what I have seen to date, the further disclosure that Mr Groza has provided is both sparse and piecemeal (at best) without any proper explanation as to what further disclosure he (or Mr Naumenko) would be willing or able to provide with more time, and as I have already noted, and as Mr Cherryman acknowledged, the Defendants ultimately had to stand on the Groza Letter itself, there being no further evidence before this court subsequent to the Groza Letter.
80. Equally, as with the position before the contempt hearing (and the failed attempt to adjourn the contempt hearing, which was without merit, as addressed in the Contempt Judgment), no proper medical evidence has ever been adduced on behalf of Mr Groza to excuse the breach of Disclosure Order, or to justify an adjournment or that would amount to any real mitigation for this hearing (even on behalf of Mr Groza, still less Mr

Naumenko). Whilst Mr Groza has referred to alleged difficulties that his health has given him in relation to “collecting the information sought”, once again, as at the time of the contempt hearing, no evidence was given (or is now given) of what those problems were or are, or how he claims they have impacted (or continue to impact) upon the process of collecting the relevant information, including prior to 13 May 2024. As has previously been noted, Mr Groza knows full well what would be required in terms of such health evidence, and what evidence he would be required to produce in relation to any medical condition. Even now, and following the terms of the Contempt Judgment (which referred to the lack of medical evidence), Mr Groza has once again failed to adduce evidence in support of any alleged difficulties resulting from any health problem.

81. Even Mr Groza’s explanation (such as it is) cannot apply to Mr Naumenko, who I have found to have provided “[n]o reason, still less any good reason” for not attending the contempt hearing. Nor can Mr Groza’s further reliance on his ill-health as part of the explanation for his not having fully complied with the Disclosure Order, as part of his request to adjourn the hearing; and as part of the backdrop to his apology to the Court, assist Mr Naumenko. The point is academic, however, as I do not consider that Mr Groza has produced any evidence in relation to his health which would distinguish his position from Mr Naumenko, not least in circumstances where such apology as Mr Groza has asserted, has not been accompanied by full compliance with the Disclosure Order, even after he has been found in contempt.
82. As I have already noted, the Groza Letter, like Naumenko 5 before it, and the late appearance on the scene of English solicitors and counsel, has all the hallmarks of seeking to “buy-time” rather than as evidencing any genuine efforts being made to comply (belatedly) with the Disclosure Order and purge the Defendants’ contempt. In any event, should there be compliance hereafter, that would be relevant to such aspect of the penalty that is coercive as addressed in due course below.
83. It is also notable that whilst Mr Groza offers purported explanations of his professed inability to obtain information or documents now, there is no explanation as to why he (or Mr Naumenko) failed to disclose what was required of them under the Disclosure Order by the deadline set out in that Order, in circumstances where they consciously chose not to comply with that Order. It is notable that such explanations (in particular as

to Mr Groza's health) that are now offered, were not offered by the Defendants either before the 13 May deadline, or in their letter to the Court shortly after it had expired.

84. The notification of appointment of solicitors and counsel to the Court little over an hour before the hearing, has all the hallmarks of a last ditch attempt to put off the sanctions hearing in circumstances in which the Defendants have had every opportunity to advance any mitigation they wish well before the hearing, and have had every opportunity to purge their contempt and to employ English solicitors to assist them in that regard long before today's hearing.
85. In such circumstances I consider that the overriding objective would be advanced not by adjourning the sanctions hearing but by proceeding with it set against the backdrop of the existing breaches of the Disclosure Order and existing contempts that have been found and the continuing substantial prejudice that is being suffered by the Claimant as a result of the Defendants' contempts and failure to comply with their disclosure obligations. Adjourning the hearing would, I am satisfied cause the Claimant real and continuing prejudice as the Defendants should have complied with the Disclosure Order in May 2024, many months ago, and they have not done so even after being found in contempt over a month ago. An adjournment, envisaged to be to after 30 November 2024, would result in further and continuing prejudice to the Claimant, both because the Claimant does not have the requisite information to place the freezing order, and also because it is suffering continuing prejudice due to the unpaid costs orders, and further costs would be thrown away if an adjournment was granted.
86. Yet further, Court orders including direction orders are meant to be obeyed and the timetable in advance of this hearing should have been complied with. I am satisfied there is no good reason for solicitors and counsel only to be instructed yesterday and notified to the court this morning, rather than at any prior time since the Defendants were found in contempt.
87. In such circumstances I am satisfied it would be inappropriate to adjourn the sanctions hearing and that application is dismissed.

B APPLICABLE SENTENCING PRINCIPLES

88. The Court may impose a sanction of imprisonment of a fixed term not exceeding two years (s.14(1) Contempt of Court Act 1981), or an unlimited fine (see *Attorney General v Crosland* [2021] 4 WLR 103 (SC)). The Court may also order sequestration of assets (see CPR 81.9(1)).
89. In contempt cases, the object of the penalty can be both punitive—to punish conduct in defiance of the Court’s order, “coupled with” a deterrent purpose (i.e. sending a message that “breach of court orders will attract a heavy sentence” – see Civil Fraud at paragraph 35-096 - as well as coercive, by “holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to do” (see *Crystal Mews Limited v Metterick and others* [2006] EWHC 3087 (Ch) (“*Crystal Mews*”) at [8] and *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd* [2015] EWHC 3748 (“*Asia Islamic*”) at [7(1)]).
90. Although it is not mandatory to do so, it is good practice for the Court to set out which elements of the sentence or sanction are given for which purpose (see *Solicitors Regulation Authority Limited v Soophia Khan* [2022] EWHC 45 (Ch) (“*SRA v Khan*”) at [52(7)] and *Business Mortgage Finance 4 plc and others v Hussain* [2023] 1 WLR 396 (CA) (“*Business Mortgage CA*”) at [129]). Where the sentence is specified as such, the element of the sentence which is intended to encourage compliance may be remitted if the contempt is purged (see *Robert John McKendrick v FCA* [2019] 4 WLR 65 (CA) (“*McKendrick*”) at [41]).
91. In that regard, the shorter the punitive element of the sentence, the greater the incentive on the contemnor to comply with the relevant order (in a case such as the present by disclosing the information required). However, there is also a “public interest in requiring contemnors to serve a proper sentence for past non-compliance with court orders, even if those contemnors are in continuing breach. The punitive element of the sentence both punishes the contemnor and deters others from disregarding court orders” - *JSC BTA Bank v Solodchenko* [2012] 1 WLR 350 (“*Solodchenko*”) at [67], and see also Civil Fraud at paragraph 35-097.
92. As Popplewell J said in *Asia Islamic* at [7(5)], (having cited, amongst other cases, *Solodchenko*):-

“In the case of a continuing breach, the court may see fit to indicate: (a) what portion of the sentence should be served in any event as punishment for past breaches; and (b) what portion of a sentence the court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive but not binding upon a future court. If it does so, the court will keep in mind that the shorter the punitive element of the sentence, the greater the incentive for the contemnor to comply by disclosing the information required. On the other hand, there is also a public interest in requiring contemnors to serve a proper sentence for past non-compliance with court orders, even if those contemnors are in continuing breach. The punitive element of the sentence both punishes the contemnors and deters others from disregarding court orders.”

93. In *Solodchenko* itself, the Court of Appeal imposed a 21 month sentence, in respect of which nine months were in respect of Mr Kythreotis’s past non-compliance. Thus, the Court considered that it was open to Mr Kythreotis:-

“[I]n the event of prompt and full compliance with the disclosure provisions of the freezing order in the future to apply to the court to vary the sentence of 21 months’ imprisonment. However, it is the view of this court that any variation which may be made on that account should not reduce the sentence to less than nine months (at [69]).”

94. In such context, the Court should make a finding, if there is a continuing contempt, and the court is going to sentence coercively, that it is sure that there is a continuing contempt (see *Civil Fraud* at paragraph 35-097). As already noted, and as further addressed below, I am sure that there is a continuing contempt on the part of each of Mr Groza and Mr Naumenko.
95. In terms of relevant factors concerning sanction, there are no formal sentencing guidelines for committal proceedings, and sanction is fact specific (see *SRA v Khan* at [52(1)]).
96. In the recent case of *Shahraab Ahmad v Ouajjou* [2024] EWHC 1096 (Comm) (“*Ouajjou*”) Moulder J (at [12]) referred to and cited the decision of the Supreme Court in *Crosland* at [44]:-

“1. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council’s Guidelines require the court to assess the seriousness of the conduct by reference to the offender’s culpability and the harm caused, intended or likely to be caused.
2. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.

3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
4. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children or vulnerable adults in their care.
6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence for a Guilty Plea.
7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension."

97. In *Crosland* itself, the Supreme Court also summarised the Court of Appeal's decision in *Liverpool Victoria Insurance Co Ltd v Khan* [2019] 1 WLR 3833 (CA) ("*Liverpool Victoria*") at [57]-[71].

Stage 1: Seriousness of the conduct by reference to contemnors' culpability

98. In *Crystal Mews* (concerning breach of a freezing order), Lawrence Collins J considered the following factors at [13] relating to the seriousness of the contempt:

- (1) Prejudice to the Claimant by virtue of the contempt and whether the contempt is capable of remedy.
- (2) The extent to which the contemnor has acted under pressure.
- (3) Whether the breach was deliberate or unintentional.
- (4) The degree of culpability.
- (5) Whether the contemnor was placed in breach by the conduct of others.
- (6) Whether the contemnor appreciates the seriousness of the breach.
- (7) Whether the contemnor has cooperated.

99. In *Asia Islamic*, Popplewell J adopted those factors and added an eighth: “whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward”.

100. See, also, *McKendrick* at [39]:-

“The court should first consider... the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order. In this regard, aggravating or mitigating factors which are likely to arise for consideration will often include some of those identified by Popplewell J in [*Asia Islamic*]”.

101. A number of cases have considered that breaches of court orders and disclosure orders in particular are serious *per se* (see, for example, *McKendrick* at [40]: “Breach of a court order is always serious, because it undermines the administration of justice”, *The Law House Limited (in Administration) v Adams* [2020] EWHC 2344 (Ch) (“The Law House”) at [66] and *Solodchenko* at [51]).

Stages 2 and 3: Would a fine be sufficient? If not, what is the shortest period of imprisonment that properly reflects the seriousness of the contempt?

102. In all cases, the Court must consider whether committal to prison is necessary and (if so) what is the shortest time necessary for such imprisonment (see *Asia Islamic* at [7(2)]).

103. The authorities identify that breach of a freezing order, including the disclosure provisions relating thereto, “usually merits an immediate sentence of imprisonment of a not insubstantial amount” - see *Asia Islamic* at [7(3)], as well as *The Law House* at [65].

104. In *Solodchenko* it was stated at [51] that “such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year”. Jackson LJ further stated at [55]-[56] as follows:-

“55. From this review of authority I derive the following propositions concerning sentence for civil contempt, when such contempt consists of non-compliance with the disclosure provisions of a freezing order:

Freezing orders are made for good reason and in order to prevent the dissipation or spicing away of assets. Any substantial breach of such an order is a serious matter, which merits condign punishment.

Condign punishment for such contempt normally means a prison sentence. However, there may be circumstances in which a substantial

fine is sufficient: for example, if the contempt has been purged and the relevant assets recovered.

Where there is a continuing failure to disclose relevant information, the court should consider imposing a long sentence, possibly even the maximum of two years, in order to encourage future co-operation by the contemnor.

56. In the case of continuing breach, out of fairness to the contemnor, the court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches and (b) what portion of the sentence the court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive, but not binding upon a future court.”

105. In *Discovery Land Company LLC v Jirehouse* [2019] EWHC 2264 (Ch) (“*Discovery Land*”) Zacaroli J expressed himself in these terms at [19]:-

“...the failure to comply with these obligations necessitates an order for committal. Disclosure obligations in aid of a freezing injunction are of the greatest importance to enable a claimant and the court to police the injunction and enforce it against third parties. That is particularly so where the injunction is in aid of a proprietary claim and the claimant is seeking to discover what has happened to money which should have been held for it but has been dissipated.”

106. As is stated in *Gee on Commercial Injunctions* at paragraph 20-029:-

“Where there is a continuing failure to disclose relevant information under a freezing injunction, the court may consider the imposition of a severe sentence that has the object of encouraging compliance, potentially even imposing the maximum possible sentence while expressly acknowledging the power to vary or discharge the sentence in the event of disclosure”.

107. In *İşbilen v Selman Turk* [2024] EWCA Civ 568 («*İşbilen CA*»), the Court of Appeal re-affirmed (at [56]) that an immediate custodial sentence will usually be appropriate for a breach of disclosure orders notwithstanding the absence of a formal “tariff”.

108. This approach has been held to apply to freestanding disclosure orders allied to, but not contained within, a freezing order itself – see, in this regard, what was said by Cockerill J in *ADM International Sarl v Grain House International SA* [2023] EWHC 135 (Comm) at [122]:-

“The judgment of Jackson LJ in [*Solodchenko*] [51, 55] indicates that breaches of freezing orders and disclosure orders within freezing orders are regarded very seriously and are likely to result in custodial

sentences. While Mr Hilton submitted that the disclosure orders here were not to be regarded in this light, I reject that submission. The disclosure orders were effectively allied to the freezing orders and should be regarded *pari passu* with orders within freezing orders.”

109. Whilst, on appeal ([2024] EWCA Civ 33), the sentence and fine were reduced (in the context of one finding of contempt being overturned), the Court of Appeal considered that “[n]o criticism” could be made as to the approach of Cockerill J to sentencing (at [152]).
110. Nevertheless, and notwithstanding such general guidance, it always stands to be considered whether, on the facts of the particular case, committal is necessary in light of the seriousness of the contempt established at Stage 1 (see *Templeton Insurance Company v Singh* [2013] EWCA Civ 35 (“*Templeton*”) at [42]).
111. It has been suggested that “a committal to prison for contempt will almost certainly require a knowing and deliberate [i.e., a contumacious] breach of an order” (see *Civil Fraud* at paragraph 35-099 citing *Gulf Azov Shipping Co Ltd v Idisi* [2001] EWCA Civ 21 at [72]).
112. As to the length of sentence, whilst the maximum term is two years, it is not the case that the maximum term is reserved for the worst sorts of contempt – see *McKendrick* at [40]:-

“[B]ecause the maximum term is comparatively short, we do not think that the maximum can be reserved for the very worst sort of contempt which can be imagined. Rather, there will be a comparatively broad range of conduct which can fairly be regarded as falling within the most serious category and as therefore justifying a sentence at or near the maximum.”
113. Where breaches are continuing, the Court can impose the maximum two-year sentence, drawing attention to the Court’s power to vary or discharge the coercive part of the sentence if the defendant makes disclosure (or the Court may suspend the sentence on that condition – see *Solodchenko* at [52] and *Civil Fraud* at paragraph 35-098).
114. The fact that a defendant or defendants is/are abroad, and therefore a sentence might not be capable of being executed, is not a reason not to impose a custodial sentence. As was said in *VIS Trading Co Ltd v Nazarov* [2016] 4 WLR 1 at [58]: “The court cannot just stand by in the fact of disobedience to its orders, just because the contemnor is outside the jurisdiction”.

Stages 4 and 5: Mitigation and impact on others

115. As with any sentence, the Court must give weight to relevant mitigating factors (see *Liverpool Victoria* at [65]). These include (if relevant):-

- (1) any early admission of the conduct constituting contempt;
- (2) any cooperation with an investigation into the contempt;
- (3) genuine remorse;
- (4) serious ill health; and/or
- (5) previous good character (although it has been said that previous good character may provide “limited assistance” in the case of the breach of a freezing order given its seriousness – see *Templeton* at [45]).

116. The Court must also give weight to any impact of committal on persons other than the contemnor, for example where the contemnor is the sole or principal carer of children or vulnerable adults (see *Liverpool Victoria* at [66]).

Stage 6: Reduction for an admission of guilt

117. The Crown Court and Magistrates’ Court Sentencing Council Guidelines on Credit for Guilty Plea provide useful guidance on appropriate credit for guilty pleas:-

- (1) An admission of guilt should result in a one-third reduction in sentence where a guilty plea is indicated at the “first stage of proceedings”.
- (2) Thereafter, the maximum level is one quarter, decreasing to one tenth on the first day of trial.
- (3) The reduction will be even further, “even to zero”, if the plea is entered during trial.
- (4) The reduction can be applied by “imposing one type of sentence for another”.

118. It is well-established that the absence of an admission cannot aggravate a sentence (see *Liverpool Victoria* at [23]).

Stage 7: Suspension

119. In relation to suspension:

- (1) The Court must consider whether any term of committal can properly be suspended. The Court may take into account factors which have already been considered in determining the appropriate length of the term of committal (see *Liverpool Victoria* at [69]).
- (2) In a case in which nothing less than an order for committal can be justified, the impact on others (such as children and vulnerable adults for which the contemnor is the primary carer) may provide a compelling reason to suspend its operation (see *Liverpool Victoria* at [66]). Where the contemnor has caring responsibilities, suspension may be appropriate, though this will not necessarily be so (see *İşbilen CA* at [145]).
- (3) The Court can also suspend a sentence to give a contemnor a further chance at compliance with the Court's orders, which may be harder to do from prison (see *İşbilen CA* at [160]).

120. The current high level of the general prison population, and associated prison conditions, is a factor to be taken into account when making a decision on sanction, but this factor alone should not allow a contemnor who deserves a prison sentence to avoid such a sentence (see *Tonstate Group Limited v Matyas* [2023] EWHC 3447 (Ch) at [15]-[18] and see, also, *R v Ali* [2023] EWCA Crim 232).

C APPLICATION OF THE APPLICABLE PRINCIPLES IN THIS CASE

121. I turn to the application of the applicable principles to the facts of the present case. Where I refer to particular facts, I am satisfied so that I am sure of such facts on the entirety of the evidence before me.

Stage 1: Seriousness

122. In relation to seriousness I have had regard to the applicable principles identified in the authorities including, in particular, in *Crystal Mews* (at [13]) and *Asia Islamic* as quoted in *McKendrick* (at 39)-[40]).

123. As noted in *McKendrick*, breach of a Court order (here the Disclosure Order) is always serious as it undermines the administration of justice, and this is a paradigm such case. In the present case the culpability of each of Mr Groza and Naumenko is high, as a result of their deliberate and conscious failure to comply with the Disclosure Order, as is the harm caused to the Claimant by reason of the prejudice suffered by it as a result of such failure (which continued, and is continuing, as already addressed in Section A above).
124. Turning to the checklist of factors in *Crystal Mews* and *Asia Islamic*.
125. Prejudice: I am satisfied that the Claimant has suffered significant prejudice. The Claimant is entitled to the information that the Defendants were required to provide in the Disclosure Order, and I have already found that delays in these contempt proceedings would, in of themselves, prejudice the Claimant (see the Contempt Judgment at [56]). It is self-evident that a failure to provide the information required in the Disclosure Order, which the Court has considered necessary to police the injunctive relief granted, will prejudice the Claimant as the Claimant has been deprived of information to which the Court has determined it is entitled, and without which the dissipation of assets may be facilitated, and the prevention of dissipation of assets may be thwarted. In this regard, and as already noted in the Contempt Judgment (at [200]), another Judge of this court has found that the evidence of a risk of dissipation by the Defendants in this case is “as strong as any that I have ever seen”: [2024] EWHC 267 (Comm) per Jacobs J at [94]).
126. Whether the Contempt is Capable of Remedy: The contempt is capable of remedy but, as already foreshadowed and further addressed in Schedule 1 hereto, I am satisfied that the contents of the Groza Letter do not begin to remedy the failure to provide the requisite information under the Disclosure Order, and to date neither Mr Groza nor Mr Naumenko has taken any adequate steps to comply with the Disclosure Order, and I am satisfied, so that I am sure, that each of the Defendants remains in continuing breach of the Disclosure Order.
127. Deliberateness/contumaciousness/culpability: There is no suggestion that either Defendant was acting under pressure, and I have already found in the Contempt Judgment that the breach was deliberate and I consider it be contumacious, with each Defendant’s culpability being high. I am satisfied (and have already found) that the Defendants have “demonstrably and expressly failed to comply in any way with the Disclosure Order and

indeed made clear their position that they would not do so immediately after the time for disclosure had expired” (Contempt Judgment at [199]). They also raised alleged defences which were “demonstrably untrue” (Contempt Judgment at [200]) and, importantly, they knew that their conduct was in breach of the Disclosure Order and “intentionally chose” not to comply with it (Contempt Judgment, [204(3)]). Whilst Mr Groza purports, in the Groza Letter, to “confirm his full willingness and intentions to fulfil all disclosure obligations” such confirmation is hollow in circumstances where he did not do so at the time he was required to do so, or before the contempt hearing, or even now (as further addressed in Schedule 1 hereto).

128. The Defendants had, shortly after the deadline for compliance with the Disclosure Order, provided the Claimant with a draft application which, amongst other matters, sought to discharge or suspend the Disclosure Order, but as addressed in the Contempt Judgment, that application was never progressed to a listed hearing. Whilst not further articulated in the Groza Letter, it may be (or have been) the Defendants’ position that they perceived (and/or indeed were advised of) risks of compliance with the Disclosure Order in relation to ongoing criminal investigations. Mr Naumenko referred to such advice in Naumenko 5 (at 178-189 in relation to ongoing criminal proceedings in Cyprus and Ukraine - which evidence was not tested by cross-examination). However, the Defendants have not disclosed any written record or other evidence of any such advice (in which the Claimant says Mr Naumenko, at least, would now have waived privilege).
129. As the editors of *Civil Fraud* at paragraph 35-025 note:- “The fact that the respondent may have (however reasonably) believed that... he was acting on legal advice, is ... no defence to a charge of contempt, but bears instead on sentence” (see also, in this regard, *Gee on Commercial Injunctions* at paragraph 20-029 setting out that a relevant consideration is “(8) Whether the contemnor has acted on mistaken legal advice”). Whilst I bear what Mr Naumenko has said, in the past, in mind, the weight to be attached to such factor is limited by the failure to evidence such advice (or even clearly articulate the impact of the same upon Mr Naumenko or Mr Groza) and in any event it is not given in the Groza Letter as a reason for not complying now in circumstances in which the Defendants have been seeking to adjourn the hearing in order to comply, uncaveated by any concerns as to any risks associated with compliance.

130. Whether the contemnors were placed in breach by the conduct of others: Subject to the points identified in the preceding two paragraphs, the Defendants were not placed in breach by others, but by their own conscious and deliberate actions in not complying with the Disclosure Order.
131. Whether the contemnors appreciate the seriousness of the breach: As I have already found in the Contempt Judgment, the Defendants were fully aware of the Disclosure Order and took advice on its terms (Contempt Judgment at [107] and so cannot but have been fully aware of its terms, and the consequences of any non-compliance (the Disclosure Order also bearing a penal notice on its face).
132. Whether the contemnors have cooperated: Whether the contemnor has attended the contempt proceedings, or has deliberately absented himself from them is a relevant factor (see *Gee on Commercial Injunctions* at paragraph 20-029(13)). The contemnors' record in relation to past cooperation is poor. They absented themselves from the previous hearing without supplying sufficient evidence for their non-attendance, the Court having found that Mr Naumenko had "voluntarily absented himself" (Contempt Judgment at [40]) and that both Defendants had chosen not to be represented at the previous hearing, and had waived their right to be present (Contempt Judgment at [49]-[50]). The Court also found that Mr Groza's medical evidence was "vague in the extreme and [did] not begin to justify" his non-attendance (Contempt Judgment at [51]). Mr Naumenko filed Naumenko 5 (his very substantial witness statement which was addressed at length in the Contempt Judgment) very late and unaccompanied by a Statement of Truth; and he failed to ensure that the Claimant's solicitors had the relevant exhibits until a few minutes before the committal hearing began. The Groza Letter does not amount to compliance with the Disclosure Order (as to which see Schedule 1 hereto), and does not justify an adjournment (as I have already addressed and found above). To the extent that it contains anything that can be prayed in aid by way of mitigation (including a professed apology at least by Mr Groza), such apology is, at best, belated, and hollow given the continued breach of the Disclosure Order. In relation to the present hearing, neither Mr Groza nor Mr Naumenko has appeared in person today. Equally, Mr Naumenko has not appeared by video link either, not only in the context of this sanctions hearing, but even in the context of his own application to adjourn this hearing which I have already addressed.

133. So far as Mr Groza is concerned, my understanding is that he did attend remotely for the application to adjourn this morning, during the course of which I indicated that if the matter proceeded to a sanction hearing I would be willing to hear anything he wished to say orally, but notwithstanding that, and notwithstanding the Claimant's solicitors telling him that that hearing was proceeding, and that I would be proceeding to my ruling in the absence of him wishing to say anything further, the evidence before me is that Mr Groza has not attended throughout the sanctions hearing this afternoon, and I rose to give Mr Groza a short opportunity to rejoin the link because he appears to have joined the link at some point earlier on and then left the link, but having given him what I'm satisfied is a reasonable time to rejoin and to say anything he wished to say, Mr Groza did not rejoin the link. I therefore consider it is appropriate to proceed to this ruling without hearing any further submissions from Mr Groza (not least given that he has already made his submissions in writing in the Groza Letter).
134. The extent to which, therefore, Mr Groza and Mr Naumenko have seen fit to attend either in person or remotely has been limited in the context of both the contempt proceedings and the sanction hearing today. I am satisfied that in the circumstances identified above the seriousness of each Defendant's conduct is high, as is their culpability.
135. So far as mitigation is concerned, and whether there has been any acceptance of responsibility / apology / remorse or reasonable excuse (per *Asia Islamic*), there was no acceptance of responsibility, or any apology, or any remorse, or any reasonable excuse proffered prior to the committal hearing or the Contempt Judgment, and I addressed at length in the Contempt Judgment as to why the matters raised in Naumenko 5 did not avail the Defendants in terms of any reasonable excuse (see Contempt Judgment at [136]-[203]). I have also addressed above any advice that the Defendants may have received.
136. The Groza Letter is mainly focussed on provision of information (and associated assertions in relation to the same), as addressed in Schedule 1 hereto, rather than as a document the purpose of which is to set out points of mitigation of which each Defendant seeks to avail himself. Whilst I note Mr Groza's apology, and purported willingness to comply with Court orders, the same is, as already noted, hollow, given that it is not accompanied by full compliance with the Disclosure Order, and is little more than a prospective statement of intention to be viewed against a backdrop of previous non-compliances. It is also notable that whilst Mr Groza offers purported explanations of his

professed inability to obtain information or documents now, those do not bear examination or are so general that they cannot be grappled with (as addressed at paragraph 32 of the Claimant's Reply Submissions), and there was no justification or explanation as to why he (or Mr Naumenko) failed to disclose what was required of them under the Disclosure Order by the deadline set out in that Order (4pm on 13 May 2024) in circumstances where they consciously chose not to comply with the Disclosure Order, or at any time before the committal proceedings or Contempt Judgment. It was not then suggested that the Defendants could not comply.

137. Notwithstanding the fact that the Claimant has, through its solicitors, written to the Defendants to inform them of the opportunity to make submissions in mitigation (in writing and/or orally), and made the Defendants aware that they still have the opportunity to purge their contempt before the hearing today, as set out in the Hogan Lovell Letter of 2 September 2024, all that has been served and relied upon, even now, is the Groza Letter, with no further evidence, or attempt at compliance since 23 September, and no further evidence being adduced, even today, and at the time of the making of the application to adjourn by solicitors and counsel. The Defendants have still not purged their contempt, and they remain in continuing contempt.
138. I am conscious of the fact that the Defendants at least assert that the Groza Letter is written without legal advice, and in such circumstances I have had particularly careful regard to its content, and have given anxious consideration as to whether the Defendants or either of them may have points of mitigation to which they have not relied upon either expressly or at all. In this regard I have considered their age, 65 in the case of Mr Groza and 54 in the case of Mr Naumenko, and Mr Groza's health (to the limited extent that such information has been provided, and, historically at least, the same was relied upon more to explain absence than non-compliance). Age and health are matters which I take into account by way of mitigation in the context of any immediate custodial sentence in the impact of prison upon them, but neither is a trump card militating against the same given the seriousness of the conduct that has been found. I have no evidence as to whether the Defendants are of previous good character, but I will assume they are. There is no evidence before me that either of the Defendants has caring responsibilities. I have also had regard to current prison conditions. Ultimately, however, there is a limit to which the available mitigation assists the Defendants when weighed against the seriousness of the

breach of a disclosure order in support of a freezing injunction, such as the Disclosure Order in this case, not least in circumstances in which each of the Defendants is in continuing breach of the Disclosure Order.

139. The Defendants did not plead guilty prior to, or at, the committal proceedings (and instead at least Mr Naumenko positively contested the Contempt Application on the basis of Naumenko 5). There is no basis for any credit for an admission of guilt at this time, and no admission of guilt has ever been made.
140. I am satisfied that the seriousness of each Defendant's conduct, by reference to their high culpability and high harm caused, as addressed above, in the context of breach of the Disclosure Order to police a freezing injunction, is so serious that a fine would not suffice and only a custodial sentence is appropriate. As has been said by many judges before me, disclosure obligations in aid of a freezing injunction are of the greatest importance to enable a complainant, and the Court, to police the injunction and enforce it against third parties (see, for example, in that regard, *Discovery Land* at [19]), and those who fail to comply with the same, and are in contempt, should face an order for committal. This applies as much to freestanding disclosure orders to police a freezing injunction as a disclosure obligation embedded within a freezing injunction (see *ADM International* at 122]).
141. I see no good reason to distinguish between Mr Groza and Mr Naumenko. I have already explained why I consider Mr Groza's apology to be hollow in the context of the continuing contempt and I have little evidence as to his health. I consider that the seriousness of their offending in terms of culpability and harm is the same, and I do not consider that the mitigation available to each of them, such as it is, leads to any difference in sentence between them.
142. The custodial sentence will be shortest period of imprisonment which properly reflects the seriousness of the contempt of each Defendant and having regard to all relevant factors including such mitigation as exists, as identified above.
143. I have considered whether the term of imprisonment that I am going to impose should be suspended. In that regard I have had regard to the Imposition Guideline and given careful consideration to the factors contained therein. However I am in no doubt whatsoever that

each Defendant's conduct is so serious that only an immediate custodial sentence is appropriate.

144. In circumstances in which I am sure that each Defendant is in continuing contempt, by reason of the continuing breach of the Disclosure Order, I consider that there should be both a punitive element (which punishes the contemnor and deters others from disregarding court orders) and a coercive element (to encourage compliance and which may be remitted if contempt is purged).
145. I accordingly pass an immediate custodial sentence in respect of each of Mr Groza and Mr Naumenko of 21 months' imprisonment. In the event of prompt and full compliance with the Disclosure Order in the future by a Defendant it will be open to that Defendant to apply to the Court to vary the sentence of 21 months' imprisonment. However any variation which may be made on that account hereafter should not reduce the sentence to less than 9 months' imprisonment (which is the penal element that must be served in any event).
146. I accordingly make orders for committal in the terms indicated for each Defendant and issue warrants of committal, to which will be attached a power of arrest. I remind the Defendants that they have a right to appeal the Contempt Judgment and the sanction, without permission being sought, to the Court of Appeal within the time set out in the Contempt Orders.
147. Schedule 1 hereto is an integral part of this Sanctions Judgment which I also hereby hand down in public, with copies of Schedule 1 being immediately available to the public.

D COSTS

148. The Claimant seeks, and I am satisfied the Claimant is entitled to, its costs, both of the Contempt Application and of the Defendants' failed application for a declaration that the Court does not have jurisdiction to consider the Contempt Application (including the costs of the Claimant's own application, filed on 23 July 2024 for a declaration in respect of the Court's jurisdiction and for direction for hearing – as to which see the Contempt Judgment at [71]). Costs in contempt applications follow the event, as normal costs do - see *Kea Investments Ltd v Watson* [2022] 4 WLR 14 at [6], *Gee on Commercial Injunctions (Supplement)* paragraph 20-029 and the *White Book* at paragraph 81.3.17

(“Contempt cases are not in a special category for costs purposes, and will normally follow the event pursuant to CPR Pt.44”).

149. I am also satisfied that the Claimant is entitled to their costs on an indemnity basis for a number of reasons. First, I am satisfied that there is a contractual entitlement to indemnity costs in this case contained within the suretyship deeds to which each Defendant is a party. Those clauses provide that: “The Surety shall, on demand and on a full indemnity basis, pay to each Secured Party the amount of all costs and expenses including legal and out-of-pocket expenses and any VAT on such costs and expenses incurred in connection with... (D) Preservation or exercise or attempted preservation or exercise, and the enforcement (or attempted enforcement) of, any rights under or in connection with this Deed.” Like Jacobs J before me (who considered that the clause was “directly applicable” when dismissing the Defendants’ application to set aside the WFO), I also consider that such clause is applicable.
150. Secondly, on established principles, indemnity costs is the usual costs order in contempt proceedings (see *Kea Investments* at [18]; *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2016] EWHC 258 (Ch) at [56] and *İşbilen v Selman Turk* [2024] EWHC 565 (Ch) at [35]).
151. Thirdly, and in any event, I am in no doubt that the Defendants’ conduct is sufficiently “outside the norm”, on established principles, so as to justify an order for indemnity costs.
152. Accordingly, I will award in each Defendant’s case Claimant’s costs of the Contempt Application and of the Defendants’ failed application for a declaration that the Court does not have jurisdiction to consider the Contempt Application filed on 23 July 2024, in each case on the indemnity basis.
153. There is an application for a summary assessment of those two categories of costs. I have heard oral submissions in relation to the accompanying statements of costs for which I am grateful, and having given careful consideration to the summary assessment of those costs on the indemnity basis, I summarily assess the costs in relation to the jurisdiction challenge in a sum of US\$145,000 and the committal and sentencing hearing order for costs in the sum of US\$237,500.

SCHEDULE 1

1. This schedule, which forms an integral part of the Sanctions Judgment, addresses the reasons why I do not consider that the contents of the Groza Letter amount to compliance with the Disclosure Order, with the result that the Defendants, and each of them, remains in continuing contempt of court.
2. So far as the Groza Letter relates to the provision of further information it is addressed below by reference to the various categories set out in the Disclosure Order.

Nominees

3. The Disclosure Order required the Defendants to provide specific information in relation to nominees, namely:

“1.1.1. The identity, address, email and telephone contact details of all nominees who hold one or more assets worth over US\$20,000 for one or both of the Defendants.

1.1.2. Which asset or assets worth over US\$20,000 are held by any such nominee, giving disclosure of the value, location and details of all such assets save to the extent that such information has already been provided.

1.1.3. The terms of any arrangement between any such nominee and one or both of the Defendants for the holding of any such asset, including whether such arrangement is recorded in writing.

1.1.4. Details of any further chain of ownership or control in relation to any such asset, including the terms of any further arrangement for the holding of the asset or any interest in it, and including whether such arrangement is recorded in writing.

1.1.5. Copies of any document recording the terms of any such arrangement as is referred to in paragraph 1.1.3 or 1.1.4 above.

1.2 In relation to Ferko LLC, Prista-Oil Ukraine Ltd and Vtormetexport LLC, the obligation in paragraph 1.1.5 above shall include, without limitation, native copies of any trust declarations, including those referred to in the HD Letter at paragraph 6.”

4. I note that the Claimant’s evidence in support of the Disclosure Order (Humphrey 2) set out the relevant background to these parts of the Disclosure Order, as follows:

- 4.1 The Defendants’ initial asset disclosure asserted that they were the “beneficial owners” of certain companies, but provided no further information about the details giving rise to that ownership interest.

- 4.2 The Defendants subsequently stated expressly (through a letter from their first solicitors, Kobre & Kim, on 1 February 2023) that, other than GNT Europe SA (held by Mr Denic) and Waylink Assets Ltd (held by Mr Gorbunov), they “do not hold or administer any of their assets via nominees”.
- 4.3 The Claimant identified from the Ukrainian companies register that, after the date of the worldwide freezing order (WFO), the Defendants’ interest in at least three other companies (identified by the Defendants in their asset disclosure) had been transferred into the names of third parties. These companies were Ferko LLC (Ferko), Vtormetexport LLC (Vtormetexport) and Prista-Oil Ukraine Ltd (Prista) (which are the subject of paragraph 1.2 of the Disclosure Order).
- 4.4 In response, the Defendants (via their then-solicitors, Hill Dickinson) asserted that the transfers of these three companies were conducted pursuant to (unspecified) “documents concluded in October and November 2022”. After further correspondence, it was later alleged that the transfers were conducted pursuant to “trust declarations”.
5. Mr Groza (at page 2 of the Groza Letter) now sets out that: (a) Mr Denic is nominee owner for the Defendants of GNT Europe SA; (b) Mr Gorbunov is the legal owner of Waylink Assets Ltd on Mr Groza’s behalf; and (c) My Poznyakov (also spelt Pozdnyakov) is registered as the ultimate beneficial owner of Ferko and Vtormetexport ‘in favour of’ the Defendants. As to that:
- 5.1 As Mr Groza acknowledges, this is not new information. It had already been disclosed to the Claimant (in some cases as early as 1 February 2023), and accordingly it cannot have any relevance to mitigation and/or sanction.
- 5.2 It is notable that it is not even a complete recitation of what has previously been disclosed in relation to nominees, because Mr Groza does not mention the position in relation to Prista.
- 5.3 I am satisfied, in such circumstances, that the Groza Letter adds nothing to the information that had been disclosed to the Claimant (or which the Claimant had discovered) at the time that Jacobs J made the Disclosure Order.

6. Further, the evidence before me is that the position on Prista has now changed. Mr Groza says that Mr Naumenko “instructed the disclosure” of Prista in the Defendants’ asset disclosure because the Defendants “previously had full control of this company under an exclusive services agreement between it and GNT Group” and now do not. However:
 - 6.1 That explanation was first given in a letter dated 30 July 2024 (i.e., two and a half months after the deadline for compliance with the Disclosure Order).
 - 6.2 I am satisfied that it is inconsistent with the Defendants’ initial asset disclosure, in which each Defendant referred to having a “50% interest in Nanu Corporation (BVI), which is the holding company of [Prista]”. No explanation is given as to how the ‘services agreement’ changed the holding structure of the company; nor has the alleged services agreement ever been provided.
 - 6.3 I am satisfied that it is also inconsistent with the Ukrainian companies register records for Prista, which showed Mr Naumenko as the ultimate beneficial owner of the company before his replacement on 20 January 2023 by Mr Chebotar.
 - 6.4 The Defendants’ asset disclosure affidavits were confirmed as “remain[ing] correct” in Hill Dickinson’s letter of 1 April 2023, despite the apparent changes of ownership on the Ukrainian companies register. Hill Dickinson confirmed that: “Mr Groza and Mr Naumenko continue to be indirect owners of these companies in equal shares”.
7. Later, Hill Dickinson revealed that a trust declaration had been entered into in relation to Prista. Disclosure of that trust declaration was specifically sought by the Disclosure Order, but the evidence before me is that it has not been disclosed.
8. Further, as to paragraph 1.1.1 of the Disclosure Order, the Defendants were required to provide address, email and telephone contact details for each of their nominees. No such information has been provided. It appears that Mr Groza possesses these details, as he says that he has attempted to call Mr Pozdnyakov (Groza Letter p.2), has spoken with Mr Denic (Groza Letter p.3); and that Mr Gorbunov is his “adopted son” (Groza Letter p.2).
9. As to paragraph 1.1.3 of the Disclosure Order, the Defendants were required to set out the terms of their nominee arrangements. However Mr Groza has given no information as to their terms, other than to assert that: (a) Mr Pozdnyakov is required to “represent[]

mine and Mr Naumenko's interests"; and (b) Mr Denic manages GNT Europe "on my behalf and on behalf of Mr Naumenko". I do not consider that this amounts to compliance with the Disclosure Order in relation to such matters.

10. The Defendants have set out no information responsive to paragraph 1.1.4, requiring them to disclose the details of any further chain of ownership or control.
11. In relation to paragraphs 1.1.5 and 1.2, Jacobs J required the Defendants to produce documents evidencing any nominee arrangements, including in particular "native copies of any trust declarations, including those referred to in the [Hill Dickinson letter of 20 June 2023] at paragraph 6". I understand that Mr Groza asserted, over a year ago, that those documents do exist, Mr Groza has done nothing to disclose them, whether before the Disclosure Order was made or since. Whilst Mr Groza now claims not to have signed the documents, not to have copies of them, and not to be in contact with Mr Pozdnyakov (the nominee in relation to Ferko and Vtormetexport), Mr Groza does not indicate, still less evidence whether (and if so, when):

97.1 He asked Mr Pozdnyakov for the trust declarations; and, if so, what response Mr Pozdnyakov gave; or

97.2 He asked Mr Chebotar for the trust declaration (or the newly alleged 'Services Agreement') in relation to Prista and, if so, what response Mr Chebotar gave.

12. Nor does Mr Groza set out who he understands did sign those documents on the Defendants' behalf, and indicate whether he has contacted them to obtain copies of the relevant documents.

Dividends (Disclosure Order Paragraph 1.3)

13. As set out in Humphrey 2, the public records of the GNT Group set out that over the 2012-2016 financial years, the GNT Group declared dividends of some US\$ 97 million.
14. The immediate shareholders of the top-level company (GNT) during the relevant time were Waylink (Mr Groza's holding company) and Enosi Advisory Limited (Mr Naumenko's holding company). The Disclosure Order required the Defendants "after making all reasonable enquiries" to set out:

“1.3.1 The dates and amounts of each payment of the Dividends by GNT; and the person(s) to whom they were paid or transferred by GNT (the “Recipients”).

1.3.2. The person(s) to whom any US\$100,000 or more of the Dividends (in aggregate) was or were paid or transferred by the Recipients; and the purpose(s) of the said payments or transfers.

1.3.3. To the extent that the persons identified in answer to paragraph 1.3.2 above include either Defendant:

1.3.3.1 the person(s) to whom the Defendant paid or transferred any US\$100,000 or more (in aggregate) of the sums he received; and

1.3.3.2 the purpose(s) of the said payments or transfers.

1.3.4. Whether any part of the sums received by the Recipients or the Defendants remains unused or unspent; and if so, the account(s) in which those sums are held.

1.3.5. Copies of any documents in the control of the Defendants (or either of them) supporting or evidencing the information given in answer to paragraphs 1.3.1 to 1.3.4 above.”

15. In the Groza Letter, Mr Groza merely says that “we did not receive any dividend from that company [i.e., GNT] during that period”, that “no one else has received them either”, and that he has been told by Mr Denic these were “technical entries” made by GNT’s accountant. As to that:

15.1 Mr Groza does not deal with the fact that he (and Mr Naumenko) contemporaneously signed the accounts of GNT confirming that the dividends were paid.

15.2 Whilst Mr Groza’s position now appears to be that no dividends were paid, there was a material difference in two witness statements put forward by a solicitor at Hill Dickinson on behalf of the Defendants on this point. In the second witness statement of Dimitra Damaskopoulou, it was stated that the Defendants “did not receive dividends for the past 10 years” and that the Claimant’s claim that they did was “factually incorrect and misleading” (at paragraphs 28-29). However in her third witness statement, Ms Damaskopoulou instead she stated that she was “not yet in a position to confirm whether, in fact, [the Defendants] received any dividends at the time of making this statement”. No further confirmation was ever received from Hill Dickinson never provided any further confirmation (they sought to come off the record one day after the filing of Ms Damaskopoulou’s third witness statement), and there has been no further update on that position until the Groza

Letter in which Mr Groza would appear to restate the initial position. On any view further information/explanation is required.

15.3 In any event, Mr Groza provides no explanation to reconcile the contemporaneously signed statements with the position now being put forward that the Defendants “did not receive” dividends. It is possible that any explanation might have revealed assets disclosable under the WFO. Whether that would be so or not, I am satisfied that Mr Groza has not engaged in the exercise required by paragraphs 1.3.2 and 1.3.3. of the Disclosure Order. This itself calls into question the (bare) denial of Mr Groza that he and Mr Naumenko received dividends from GNT. I am satisfied that the statement is inconsistent with the contemporaneous records and relies upon a new suggestion that the references to US\$97 million of dividends in the accounts were merely “technical entries made at the request of our accountants”. This suggestion (which is not backed by any evidence from such accountants) at first blush appears less than credible. In this regard if this was in fact the position, I consider that there is no reason that this explanation could not have been set out previously in correspondence, or in the Defendants’ nine-page letter to the Court sent immediately before the Claimant’s application for disclosure, or at any time before the deadline for compliance with the Disclosure Order, or, indeed, in Naumenko 5.

Waylink

16. I understand that the requirement for disclosure in relation to Waylink (Mr Groza’s primary asset holding vehicle) came about as follows:

16.1 Mr Groza initially disclosed that Waylink only had a single asset worth over US\$20,000 (the disclosure threshold in the WFO)—its shares in GNT.

16.2 Waylink was said by the Defendants not to be operational, and to hold a bank account with less than US\$20,000. It was, however, said to be the source both of Mr Groza’s living expenses and the legal expenses of both Defendants.

16.3 Following correspondence in relation to how Waylink (with no assets) could be the true “source” of the payments, the Defendants revealed that Waylink borrowed money, which was then used for the payment of legal fees. Later, it was revealed

that Waylink had borrowed money from “several sources, all of them independent from our clients”. The name of one such company, described as the “latest”, was disclosed: Vivacity MK LLC (Vivacity). It was also said that the Defendants themselves borrowed from Waylink in order to fund their legal expenses, and that the Defendants have “contractual obligation[s] to repay these funds”.

17. The Disclosure Order required the Defendant to set out (in summary):
 - 17.1 The identity of the lenders from whom Waylink was borrowing money, and their beneficial owners (paragraphs 2.1-2.2);
 - 17.2 The details of the terms of the loans, including native copies of the agreements if in writing (paragraph 2.3);
 - 17.3 where any advances were paid, what the money was spent on and how much of it remains (paragraph 2.3.3); and
 - 17.4 The details of the loans given by Waylink to the Defendants, including the date, terms, copies of the loans (if in writing), the dates and amounts of each advance made thereunder, and details of what the money was spent on (paragraph 2.4).
18. Mr Groza has now disclosed that Waylink also received loans from one other company, Vexion Trade Co FZCO (“Vexion”); and said that the total amount of the lending from Vexion and Vivacity amounts to some US\$2.5 million.
19. Mr Groza does not allege that this information could not have been provided before the deadline for compliance with the Disclosure Order (or at any time before that), nor does he set out what steps (if any) he took before the deadline for compliance came and went.
20. I am satisfied that the information is substantially incomplete and does not include the details required by the Disclosure Order. Whilst Mr Groza says that he has disclosed the (non-native) copy of the agreement between Waylink and Vexion, it does not appear in the exhibit attached to the Groza Letter. In such circumstances his statement that the terms of the Vivacity loan to Waylink were “about the same” as those with Vexion takes matters no further.

21. As the Claimant points out, and given that Mr Groza claims that the funds lent to Waylink by Vivacity and Vexion were used “solely for legal fees and related expenses”, he provides no explanation for the source of his living expenses, the source of which has also been claimed to be Waylink.
22. No information or disclosure is given as to the purported loans from Waylink to the Defendants. Mr Groza says that neither he nor Mr Naumenko “had a direct interest in this money – it went directly to lawyers and other service providers” (see Groza Letter p.3).
23. It appears that there are, or may be, other sources of lending which remain undisclosed. In this regard the reference in Hill Dickinson’s letter of 20 June 2023, in which Vivacity was originally mentioned, described the lenders to Waylink as “several sources, all of them independent from our clients”. The Claimant submits the use of “several” and “all of them” (as opposed to “each of them”) suggests that there were more than two sources for the funding of Waylink (i.e., that there were further sources which are as yet undisclosed).
24. I am satisfied that in the above circumstances the Groza Letter does not materially advance the position in respect of disclosure, or amount to compliance with the Disclosure Order, and in consequence the Defendants and each of them remain in continuing contempt.
25. For completeness, and as to the Defendants’ reliance on the Claimant’s actions to seek to justify or excuse their non-compliance (from pages 3 to 9 of the Groza Letter), I am satisfied that they do not do so, and for the reasons set out at paragraph 32 of the Claimants’ Reply Submissions.