



Neutral Citation Number: [2025] EWHC 2909 (ChD)

Case No: BL-2017-000665

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

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

Date: Monday 10 November 2025

Before :

THE HONOURABLE MR JUSTICE TROWER

Between :

JSC COMMERCIAL BANK PRIVATBANK

Claimant

- and -

- (1) IGOR VALERYEVICH KOLOMOISKY**
- (2) GENNADIY BORISOVICH BOGOLYUBOV**
- (3) TEAMTREND LIMITED**
- (4) TRADE POINT AGRO LIMITED**
- (5) COLLYER LIMITED**
- (6) ROSSYN INVESTING CORP**
- (7) MILBERT VENTURES INC**
- (8) ZAO UKRTRANSITSERVICE LTD**

Defendants

Robert Anderson KC, Andrew Hunter KC, Tim Akkouch KC, Catherine Jung, Conor McLaughlin and Yanni Goutzamanis (instructed by Hogan Lovells International LLP) for the Claimant

Alec Haydon KC (instructed by Fieldfisher LLP) for the First Defendant
Clare Montgomery KC, Craig Morrison KC, Alyssa Stansbury and Matthew Hoyle (instructed by Enyo Law LLP) for the Second Defendant

The Third to Eighth Defendants did not appear and were not represented

Hearing dates: 1, 2, 6, 7 and 8 October 2025

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30 on 10 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives

Mr Justice Trower

1. On 30 July 2025, I handed down judgment ([2025] EWHC 1987 (Ch) (the “Judgment”)) on the trial of the Bank’s claim. In the Judgment I explained my conclusions that:
 - i) the Individual Defendants are both jointly and severally liable to the Bank for compensation for the harm it sustained on the making of the Relevant Drawdowns and the amount for which they are liable is US\$1,911,877,385, less the real value of the Transferred Assets; and
 - ii) the Corporate Defendants are jointly and severally liable to the Bank for compensation for the harm it sustained on the making of specific identified Relevant Drawdowns, but only to the extent I identified in [1571] of the Judgment, alternatively in unjust enrichment but only to the extent I identified in [1688] of the Judgment.
2. In this judgment I shall use the same defined terms I used in the Judgment. In the order made at the time the Judgment was handed down (the “July Order”), I gave directions for a further hearing to determine a number of issues to the extent that the parties were unable to reach agreement. There has been some narrowing of those issues, which are reflected in a number of draft orders which have been in circulation during the course of a further consequential hearing (the “Second Consequential hearing”) and indeed subsequent to it. The form of those drafts also reflects the extent of the parties’ disagreements. Those orders are as follows:
 - i) a consequential order (the “CO”) which deals with the entry of judgment, interest, release of collateral use restrictions, judgment certificates and costs;
 - ii) an amended WFO;
 - iii) a delivery up and disclosure order (the “DDO”) relating, amongst other matters to share certificates and stock transfer forms in a large number of companies, and information amounting to wide-ranging asset disclosure; and
 - iv) an agreed order extending time pursuant to CPR 52.12(2)(a).
3. The issues which remain for determination are as follows:

the precise amount of the judgment sum to be entered against the Corporate Defendants, together with time for payment by Mr Kolomoisky and Mr Bogolyubov of the judgment sum;

 - i) the Bank’s claim for an award of pre-judgment interest and the rate at which post-judgment interest is to be paid;
 - ii) the Bank’s application for costs, and in particular the basis of assessment of the costs to be paid by the Defendants, payment on account of costs and interest on costs;
 - iii) applications by Mr Kolomoisky and Mr Bogolyubov for permission to appeal;

- iv) applications by Mr Kolomoisky and Mr Bogolyubov for a stay of execution pending appeal; and
 - v) a number of miscellaneous points on the form of the WFO, the continuation of which pending the determination of the Defendants' applications for permission to appeal is not in issue, and on the form of the DDO.
4. In reaching my conclusions on the matters which remain for determination, I have had the benefit of written submissions from the Bank, Mr Kolomoisky and Mr Bogolyubov and oral argument at the Second Consequentials hearing. The Corporate Defendants were not represented at the Second Consequentials hearing and their solicitors, Pinsent Masons, have now come off the record. They did so on 24 July shortly before the Judgment was handed down (the order for the BVI Defendants was only sealed on 1 August), but well after it had been circulated in draft.
 5. The lead on most of the Defendants' arguments at the Second Consequentials hearing was taken by counsel for Mr Bogolyubov (Clare Montgomery KC, who appeared at the trial and Craig Morrison KC, who did not). Mr Kolomoisky was represented by Alec Haydon KC, who had appeared at the trial, but on many of the points, he simply adopted the position taken on behalf of Mr Bogolyubov. In some respects, this was a reversal of what had occurred at the trial when Mr Kolomoisky tended to take the lead. A reason for this change was that Mr Kolomoisky has been in prison awaiting trial in Ukraine since September 2023.
 6. The consequence of Mr Kolomoisky's imprisonment is that it is very difficult for Mr Kolomoisky to give instructions to his London solicitors and he is only able to do so via the Ukrainian lawyers instructed by him in the criminal proceedings during the limited periods of time in which he has access to them. Furthermore, the primary focus of his criminal lawyers is in progressing his defence to the offences of which he has been accused rather than discussing other matters with him such as these proceedings. He has written a letter to his English solicitors, Fieldfisher, explaining the circumstances of his imprisonment, which expresses amongst other things his conclusion that he is being "deprived of the opportunity to fully communicate with foreign lawyers, participate in and exercise my defence in foreign judicial proceedings".
 7. In these circumstances, Mr Haydon submitted that any discretionary order made against Mr Kolomoisky on the Bank's application should, in the interests of justice and fairness, adopt a balanced approach recognising his personal circumstances. The Bank has not said that I should question this evidence, and I accept Mr Haydon's submission that Mr Kolomoisky's personal circumstances are a material factor to be taken into account when balancing the justice and fairness of some aspects of the relief the court is being asked to grant.
 8. I also received extensive written factual and expert evidence from the Bank and Mr Bogolyubov, almost all of which was directed at questions relating to the Bank's application for interest and the Individual Defendants' application for a stay of execution pending determination of their applications for permission to appeal (and the appeal itself if permission is granted).

The Judgment Sum

9. The Bank's calculation of the principal sum for which the Individual Defendants are jointly and severally liable is US\$1,761,957,792. They have both confirmed that they do not object to the Bank's calculation. I am satisfied that this is the correct principal judgment sum and that judgment against them should be entered in that amount accordingly.
10. In their skeleton arguments, the Individual Defendants seek an extension of time from the standard 14 days to 28 days for payment of the judgment sum. They invited the court to exercise its jurisdiction under CPR 40.11(a). This is a separate application from their application for a stay of execution pending appeal, which Mr Bogolyubov described as the principal head of relief, but he accepted that an extension for any significant period of time was only likely to be granted in the context of a stay of execution (e.g., *Gulf International v Al Ittefaq* [2010] EWHC 2601 (QB) at [20] to [24]). If a stay were to be granted the time for compliance with the obligation to pay the judgment sum will be extended in accordance with the terms of the stay: CPR 40.11(c). Mr Kolomoisky simply relied on what was said by Mr Bogolyubov, although Mr Haydon added that the information available to his solicitors indicated that there are limited assets outside Ukraine that might be considered to be readily realisable.
11. The differences between a stay and an extension of time for payment were not further explored in the parties' oral submissions. This is not very surprising because this is not a case in which there is any freestanding basis for an extension of time on grounds which operate independently of the stay, and the form of order circulating between the parties during the course of and since the Second Consequentials hearing does not indicate that there is. In any event, the Individual Defendants have known since July that they have been found liable for payment of a very large sum of money (albeit the precise quantum is only now being settled) and the court would expect to have received evidence if there were particular reasons as to why payment within a period greater than 14 days was likely to be achievable while payment within 14 days was not. It follows that paragraphs 2 and 3 of the CO say nothing about the time for payment with the consequence that the 14 days prescribed by CPR 40.11 will in principle apply. The impact of the Individual Defendants' application for a stay on the time for payment of the judgment sum is a matter to which I will revert later in this judgment.
12. As to the Corporate Defendants, the Bank accepted that it cannot seek monetary relief against them in both tort and unjust enrichment, because that would result in double recovery. However, it submits, and I accept, that it is entitled to choose whether to receive compensation for tortious wrongdoing pursuant to Article 22 of the Civil Code or restitution for unjust enrichment under Article 1212. It has elected to receive compensation in tort, which means that each of the Corporate Defendants is liable for the amount of the Relevant Drawdowns that was used to fund the Unreturned Prepayments it received if and to the extent that they were made less than one month before the date of the associated Relevant Supply Agreement.
13. The Bank instructed Mr Thompson (who had given expert forensic evidence at the trial), to calculate the amount of the loss attributable to each of the Corporate Defendants having regard to the principles I explained in paragraph [1571] of the Judgment. His calculations were supported by a table which summarised a multi-page appendix demonstrating that 87 Relevant Drawdowns with a US\$-equivalent value of US\$301,118,989 were made less than one month before the date of the associated Relevant Supply Agreement to which one of the Corporate Defendants was a party. His

evidence also established that the total value of the repayments which I concluded ought to be credited against those Relevant Drawdowns was US\$25,581,653.

14. Although the Corporate Defendants did not appear at the Second Consequential hearing, I am satisfied that they were well aware that a determination of the amount for which they were liable in the light of the Judgment would be made either at the time of hand down or on a later occasion. I am also satisfied that they have been informed that their solicitors have come off the record. They have chosen not to challenge Mr Thompson's evidence, which I accept as an accurate assessment of the amount for which each of them is liable to the Bank.
15. The consequence of my findings and Mr Thompson's calculations is that the aggregate of the principal amounts for which each of the Corporate Defendants is severally liable to compensate the Bank is US\$275,537,335, broken down as between each of the Corporate Defendants as follows:
 - i) Teamtrend: US\$95,661,560
 - ii) Trade Point Agro: US\$8,533,391
 - iii) Collyer: US\$73,070,300
 - iv) Rossyn: US\$60,960,985
 - v) Milbert: US\$31,934,291
 - vi) Ukrtransitservice: US\$5,376,808.
16. Each of these amounts is compensation for part of the same harm as the harm for which the Individual Defendants are jointly liable to compensate the Bank. It follows that the Individual Defendants are jointly liable to the Bank together with each Corporate Defendant in respect of each amount for which that Corporate Defendant is severally liable to the Bank.
17. There is one further issue which has arisen in relation to Rossyn. It was dissolved under the law of its incorporation (British Virgin Islands) on 4 July 2023 and no steps have been taken to restore it to the register in the BVI. Initially, I was concerned that this meant that there might be an impediment to the entry of judgment against it, not least because it appeared from the version of section 215 of the BVI Business Companies Act ("BCA") in the bundles that, while a creditor was able to proceed against a company registered under the BCA after it had been struck off, that may not have been the case after it was dissolved. However, further investigation has revealed that section 215 of the BCA was amended in 2022 to provide that the fact that a company has been dissolved (and not just struck off the register) does not absolve it from any liability that arose prior to its dissolution, and does not prevent any creditor from making a claim against the company and pursuing the claim through to judgment or execution. It follows that I am satisfied that judgment may be entered against each of the Corporate Defendants in the amounts I have identified above.

Interest

18. There was no issue between the parties that, on the basis of the findings made in the Judgment, the Defendants have caused the Bank harm to the extent of the Relevant Drawdowns less the real value of the Transferred Assets. This is the starting point for quantifying the amount of the compensation to which the Bank is entitled. The Bank also pleaded a claim that it had suffered the additional harm of being deprived of that sum for the period between the date of the harm and the date of judgment. It contended that the purpose of an award of pre-judgment interest is to compensate the Bank for that additional harm.
19. The Bank's case on this issue was explained in its written closing submissions, but it was not developed in the oral submissions at the end of the trial. In paragraph [2025] of the Judgment, I explained that any dispute on interest would have to be determined at a further hearing consequential on the Judgment.
20. The Bank's primary case is that it is entitled to compound interest on the judgment sum for the period up to 30 July 2025 and simple interest thereafter until payment. It submitted that, if it is wrong about its entitlement to compound interest, it is entitled to simple interest in the alternative. Although there are a number of other elements of the claim to interest which are in dispute, it is convenient to divide the issue into three parts: pre-judgment compound interest, pre-judgment simple interest and post-judgment interest. There is also a separate issue relating to the payment of interest on costs which I shall deal with later in this judgment.

Pre-Judgment Compound Interest

21. The Bank both pleaded and submitted that the payment of compound interest is justified under Ukrainian law and pursuant to the equitable jurisdiction of this court to award compound interest in cases of fraud - a jurisdiction which is applicable to a claim governed by foreign law if that foreign law confers on the foreign court a power to award compound interest. It was said that a Ukrainian court has the power to award compound interest as a claim for compensation for damage pursuant to Articles 22 and 1192 of the Civil Code. The discretion to award compound interest is a departure from the default award of simple interest and is justified in relation to a commercial entity, which would not receive full compensation without an award of compound interest.
22. As to rates, the Bank pleaded that it was entitled to compound interest at a rate reflecting the rate at which it borrowed or raised funds during the relevant period on its most expensive US\$-denominated borrowing in the amount of the Bank's principal loss, subject to a minimum rate of 3% per annum. It pleaded in the alternative that it was entitled to compound interest reflecting the weighted average cost of the Bank's US\$-denominated borrowing in each year, also subject to a minimum rate of 3% per annum as set out in a table annexed to its Reply. It pleaded in the yet further alternative that, if and to the extent the court concludes that the Bank would not have borrowed replacement funds, the appropriate rate is the minimum commercial rate of return that could have been achieved by the Bank if it had had use of the misappropriated sums, a reasonable estimate for which is 3% per annum. It was pleaded that each of these alternatives ought to be compounded with monthly rests.

23. As to quantifying the cost of that borrowing, the way that Mr Hunter KC described this in his submissions was that the Bank was operating a business model where it was making returns in various ways on US\$. In the period up to 2017, the loss of opportunity to the Bank as a result of the loss of the funds it should have had absent the Misappropriation was therefore at least the cost of its borrowing. It was said that an economically rational bank will either pay down its most expensive borrowing or will invest (normally by lending on) to make a return in excess of that cost. In other words if a bank is going to use its money in the most economically efficient way to make a profit it will at the very least make more than the cost of its most expensive borrowing; otherwise it will simply repay its most expensive borrowing, which is why the presumed cost of borrowing is an accurate proxy as a matter of principle for the loss which it sustained by being kept out of the money.
24. However, it is said that the position changed when, as a result of a process of what has been called in the evidence the “de-dollarisation” of the Ukrainian economy, banks were not allowed to offer their depositors interest on US\$ at free market values. The evidence is that the interest rates on the Bank’s US\$-denominated borrowing dropped away from 8.6% in 2016 to 3.7% in 2017, 1.4% in 2018 and 0% in 2021 onwards and bore no continuing correlation to the interest rate on its US\$-denominated lending. Over the same period, the Bank was able to lend on at higher rates, with minimum commercial terms of at least 3%. The obvious effect of this was to constrain the amount of US\$ that could be raised from depositors. At the same time it would not have been economically rational for the Bank to have redeemed or reduced its US\$-denominated borrowing portfolio, because the rates it was paying were below the bare minimum commercial rate. In such circumstances, the correct rate was the rate of return it could have obtained from those funds, the minimum of which is 3%.
25. Mr Kolomoisky’s pleaded case was that the Ukrainian courts have no power under Ukrainian law to award compound interest in respect of a tort claim and he denied that interest may be awarded as damages under Ukrainian law. He also said (and this much is common ground) that there is no express Ukrainian statutory power relating to compound interest, and that no expert has identified any case in which an award has been made in the absence of an express contractual entitlement. Mr Bogolyubov’s pleaded case was to the same effect and like Mr Kolomoisky he said that interest under Ukrainian law could only arise in respect of the claims against him pursuant to Article 625(2) of the Civil Code, which is simple interest running from the date of judgment (as the date from which there was delay in the execution of a monetary obligation arising out of a tort) to the date of payment. In their closing submissions at the trial, the Corporate Defendants made no additional submissions on interest (anyway so far as the claim against them was in tort) and simply adopted the arguments advanced by Mr Kolomoisky and Mr Bogolyubov.
26. However, during the course of oral submissions at the Second Consequentials hearing, Mr Morrison KC clarified that Mr Bogolyubov accepted that compound interest is in principle available under Ukrainian law as damages where that damage is proven. In other words, if compound interest is proven to be the loss, it would be recoverable as compensation for the harm sustained; but the real issue is said to be that the Bank has not discharged the burden of proving that loss. Notwithstanding the position adopted by Mr Morrison, it is appropriate for me to deal with the underlying principles, albeit

quite shortly, in part because compound interest is sought against the Corporate Defendants, none of whom was represented while this issue was being argued.

27. The starting point is to identify the applicable law. In *Nicholls v Mapfre Espana* [2025] 1 WLR 660 at [59], the Court of Appeal was concerned to identify the law applicable to issues of interest where a claim is made for damages for breach of a non-contractual obligation covered by the Rome II Regulation and the law applicable to the tort is a foreign law. The test which emerged from *Nicholls*, as even more recently applied in *The Kingdom of Sweden v Serwin* [2025] EWHC 1620 (Comm), is to ask whether the entitlement to interest under the foreign *lex causae* of the tort is intertwined with the issue of damages. If it is, it will be governed by the *lex causae* (Rome II, Article 15(c)).
28. In my view, this test is satisfied in relation to the way in which the Bank puts its case, because the Bank submitted that compound interest can in principle be awarded under Ukrainian law as a substantive remedy in accordance with the principle of “full compensation” under Article 1166(1). This requires the Bank to show that, but for the misappropriation, either: (i) “*the funds could have been invested, with any interest income (based on fair market terms) similarly invested, so as to earn returns over time on a compound basis*”; or (ii) “*the claimant would have repaid loans on which interest was accruing on a compound basis, thus avoiding an expense*” (Article 22(2)(1) of the Civil Code). It is accepted that it is for the claimant to prove that loss; otherwise, no compound interest is payable.
29. This approach to a claim for compound interest was confirmed by Mr Beketov at the trial. He confirmed, in evidence which was not challenged by the Defendants, (i) that there is no express statutory power to award compound interest as a matter of Ukrainian law, (ii) that a sum equivalent to compound interest may be awarded under Ukrainian law as part of the full compensation to which the Bank is entitled for any harm caused by the Defendants’ conduct, and (iii) that the existence and extent of the loss are matters which the Bank must plead and prove. The way in which he put the point in his supplemental report was that a claimant can obtain an award of compound interest if it represents a fair quantification of the claimant’s lost profit, and/or is necessary to ensure that the claimant is fully compensated for the harm caused to it.
30. I accept this evidence and I therefore agree that, as a matter of Ukrainian law, compound interest can be awarded as part of the compensation for the harm done to the Bank to the extent that it is the measure of the commercial value of the money of which a claimant has been deprived over time. Mr Beketov’s evidence to this effect is consistent with English law; see e.g., the explanation of Foxton J in *Hotel Portfolio II UK Limited v Ruhan* [2022] EWHC 1695 (Comm) (“*Hotel Portfolio*”) at [42]:

“Compound interest reflects the commercial value of money – it is both the cost paid by those having to borrow it, and the return expected by those investing or saving it, whether they are trading entities or not.”
31. As I have indicated, the submissions made on behalf of Mr Bogolyubov (and adopted by Mr Kolomoisky) did not challenge the point of principle that compound interest to compensate for the loss of the commercial value of money is capable of being paid as a matter of principle. Rather they focussed on the question of whether the Bank had successfully established on the evidence that compound interest is part of the full compensation to which the Bank is entitled. In those circumstances, and before giving

separate consideration to the Bank’s case on the different elements of the claim to compound interest, I should identify the correct approach to the evidence.

32. The Bank submitted that, in accordance with the general rule that the question of how facts in issue must be proved is a matter for the *lex fori*, it is appropriate for the court to have regard to cases which are authoritative in England on the relevance and weight of the evidence relied on. It cited the following statements of principle identified in a decision of the Privy Council concerned with the application of a claim for *Sempre Metals* compound interest (*Sagicor Bank Jamaica v YP Seaton* [2022] UKPC 48 at [33] and [37]):
 - i) In this context, the law does not require a detailed examination of a claimant’s financial affairs. Thus, an extensive process of disclosure by the claimant to make or verify an assessment for financial loss caused by a failure to pay money is likely to be unhelpful and will be disproportionate.
 - ii) Both maintaining a higher level of borrowing than a claimant would otherwise have done and losing the opportunity to make returns can be inferred from general evidence as to the claimant’s business. The evidence that is required is highly context specific. This covers evidence about the nature of the business involved.
 - iii) Looking at commercial returns available at the relevant time can allow for approximations of loss where it is not possible to show exactly what project a commercial entity would have deployed its money on to gain a return, or what exact borrowing it would have paid out or taken out, provided it is properly pleaded and proved.
33. This approach has been approved in an English context by the Court of Appeal in *Royal Mail Group Ltd v DAF Trucks Limited et al* [2024] EWCA Civ 181 at [130ff] and [159ff]). Similarly, the desirability of avoiding an elaborate factual enquiry as to what would have happened if the money of which the Bank has been deprived by the Misappropriation had not been lost, is also apparent from the way in which Foxton J in *Hotel Portfolio* explained the correct approach, albeit in the different context of compound interest where equitable compensation is ordered in favour of a beneficiary. There are differences because, in that type of case, there is less obviously a need to show that a beneficiary would have put the compensation to some commercial use, but in my view some of the same considerations apply. He said at [42]:

“In many ways, it is the “default” rule of awards of simple interest in court proceedings which is the anomaly. Nor am I persuaded that it is necessary for the court, before awarding compound interest for equitable compensation, to engage in a complex counterfactual enquiry as to what the beneficiary would have done with the money if paid sooner – for example as to whether HPIL, in a scenario in which it would have had a surplus of assets over liabilities, would have continued to operate or been wound up in a solvent liquidation.”
34. The Bank submitted that damages for loss of the use of money in the form of compound interest can be, and often is, justified on the conceptual basis that a claimant either has had to maintain a higher level of borrowing than it otherwise would have done, and has had to do that on a compound basis, or that a claimant has lost the opportunity to make

returns, which would have been on a compound basis if they had been made. The loss of opportunity to the Bank if it had the funds it should have had is at least the cost of its borrowing. The Bank submitted that this principle most certainly applies to it because, as a bank, it self-evidently uses money as part of its business. It submitted that it inevitably suffered harm from being deprived of money. It had to incur the cost of raising equivalent money to that which it should have had. It has also lost the return it would have made from deploying that money in its business. In the Bank's case, this was more than mere concept, because its core business involved using funds from depositors and others to lend to customers (which in the event were mainly companies owned or controlled by the Individual Defendants). The Bank's accounts showed that substantially all of its financing was undertaken on a compound interest basis, because it required the Bank to pay monthly interest on customer deposits denominated in UAH and US\$.

35. The Bank's other primary source of funding was lending from the NBU. In its closing submissions at the end of the trial, it relied on the fact that, around the period in which the UAH Relevant Drawdowns were made (UAH 8.8bn between February 2014 and the beginning of September 2014), the Bank entered into loan facilities with the NBU with a face value of UAH 10 billion, while between 31 December 2013 and 31 December 2014, its total borrowing from the NBU increased from UAH 3.4 billion to UAH 18.3 billion. It then increased further to UAH 27 billion by 31 December 2015. It was demonstrated that all of the NBU loans provided for interest to be paid monthly (and thus on a compound basis) until maturity. Against that background, the Bank said that it is entitled to compound interest.
36. The Defendants' overarching submission was that the Bank has provided no or no sufficient evidence either of what was alleged to be an additional US\$1.7 billion of borrowing, or the terms on which it was sought or achieved. They said that it is insufficient for the Bank merely to show that it borrowed in the relevant years and that its borrowing was on compound terms. It was submitted that the Bank has provided no evidence that it continued to borrow to 'plug the hole' after nationalisation, when it was re-capitalised. It was said that, despite this point being made at trial, the Bank has failed to fill this evidential void. In particular, the Defendants pointed out that Mr Thompson did not undertake an analysis of the compound interest actually paid by the Bank and had failed to produce evidence that the Bank would have taken out additional borrowing.
37. It was said that eight sets of customer account terms do not provide evidence of the monthly compound interest *actually* paid on customer deposits over the relevant period. It was also submitted that a handful of NBU facilities relating to UAH (rather than US\$) denominated lending do not prove its case either; indeed, they no longer appeared to be relied upon by the Bank. In summary, it was said that the evidence failed to show that substantially all the Bank's borrowing from 2013 onwards required the Bank to pay monthly interest to its lenders and depositors, as claimed. It was said that, in practice, interest would be paid according to the contractual terms of the deposit; the compound period may thus vary with those terms.
38. The Bank's answer to these submissions is that they miss the point. The question is whether the impact on the Bank of not being paid US\$1.7 billion immediately is that it was not then given the opportunity to deploy the additional money in order to reduce the borrowing portfolio where it was rational in economic terms for it to do so, or on

the Bank's alternative case to make other profitable use of the missing money on profitable compound terms. It is not therefore, a question of showing that it took out new borrowing specifically related to the misappropriated US\$1.7 billion.

39. I agree with the Bank's submission. There is relatively little significance in the fact that the Bank has not shown that it did in fact borrow to replace the missing US\$1.7 billion. What matters is whether it has shown how that money is likely to have been used if it had continued to be available to it. The material, which has been analysed in great detail by Mr Thompson, proves how the Bank deployed the US\$ which it did have available to it during the period from the time of the Relevant Drawdowns to the date of judgment, an exercise which has been cross checked against the rates of return which were commercially available in the market over the period. His conclusions (by reference to the Bank's most expensive US\$-denominated borrowings and to a weighted average of all of the Bank's US\$-denominated borrowings, both compounded monthly) were that:
 - i) applying the interest rates based on the Bank's most expensive US\$-denominated borrowings in the amount of the Bank's US\$-denominated loss leads to a liability for interest compounded with monthly rests of US\$1,356,234,795 (Case 1); and
 - ii) applying the interest rates based on all of the Bank's US\$-denominated borrowing leads to a liability for interest compounded with monthly rests of US\$1,190,083,824 (Case 2).
40. In my judgment the Bank has proved that this is a case in which compound interest is the only fair way of compensating it for its loss of the use of money over time. There is sufficient evidence to justify a conclusion that in this, as in many other cases, compound interest reflects the commercial value of the money which the Bank lost as a result of the Misappropriation. I reach this conclusion not just because of the point of principle articulated by Foxton J in *Hotel Portfolio*, but also because the very nature of the Bank's business was that it was using money in this way as part of its business. In my judgment, this is reflected in Mr Beketov's evidence as to what amounts to full compensation for the purposes of Ukrainian law. This is an unsurprising conclusion, which in my view is sufficiently evidenced by the terms of the Bank's financial statements, the reports produced by Mr Thompson and a sample of the Bank's standard terms and conditions.
41. However, this conclusion does not of itself establish the terms of the compound interest to which the Bank is entitled. The important elements are period, frequency of rests and rate.
42. As to period, the Bank seeks pre-judgment interest running from the dates it suffered loss (i.e., the date of each Relevant Drawdown) up to the date of judgment (i.e., 30 July 2025). This was not in dispute, and in a case of this sort, it seems to me to be correct that as a matter of principle CPR 40.8(1) should be applied so that post-judgment interest takes over from the time that judgment is handed down even though the terms of the order may not by then have been finalised or entered.
43. As to the frequency with which interest should be calculated and added to the principal balance, the Bank submitted that this should be quantified on a monthly basis. It said

that its borrowing portfolio overall was far too complex to be susceptible to a detailed analysis, but that does not mean that a broad approximation cannot be adopted. I agree that (consistently with the approach of Foxton J in *Hotel Portfolio*) the solution is to try and make a reasonable but necessarily approximate estimate of the appropriate intervals. This is entirely consistent with the fact that, while Ukrainian law entitles the Bank to “full” compensation, how that is proved is a matter of English law as the *lex fori*.

44. I accept the Bank’s submission on this point. It has produced evidence of the Bank’s standard terms for interest payable on customer deposits in the period 2013 to 2017, which were relied on in its closing submissions at trial and have not been gainsaid by the Defendants. I have had regard to the fact that, throughout the period, far and away the most substantial source of financing (both in US\$ and UAH) were customer deposits, in respect of which the Bank paid interest on a compound basis with monthly rests.
45. As to rate, the Bank’s primary case is that the interest payable to it should be calculated based on the cost of its most expensive US\$-denominated borrowings in the amount of the Bank’s principal loss. In support of this approach, it referred to basic assumptions as to what an economically rational actor in the position of the Bank, acting in its own best economic interests, would have done if it had not been deprived of the principal judgment sum during the period. It submitted that the presumed cost of the Bank’s funds can be measured by reference to its borrowing portfolio, since an economically rational bank would either pay down its most expensive borrowing or make a return in excess of that. It followed that this approach reflected both the cost to the Bank of funds it was required to borrow, and a measure of the loss of use of the funds which it did not have to invest.
46. By way of alternative to the most expensive rate the Bank had to pay, it argued for a more conservative minimum loss, calculated by Mr Thompson as a weighted average across the whole of its borrowing. This approach assumes that the Bank would have either been able to generate returns in excess of that cost of borrowing or, if not, that it would have reduced borrowing evenly across its portfolio, subject to a 3% minimum floor.
47. Mr Steadman had two general comments on the Bank’s evidence from Mr Thompson, which were not developed in submissions but which I ought to mention. The first was that he had used the PrivatBank group’s consolidated financial statements to ascertain the cost of its borrowing. I agree with the Bank that, given the significance of the Bank within the group as a whole, this was not an inappropriate course for Mr Thompson to have adopted, more particularly because the use of the Bank’s own financial statements would in fact have led to a higher rate for the weighted average in each of 2014 and 2015 and the same rate thereafter. I also accept Mr Thompson’s view that it is appropriate to have used all of the Bank’s US\$ denominated borrowing for the purpose of assessing the weighted average and not just those derived from customer deposits. As Mr Thompson explained, it is relevant to consider other sources of funds, especially where the interest rate is intended to provide a proxy for rates of return that the Bank could have achieved by investing US\$.
48. On the question of whether the Bank has established that it is appropriate for compound interest to be calculated based on the cost of its most expensive US\$-denominated

borrowings, Mr Morrison submitted that there were a number of problems with the Bank's approach. The principal one was that, while it might be rational to choose to minimise the most expensive borrowing if the Bank had some kind of open-ended completely flexible facility and an ability to move back and forth between different types of facility without negative consequences, this aspect of its case had to be proved. But he said that this was implausible, not least because all things being equal the highest rate instruments are likely to have the tightest conditions on repayment. Furthermore, Mr Morrison suggested that such evidence as there was in fact went the other way, and he drew my attention to a 10.875% instrument maturing after five years, which was not redeemable at will.

49. In my view, the Defendants' submissions on this part of the argument are to be preferred, anyway in the sense that I do not consider that the cost of the Bank's most expensive US\$-denominated borrowings has been established to give the right answer (although, as I explain below, I do not think the Defendants are right about the 3% floor). While I accept that an economically rational approach may point to repayment by the Bank of its most expensive debt first, on this particular issue I place more weight on a balanced assessment of the Bank's debt overall. The Bank's principal case presumes that payment of the most expensive debt first is what would have happened, but for the reasons given by Mr Morrison, that is not an assumption it is safe to make. I think that the weighted average approach subject to a 3% floor is the most appropriate rate to adopt, recognising that there is inevitably a level of approximation in any solution that is adopted.
50. The 3% floor requires some explanation. The Bank accepted that it paid significantly reduced rates on US\$-denominated deposits from 2018 onwards, decreasing (from 2021 onwards) to 0%. The decline in interest rates for US\$ customer deposits was a result of NBU intervention and its pursuit of a macro-economic policy of de-dollarisation of the Ukrainian banking sector. However, adopting the 0% rate in calculating the interest due to the Bank amounted to an assumption that the Bank would have made no return whatsoever had it retained the US\$ misappropriated funds and been able to lend them. I agree that the evidence analysed by Mr Thompson shows that this is clearly wrong. The decline in customer deposit interest rates during this period was not matched either by a decline in the rate of return that the Bank was able to achieve on lending US\$ or by a decline in commercially available US\$ saving or borrowing rates outside Ukraine. It follows that the low interest rates offered by the Bank on US\$ customer deposits from 2018 onwards do not indicate the rate of return the Bank would have been able to receive had it retained the misappropriated funds. This therefore broke the broad correlation between the borrowing costs to the Bank of US\$ deposits already made and held by the Bank, and the return it could expect to get when investing those US\$. Applying the basic principle that the Bank would have used the foreign currency of which it has been deprived in an economically rational way, it would have made a return (regarded by Mr Thompson as reasonable if not conservative) of at least 3%.
51. The Defendants submitted that this was unprincipled and the evidence for the conclusion did not exist. In short they pointed out that there was no evidence that there were constraints on the Bank's ability to borrow at very low levels in that period. It was also said that the Bank could not argue its case by reference to the minimum commercial rate of return that could have been achieved by the Bank if it had had use

of the misappropriated funds, because that argument was not available to it on the pleadings in the absence of proof that the Bank would not have borrowed replacement funds.

52. I do not accept the pleading point. The Bank made clear in its Particulars of Claim that the applicable rate should be assessed by reference to its actual or presumed commercial cost of funds which it then particularised in its Reply as a reflection of the rate at which the Bank borrowed or raised funds during the relevant period. The exception was where it would not have borrowed replacement funds, in which event it pleaded that the appropriate rate was the minimum commercial rate of return that could have been achieved by the Bank if it had had use of the misappropriated sums.
53. It pleads that this evidence is an appropriate measure of the minimum commercial rate of return it could have achieved with the misappropriated funds, in circumstances in which it would not have borrowed replacement funds. The Defendants' criticism is that there is no evidence that it would not have done so, but I agree with the Bank that it is right to infer that it would not have done so in circumstances in which it was only offering very low (and latterly 0%) levels of return when commercial returns were available in the market at a much higher rate. On the evidence, the Bank has established on the balance of probabilities that it in fact made returns on its US\$-denominated lending which did not reflect the fact that it paid significantly reduced rates on US\$-denominated deposits, decreasing (from 2021 onwards) to 0%. Indeed, the evidence contained in parts of Mr Thompson's report if anything shows that the 3% floor is conservative.
54. In all the circumstances, I am satisfied that it is appropriate to award the Bank interest at a rate based on all of the Bank's US\$-denominated borrowing for the period running from the dates of each applicable Relevant Drawdown up to 30 July 2025 compounded monthly (i.e., Case 2). This means that each of the Individual Defendants is liable for interest in the total sum of US\$1,190,083,824.
55. As to the Corporate Defendants, Mr Thompson has calculated the pre-judgment interest on the loss attributable to each of them, deducting interest on credits for repayments attributable to the harm for which they are each responsible, but otherwise applying the same methodologies as he has done for the Individual Defendants. I can see no reason for adopting a different approach. I accept his evidence and have no reason to doubt the accuracy of his calculations, which establish that the interest payable up to 30 July 2025 is as follows:
- i) Teamtrend is liable to pay interest on the judgment sum in the total amount of US\$57,004,334;
 - ii) Trade Point Agro is liable to pay interest on the judgment sum in the total amount of US\$6,000,289;
 - iii) Collyer is liable to pay interest on the judgment sum in the total amount of US\$43,067,210;
 - iv) Rossyn Investing is liable to pay interest on the judgment sum in the total amount of US\$36,844,732;

- v) Milbert Ventures is liable to pay interest on the judgment sum in the total amount of US\$19,597,472; and
- vi) Ukrtransitservice is liable to pay interest on the judgment sum in the total amount of US\$3,390,599.

Pre-Judgment Simple Interest

56. In reaching the conclusion I have on compound interest, I have determined that an award of simple interest does not fully compensate the Bank for the harm which it sustained in consequence of the Defendants' unlawful acts. It follows that it is not necessary to consider in any detail the submissions that were made on the right to simple interest. However, given the sums in issue, it is appropriate to give a brief description of the conclusions that I would have reached if I had determined that compounding was inappropriate. There are two possibilities.
57. The first possibility is that simple interest is payable in circumstances in which the Bank has (contrary to my findings) failed to demonstrate that the element of compounding is justified, but the Bank can prove that simple interest is required to give it full compensation for the harm it has sustained by the Defendants' unlawful acts. In that context, and consistently with the approach I have explained above, the right analysis is that simple interest should be paid at a rate reflecting the weighted average of all of the Bank's US\$-denominated borrowing, subject to a minimum rate of 3% per annum. In the evidence this is described as Case 5. It would lead to an award of simple interest totalling US\$914,043,573 as opposed to the greater liability for US\$1,190,083,824 (described as Case 2), which is calculated on the same basis but compounding with monthly rests.
58. The analysis is slightly more complicated if simple interest is claimed under Ukrainian or English statutory provisions. Statutory interest is payable under Ukrainian law as a matter of right pursuant to Article 625 where a debtor is in default of all types of monetary obligation:

“Upon the creditor's claim, a debtor that delayed execution of the monetary obligation shall have to pay the debt amount taking into account the established rate of inflation for the whole term of delay as well as three per cent annual interest of the delayed amount, unless another interest is established by the agreement or by the law.”
59. If, contrary to my conclusion on compound interest, the Bank were to be thrown back on to a claim to interest other than by proof of its entitlement to full compensation, its right to do so derives from Article 625. It also relies on the English court's discretionary power under section 35A of the Senior Courts Act 1981 (“section 35A”). The exercise of this English law power is available because, as Moore-Bick LJ explained in *Maher v Groupama Grand Est* [2010] 1 WLR 1564 (“*Maher*”) at [25] to [37], the power to award interest under section 35A creates a remedy rather than a substantive right and is therefore governed by English law as the *lex fori*, even though the law of Ukraine is the *lex causae*. The consequence of this, and the way in which the power ought to be exercised, was succinctly explained by Leggatt J in *AS Latvijas Krajbanka (in*

liquidation) v Antonov [2016] EWHC 1679 (Comm) (“*Antonov*”) at [7], saying (when applying the decision of the Court of Appeal in *Maher*):

“The Court of Appeal considered that this discretionary remedy is available whether a substantive right to recover interest exists or not, although the factors to be taken into account in exercising the court’s discretion might well include any relevant provisions of the applicable foreign law relating to the recovery of interest.”

60. Turning to the position under Ukrainian law, it was common ground that interest payable under Article 625 is simple interest and it is payable at a statutory rate of 3%, which is not subject to indexation for inflation where, as in the present case, the obligation is denominated in a foreign currency (US\$). However, there was a dispute as to whether, in relation to a tortious obligation, it is payable from the time of the infliction of harm or from the time at which a court holds the defendant accountable. Mr Morrison drew attention to what he said was the important distinction between an obligation arising out of the tortious act and the obligation to pay a defined amount, the latter of which he said was the moment from which interest was payable.

61. It was Mr Beketov’s evidence that, where another source of interest is not “established by ... the law” (which would only be the case if I am wrong in my finding that full compensation requires the payment of interest), statutory interest is payable from the time of infliction of harm. In my judgment this evidence is supported by the resolution of the Grand Chamber dated 2 August 2023 in case No. 904/6790/21, *Intermet LLC v Person 1*, which analysed the previous resolution of the Grand Chamber dated 19 June 2019 in case No. 703/2718/16-ts, *Person 1 v Head Office of the Pension Fund of Ukraine* as follows at [45]:

“42 ... The obligation is not one that arose from a court decision. This is an obligation to compensate for damage, in which the court decision determines the specific amount of damage and states that there is an obligation between the parties. Since compensation for damages is also possible in monetary form, in this case a monetary obligation arose between the parties, as one party is obliged to pay a certain specified amount of money to the claimant.

43. In other words, the Grand Chamber of the Supreme Court has already expressed its legal position that the monetary obligation to compensate for damage arises between the parties from the infliction of damage, and not from a court decision. The provisions of part 2 of Article 625 of the Civil Code of Ukraine should be applied taking into account the above opinion of the Grand Chamber of the Supreme Court.”

62. Mr Beketov’s evidence is also supported by a further recent resolution of the Supreme Court dated 13 February 2025 in case No. 922/1920/24, *Yuri Mytsa v. PJSC Kharkivenergozbut* (as well as another resolution dated 26 February 2025 in case No. 905/55/24, *JSC DTEK Dniproenergo v. LLC DTEK Skhidenergo* (aka *Donbasenergo*) although this case may be distinguishable on its facts). By contrast, Mr Morrison relied on Mr Marchukov’s evidence on the significance of the resolution of the Supreme Court dated 23 April 2025 in case No. 694/1482/21, *Person 1 v Private Joint-Stock Company Insurance Company Ukrainian Insurance Group* (aka *Traffic Accident*), which is

consistent with a conclusion that Article 625 interest was payable only from the date of judgment.

63. However, Mr Beketov explained that *Traffic Accident* did not refer to the *Intermet* case and, while Mr Marchukov identified similarities between *Traffic Accident* and the current case, the view he actually expressed was somewhat tentative in that he simply said that “I am not able to confirm that” the Supreme Court “has now settled in favour of” an approach that simple 3% annual interest under Article 625 in the context of tortious liability begins to accrue on or immediately after the infliction of harm. I accept Mr Beketov’s evidence on this point for the reasons he gives.
64. In light of this conclusion, the only outstanding issue is the rate at which I would have awarded simple interest if I were to have been wrong on the award of compound or simple interest assessed as full compensation. In the light of the manner in which Leggatt J explained the position in *Antonov*, the 3% recoverable under Ukrainian law is to be taken into account as a relevant provision of the applicable foreign law when exercising the court’s discretion under section 35A. If I were simply to award 3%, described in the evidence as Case 6, there would be an award of pre-judgment interest against the Individual Defendants totalling US\$612,195,688.
65. The alternative rates sought by the Bank were, in order of preference, as follows (the quantum was agreed by the experts):
 - i) 10.875%, being the rate at which the Bank borrowed US\$ under loan participation notes issued in 2013 (Case 3), leading to an award of simple interest totalling US\$2,219,734,337;
 - ii) the rates of the Bank’s most expensive US\$-denominated borrowings in the amount of the Bank’s principal loss, subject to a minimum rate of 3% per annum (Case 4), leading to an award of simple interest totalling US\$1,012,629,137; and
 - iii) the rates of the weighted average of all of the Bank’s US\$-denominated borrowing, subject to a minimum rate of 3% per annum (Case 5), leading to an award of simple interest totalling US\$914,043,573.
66. In this context, the basic position is that the court is concerned with the rate at which and the terms on which a claimant with the general characteristics of the Bank would have borrowed in the relevant currency: *Fiona Trust v Privalov* [2011] EWHC 664 (Comm) at [15] and [16] and *Carrasco v Johnson* [2018] EWCA Civ 87 at [17(3)]. I accept that the court will normally avoid an analysis of the rates at which the successful claimant could have borrowed, but I also accept that the size of the Bank was such that it is hard to find evidence of the rate at which a bank ‘with the attributes of the Bank’ would have borrowed except for the actual rates at which the Bank did in fact borrow. I also take into account the fact that it has been necessary to consider in some detail the rates at which the Bank did in fact borrow during the relevant period in order to deal fully with the Bank’s claim to interest as full compensation.
67. Having regard to all of these considerations, the rate I would have awarded had it been necessary to consider the exercise of my powers under section 35A would have been in accordance with Case 5 (i.e., the rates of the weighted average of all of the Bank’s US\$-denominated borrowing, subject to a minimum rate of 3% per annum, leading to an

award of simple interest against each of the Individual Defendants totalling US\$914,043,573). However, in the light of my previous conclusions, I consider that the Bank's entitlement to full compensation means that it can enter judgment for interest in accordance with Case 2, i.e., interest with monthly rests at a rate computed by reference to the weighted average with a 3% floor. As I have already explained, so far as the Individual Defendants are concerned, the amount calculated by Mr Thompson and not disputed by the Defendants' expert is US\$1,190,083,824.

Post-Judgment Interest

68. There is also a single issue which arises in relation to post-judgment interest. The Bank invites the court to exercise its discretion under section 44A of the Administration of Justice Act 1970 ("section 44A") to award simple interest at US Prime plus 2%. It relies on *Lonestar Communications Corp LLC v Kaye* [2023] EWHC 732 (Comm) in which Foxton J reviewed the authorities on pre- and post-judgment interest at [14] to [16] and explained that the default judgment interest rate for US\$ awards in the Commercial Court going forward should be US Prime, irrespective of whether the claimant has a US place of operations or not, plus an appropriate uplift. I see no reason not to adopt that approach in these proceedings. It was said that the appropriate uplift is 2% which is conservative, particularly in light of the fact that the evidence shows that the borrowing costs for Ukrainian institutions have increased significantly since the start of its war with Russia.
69. The Individual Defendants disagreed. They invited me to follow the approach that Leggatt J adopted in *Antonov* when he exercised his discretion under section 44A to award post-judgment interest at the rate that would have been applied by the Latvian court, which was lower than the standard Judgments Act rate of 8% per annum. Applying that principle in the present case would mean that I would award 3% interest.
70. In my view the Bank is right on this point. In *Antonov* at [18], Leggatt J confirmed that the court should still focus on compensating a judgment creditor for being kept out of their money and therefore on making a post-judgment award by reference to market rates of interest. However, in that instance the applicable ECB rate was 0% and Leggatt J expressed concern that 2% should not undercompensate the claimant in circumstances in which it would have been entitled to a 6% rate if it had sued in Latvia, which it would have done if the defendant had not relocated to England after the claimant had collapsed. He therefore awarded 6%, which was more than the market rate would have yielded. That is the converse to the present position.
71. While I have regard to the position which would have pertained if the Bank had sued in Ukraine, it remains my view that it is appropriate to apply US Prime plus 2%. On the evidence, this is the best approximation of a realistic compensation for the borrowing costs which will be incurred by the Bank in consequence of the Defendants' delay in making payment of the judgment debt. In my view, the fact that Leggatt J considered it appropriate in *Antonov* to award more than the market rate by reference to judgment interest applicable in Latvian proceedings is no support for the submission that I should award less than market interest by reference to the judgment interest applicable in Ukrainian proceedings.

Costs

72. It is not in issue that the Bank is the successful party and is entitled to its costs of the proceedings. However, the Bank seeks its costs on the indemnity basis, which is opposed by the Defendants. In order to succeed in that application, the Bank must establish that there is something, whether it be the conduct of the relevant party or parties or the circumstances of the case, which takes the case outside the norm, a principle which requires the court to identify something “outside the ordinary and reasonable course of the proceedings”, but which does not mean “exceptional”: *Esure Services Ltd v Quarcoo* [2009] EWCA Civ 959 (“*Esure*”) at [25] and *Whaleys (Bradford) Ltd v Bennett* [2017] EWCA Civ 2143 at [28].
73. The Bank relied on a number of factors as taking this case out of the norm, the first of which was the nature of the Defendants’ wrongdoing. The Bank submitted that it is not only the conduct of the proceedings which are relevant but that the Defendants’ underlying conduct should also be considered. In this regard it relied on (a) CPR 44.2(4) to the effect that, in deciding what order to make about costs, the court will have regard to all the circumstances, including the conduct of the parties and (b) the fact that CPR 44.2(5) provides that such conduct includes conduct before, as well as during, the proceedings. It drew my attention to two cases (*Eurasian Natural Resources Corporation Ltd v Dechert LLP* (3.8.22; unreported) (“*ENRC*”), at [64] and *Kazakhstan Kagazy v Zhunus* [2018] EWHC 369 (Comm) (“*Kazakhstan Kagazy*”), at [192]) in which the court had taken into account the nature of the conduct which gave rise to the claim in ordering indemnity costs.
74. Ms Montgomery did not dispute that pre-litigation conduct was taken into account in the cases referred to by the Bank, but she cautioned against concluding that pre-action conduct with no connection to the proceedings themselves is sufficient in and of itself to justify making an order for indemnity costs. The same point was made by Mr Haydon in reliance on the decision of Andrew Baker J in *Pisante v Logathetis* [2022] EWHC 2575 (Comm). I think that Ms Montgomery was correct to advance her submission in the way that she did, but I also think that pre-action conduct relating to the underlying cause of action is capable of being relevant to an assessment of whether indemnity costs is the right order to make.
75. The Bank highlighted (a) the nature of the fraud being a scheme which had no underlying commercial rationale ([180] of the Judgment) and was built on dishonest foundations ([802] of the Judgment), (b) the fact that it was committed while the Individual Defendants remained members of the Supervisory Board, (c) the extent of the deception including the creation of vast numbers of sham documents (referred to in many places in the Judgment, e.g., [399]), (d) the instigation of the collusive 2014 Ukrainian Proceedings ([429] of the Judgment), (e) the artificiality of the Transformation ([748] of the Judgment) and (f) the over-inflation of the value of the Transferred Assets ([1181] of the Judgment). I have no doubt that the conclusions I reached on these aspects of the case are factors which support the Bank’s case that these proceedings are outside the norm. Whether or not the seriousness of the conduct which underpinned the cause of action can, in and of itself, be sufficient to justify indemnity costs does not arise, because the Bank relied on and established many other matters which bear on the issue of whether an order for indemnity costs is the right order to make.

76. One of these relates to the pre-action conduct of the Defendants, not by reference to the unlawful conduct which gave rise to their liability, but by reference to what they did in seeking to frustrate the investigation of their own wrongdoing; a factor which is more intimately connected to the proceedings themselves. This included the initiation of defamation proceedings by Mr Kolomoisky and the English Defendants, designed to create *lis alibi pendens* obstacles to proceedings by the Bank in England, the obtaining of confidential information relating to the Bank's post-nationalisation investigations, which appears to have come from sources within the Bank with a continuing loyalty to the Individual Defendants, and the communications between the Individual Defendants in relation to the steps they might take in an effort to thwart the commencement of these proceedings. In my view this conduct was out of the norm in the sense described in the authorities and was on any view conduct before the proceedings commenced but which related to them so as more clearly to engage the language of CPR 44.2(5).
77. I accept Ms Montgomery's submission that the evidence shows that Mr Kolomoisky was more intimately involved in this conduct than Mr Bogoyubov, but I also accept the Bank's submission that pre-action conduct in which he was undoubtedly involved was out of the norm, including in particular what he knew from Mr Kolomoisky about the misuse of confidential information obtained from Bank employees in efforts to thwart the bringing of litigation against them both. Indeed, my finding on this issue was based on evidence, which I accepted, that Mr Kolomoisky even shared with Mr Bogolyubov his draft of a proposed injunction against Hogan Lovells.
78. The second factor relied on by the Bank was supported by cases such as *Esure* at [23] and *ENRC* at [8] in which the dishonesty of the Defendants' defence to the proceedings was a material part of what takes the case out of the norm. The Bank illustrated this submission by pointing to six examples in the Judgment, in relation to some of which I was driven to conclude that the Defendants' cases were inherently incredible and built on deliberate lies:
 - i) The Defendants wrongly maintained their denial that the Individual Defendants owned or controlled the Corporate Defendants ([755]-[756] of the Judgment).
 - ii) The Individual Defendants wrongly denied their ownership or control of the Borrowers, the Intermediary Borrowers, the New Borrowers, the ED Principals, the Share Pledgors, PBC and Primecap ([273], [290], [696], [734]-[735], [761], [768], [1573] of the Judgment).
 - iii) The Individual Defendants were wrong to argue that they were not involved in the Bank's business and in its decisions to grant loans, and significantly downplayed the extent to which they participated in the business of the Bank ([188]-[189], [208], [248]; see also [120], [213], [420] of the Judgment).
 - iv) The Individual Defendants' position regarding the Share Pledges was "*inherently incredible*" (at [367]) and they were in fact substantially involved in the Transformation and Asset Transfer (at [571]-[572], [575], [1211], [1214] of the Judgment).
 - v) The attempt by Mr Bologlyubov to distance himself both from the affairs at the Bank and the individuals central to the Misappropriation by a case based on the

Deeds of Waiver and Indemnity, which I concluded was seriously misleading and dishonest ([172], [174] [690]-[691] of the Judgment).

- vi) The Corporate Defendants’ defence that the RSAs concluded by the BVI Defendants were not shams was always hopeless, while the arguments based on an assertion that the English Defendants acted in good faith as agents for the ED Principals was essentially dishonest ([340], [349], [15733] to [1577] of the Judgment).

79. In my view, all of these instances point towards the making of an award of indemnity costs. While the focus of the Defendants’ case had shifted by the time of closing submissions to a heavy reliance on the Limitation Defence and the Repayment Defence, they continued to maintain their position throughout that they were not responsible for the unlawful conduct alleged by the Bank, a position which was argued in great detail and with considerable forcefulness by Mr Bogolyubov. I have concluded that this involved them seeking to advance a case which sought to mislead the court as to the reality of what occurred in numerous respects. In my view, the position they maintained throughout the proceedings on this aspect of their respective defences of itself justifies an award of indemnity costs.
80. In reaching that conclusion I bear in mind Mr Haydon’s submission that Mr Kolomoisky simply put the Bank to proof of its case as he was entitled to do. I do not think that is the right way to characterise the approach he took. He made positive denials in relation to his role in the Misappropriation – it was not simply a case of putting the Bank to proof and that was a position which was maintained in his written closing submissions.
81. It was also submitted that the costs of the Repayment Defence, the Limitation Defence and the Use of Funds Defence, characterised as they were by Mr Haydon as targeted defences, should be carved out of any order for indemnity costs. I do not agree.
82. As to the Repayment Defence, I think that the Bank was entitled to rely on the fact that what it had called the free choice element was unpleaded, while the way in which one of its essential elements (the value of the Transferred Assets and in particular the OSFs and the petrol stations) was the subject in a number of respects of misstatements and manipulations which took the matter well out of the norm. As to the Limitation Defence, I disagree for a similar sort of reason, which is also linked to the Bank’s fourth factor (see below). Much of what was argued in relation to limitation was affected by what was alleged to have been the Bank’s awareness of the violation of its rights. The Defendants’ case on attribution was constantly changing and difficult for the Bank to address. In my view this took even this aspect of the case well outside the norm. As to the Use of Funds Defence, it too developed during the course of the trial in an unsatisfactory manner, but in any event, as is apparent from [1124ff] of the Judgment, it is not capable of being analysed in a manner that is independent from the main argument relating to the underlying wrongdoing.
83. The third factor was evidential failings. The Bank relied on *Singh v Singh* [2014] EWHC 1770 (Ch) (at [7]) and *ENRC* (at [10]) in support of a submission that where a party adopts an “*extraordinarily casual*” or “*very casual*” approach to its disclosure obligations, this may take the case sufficiently outside the norm to justify an award of indemnity costs. I agree that the conduct of both of the Individual Defendants fell

materially short of full compliance with their disclosure obligations. I recorded a summary of the position in [176] to [177] of the Judgment, having given a little more detail of the shortcomings of Mr Kolomoisky's disclosure in [155] to [161] of the Judgment and the shortcomings of Mr Bogolyubov's disclosure in [162] to [175]. It is not necessary to repeat my conclusions in any detail, but I was unable to be satisfied that, even taking into account what has been destroyed, all documentation in the control of the Individual Defendants relevant to the disclosure issues had seen the light of the day. The Bank is also entitled to rely on the extent to which I determined that during the course of the preparations for trial, the whole approach adopted by Mr Kolomoisky was to make the disclosure process as painful as possible for the Bank, while I expressed myself sceptical that full disclosure was ever given by Mr Bogolyubov.

84. The Bank also relied on the fact that neither of the Individual Defendants gave evidence at the trial and did not offer a satisfactory explanation for their failure to do so ([95]-[97] of the Judgment). I do not think that this alone would warrant an order for indemnity costs, but the context is important and, if this failure caused delay, increased costs, or otherwise impeded the efficient progress of the litigation, it is capable of justifying (or at least contributing to a justification for) indemnity costs. In the current case I think that this aspect of the way their defence was conducted, including in particular the findings I made in [89] to [99] and [181] to [184] of the Judgment, was out of the norm. Not only did they justify the drawing of a number of adverse inferences against the Defendants, the approach the Individual Defendants adopted to the evidence on which they initially proposed to rely was inimical to the efficient progress of the litigation.
85. On this aspect of the application, it was said on behalf of Mr Bogolyubov that he has, throughout the proceedings, taken a proportionate and reasonable approach to the conduct of the litigation. I accept that there were many occasions on which particular issues were dealt with in a cooperative manner and that it was not a full scale war of attrition in which every point was fought to the bitter end without regard to its merits. However, I do not agree that Mr Bogolyubov behaved in the manner suggested throughout. As the Bank submitted, the effect of the findings I have made is that the case he presented was built on allegations which he must have known to be untrue, and that he obfuscated and suppressed documents on a number of occasions. That is not conduct which can be characterised as a proportionate and reasonable approach throughout.
86. The fourth aspect of the Defendants' conduct of the proceedings relied on by the Bank was their belated changes of case. The Bank identified a number of respects in which the Defendants both abandoned central aspects of their defences and introduced numerous new points at trial. Three examples were given by the Bank of abandoned aspects of their defence:
- i) the Defendants' reliance on the Lafferty Spreadsheets which was abandoned shortly before the trial's original start date;
 - ii) the case advanced by both of the Individual Defendants that the Bank was nationalised as the result of a political campaign directed against them, to which Ms Rozhkova's evidence was largely directed and which was not formally abandoned until after the start of the trial; and

- iii) the decision by Mr Kolomoisky on Day 17 of the trial not to call his own expert or cross-examine the Bank's expert on the value of the Share Pledges, which had been an important issue.
87. The Bank also relied on the decisions of the Individual Defendants not to cross-examine certain witnesses, a number of which were not made until well into the trial and at the time of maximum inconvenience to the witnesses given the travel difficulties caused by the war in Ukraine ([56] of the Judgment). Taken in isolation, all these aspects of the Defendants' conduct, although disruptive to the proper and efficient progress of the trial, are capable of being explained as the kind of tactical decision which is directed at efficient case management once a party's legal team have a full appreciation of the points which should be run and those which should not. This would militate against an award of indemnity costs other than in respect of the abandoned aspects of their defences. However, when combined with a number of the other criticisms that have been identified, I do not think that is the correct inference to draw.
88. One of the reasons for this is the way in which new points were advanced at the trial, of which a number of examples were given by the Bank. The first of these was Mr Kolomoisky's allegation introduced at the time of the second PTR and subsequently adopted by Mr Bogolyubov by way of an amended defence that the Bank was precluded from contending that any of the Relevant, Intermediary, or New Loans, were void and voidable. This point required further expert evidence to be adduced on the Ukrainian doctrine of *venire contra factum proprium*, but was subsequently abandoned in closing. Another was the manner in which there was a substantial shift in Mr Kolomoisky's case on loss (adopted by the other Defendants), which underwent a significant and unpleaded change between its pleading and closing submissions and in respect of which I concluded that an application to amend would have been refused, had it been made, on the grounds of real prejudice to the Bank (at [1094] of the Judgment).
89. The Bank also identified with some justification constant changes in the Defendants' case regarding the identity of the person or persons whose knowledge was relevant for the purposes of their limitation defence, culminating in a speculative case based on the possible existence of a whistleblower ([1884ff] of the Judgment). Likewise, another example of the constantly shifting nature of the Defendants' cases relied on by the Bank was Mr Bogolyubov's conflicting accounts of Mr Dubilet's role. He was described as a "very experienced and talented banker" in Mr Bogolyubov's (withdrawn) witness evidence for trial, while by the opening of the trial, it was said that his conduct was "clandestine and contrary to all principles of prudent banking" and by the end of the trial that he was the key individual responsible for administering the Scheme without Mr Bogolyubov's knowledge. In my view, taken together with the other matters I have referred to in this section of my judgment, these evidential issues support the award of indemnity costs.
90. The fifth and final factor relied on by the Bank was the conduct of the Defendants' four expert witnesses, whom it said failed to meet their obligations under CPR Part 35, a relevant factor when considering whether a case is sufficiently outside the norm to justify an award of indemnity costs. As has been said on a number of occasions in this context, a party must bear responsibility for the failings of the witness it calls (e.g., *Balmoral Group Ltd v Borealis (UK) Ltd* [2006] EWHC 2531 (Comm) at [16]-[20] and *Suez Fortune Investments Ltd v Talbot Underwriting Ltd* [2019] EWHC 3300 (Comm) at [29]).

91. In particular, the Bank highlighted:
- i) the failings in Mr Davidson’s expert forensic accountancy evidence including the facts that he withheld the regulatory findings that had been made against him and that he even had to invoke the privilege against self-incrimination to justify his refusal to answer any questions from the Bank on this aspect of his credibility ([311] to [314] of the Judgment);
 - ii) Mr Kaczmarek’s evidence relating to the valuation of real property assets and the Crimean Arbitrations, one aspect of which I found to have been dissembling, evasive and incoherent ([1231] and [1293] of the Judgment);
 - iii) the difficulties Mr Alyoshin seems to have had in assisting the court when faced with having to make concessions liable to damage Mr Kolomoisky’s case ([810] to [812] of the Judgment), together with the considerable number of other criticisms I found it necessary to make of his evidence ([887] to [892], [894] to [896] and [1750] to [1755] of the Judgment);
 - iv) the basic errors in Mr Seymour’s evidence regarding the valuation of aircraft and his failure to draw to the attention of the court until the eleventh hour that he had been subjected to serious criticism in a number of other cases, a circumstance which threw into doubt the seriousness with which he had undertaken his overriding duty to the court ([1232] to [1234] of the Judgment).
92. The court must be acute to identify the distinction between (a) a situation in which disagreement between experts is to be characterised as nothing more than a matter on which respectably held views might differ and (b) a situation in which the court is driven to conclude that the evidence does not amount to a genuinely independent expression of the expert’s own view, having taken proper account of known relevant material to the contrary. The latter is to be deprecated, but the former is not. In my view the extent to which Mr Kolomoisky’s experts (and the evidence of the four I have identified above was also adopted and relied on by the other Defendants) was unsatisfactory for the types of reason I have sought to summarise, and supports the Bank’s application for indemnity costs.
93. I also do not accept the submission made on behalf of Mr Kolomoisky (and to which I have already alluded) that the court should adopt an issue-by-issue approach to the basis on which costs should be assessed – standard in some respects and indemnity in others. Taken together, the factors on which the Bank relies had a pervasive impact on the proceedings generally and related directly to many of the core issues in the case. In all of these circumstances, I am satisfied that, taken in the round, the conduct I have summarised above takes this case out of the norm in a way which justifies an award of indemnity costs in respect of the proceedings as a whole. I should add that the factors which I have described are attributable to the way in which each of the Defendants either directly advanced their case or adopted a case made by one or the other Defendants. In my judgment, an order that the Bank’s costs be paid by the Defendants on the indemnity basis is the right order to make in this case.

Interim payment on account of costs

94. The costs will be subject to detailed assessment and the Bank seeks an interim payment of £80m (which is approximately 72% of the £110,524,169.99 claimed for present purposes) pursuant to CPR 44.2(8). An order for an interim payment of £36.67 million is not opposed in principle by Mr Bogolyubov so long as it is paid within 14 days to his solicitors, Enyo Law LLP (“Enyo”), to be held by them pending the outcome of the applications for permission to appeal (and if granted, the appeal). It is only opposed by Mr Kolomoisky on the basis that to make an interim payment would not be in keeping with his application for a stay of execution. In his written argument for the purposes of this hearing, Mr Bogolyubov made a similar point to the effect that if he were to have to pay more than £36.67 million on account, his appeal would be stifled.
95. In my view the question of whether or not to grant a stay of execution is different from the question of whether or not to make an interim order, even taking account of the fact that the means of the parties is one of the factors which goes into the balance when deciding whether to order an interim payment and its amount. Anyway in part, this is because the process of detailed assessment may extend beyond the time at which any stay of execution expires. The question of whether there is substance in the Individual Defendants’ submissions on this aspect of the Bank’s applications is more conveniently dealt with in that context. In short I do not think that there is any tension in the court making an interim order, even though it may then be stayed on such terms as the court considers meets the justice of the case.
96. In my judgment, it is right as a matter of principle to order an interim payment on account of costs in the amount of a reasonable sum, because there is no good reason not to do so (CPR 44.2(8)). I consider that that would be the case, even if I were also to grant a stay of execution pending appeal.
97. In making that order, the exercise of quantifying what amounts to a reasonable sum involves the making of an estimate of the likely level of recovery subject to an appropriate margin to allow for error in the estimation, per Christopher Clarke LJ in *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 (Comm) (“*Excalibur*”) at [23]. He went on to say at [24]:

“In determining whether to order any payment and its amount, account needs to be taken of all relevant factors including the likelihood (if it can be assessed) of the claimants being awarded the costs that they seek or a lesser and if so what proportion of them; the difficulty, if any, that may be faced in recovering those costs; the likelihood of a successful appeal; the means of the parties; the imminence of any assessment; any relevant delay and whether the paying party will have any difficulty in recovery in the case of any overpayment.”
98. The Bank has produced a schedule, which is said to have been prepared by taking a very restrictive approach, which the Bank says means that the schedule is likely to include only a portion of its total recoverable costs of these proceedings. It is said that certain time-periods, workstreams and cost-items have been excluded wholesale from the analysis, even where the Bank’s position is that those costs would be recoverable if and when a detailed assessment is conducted. It has excluded workstreams which it considers that the Defendants may argue do not relate to the proceedings. Even on that basis the amount claimed for present purposes totals the sum I have already mentioned, viz. £110,524,169.99.

99. In formulating its claim the Bank relies on what Christopher Clarke LJ said in *Excalibur* at [27]: “comparison between the costs of both sides is often informative”, as to which it points out that Mr Kolomoisky’s costs of the claim are said to have been c.£110m. It had originally thought the amount was in the region of £124 million based on the notifications of legal fee payments given by Fieldfisher pursuant to paragraph 6a of the WFO (the total amount for which the Bank had been asked to consent by all of the Defendants was said to be just short of £200 million). The Bank submitted that it was therefore the case that Mr Kolomoisky’s costs were roughly the same as those contained in the Bank’s schedule. Mr Bogoloyubov’s costs were very much lower, totalling what its solicitors said were (at most) £27.3 million.
100. The Bank submitted that there were a significant number of factors which more than justified expenditure at a level of approximately the same amount as Mr Kolomoisky and which explained the significant difference between the amount it claimed and the costs incurred by Mr Bogolyubov. In particular the Bank submitted (a) that it had actually called witnesses and presented an overarching factual case, (b) that the Bank called an additional expert on Cypriot law and its experts had to make the running on all issues and respond to multiple adverse experts, (c) that the Bank was the claimant, and as such had many additional costs not incurred by the Defendants, such as producing the enormous draft trial bundle, (d) that the Bank produced a large number of additional documents for the purposes of preparing its case, such as the 177 SOFs, the 37 nominee structure charts, and the 93 structure charts in relation to the Corporate Defendants, the ED Principals, the Borrowers and the Intermediary Borrowers, and (e) that the Bank had to contend with three sets of active defendants.
101. As to the discrepancies with Mr Bogolyubov’s incurred costs, it identified a number of additional factors which were not also applicable to Mr Kolomoisky. He did not adduce expert valuation evidence and he relied to a large extent on Mr Kolomoisky’s forensic accounting and foreign law evidence in accordance with the limitations on the ambit of the expert evidence which he (like the Corporate Defendants) was permitted to call by the first CMC order made by Mann J on 26 June 2020. To the same effect it was said that Mr Bogolyubov adopted a large part of Mr Kolomoisky’s defence and that he “outsourced” a large part of his disclosure exercise to Mr Kolomoisky’s legal team.
102. In further support of Mr Bogolyubov’s submission that there was reason to doubt that the Bank will recover £80 million on a detailed assessment, it was said that the fact that the Defendants between them had sought consents for legal expenditure of a figure just short of £200 million pursuant to the terms of the WFO was not a fair reflection of Mr Bogolyubov’s position. The evidence was that the figure of £58 million attributable to his lawyers’ fees related to all his lawyers’ fees during that period, including the Tatneft and Shulman proceedings, which (as I explained in the Judgment) commenced in March 2016 and May 2017 respectively, and separate proceedings brought by the Bank under s.423 of the Insolvency Act 1986. It was said that his costs of these proceedings was £27.3 million, i.e., just over one fifth of the Bank’s identified costs.
103. It was also submitted that the Bank had provided insufficient evidence to enable the court to make a reasonable assessment at this stage. It was said that for this reason great caution should be exercised and the Bank should not be given the benefit of the doubt. While I accept that the court must adopt a reasonably cautious approach in accordance with Christopher Clarke LJ’s statement not just that the estimate must be reasonable, but also that there must be an appropriate margin to allow for error, I do not agree that

the court has insufficient evidence to make a reasonable assessment at this stage. Any estimation in a case of this size is bound to be a broad brush exercise and a balance has to be struck between providing the court with enough information to enable a reasonable sum to be estimated, while recognising that it will not be appropriate to carry out anything approaching a detailed assessment. Doubts may well be better accommodated by increasing the margin for error than by declining to make an estimate at all.

104. The Bank's application was supported by a 19 page schedule, the first part of which broke down its costs into monthly figures for profit costs (totalling £65.21 million), counsel's fees (totalling £13.95 million) and other disbursements (totalling £31.36 million) from August 2017 to July 2025 and provided a summary description of the main workstreams for each period. The second part itemised the monthly profit costs for the five categories of Hogan Lovells fee earner for the same time periods. It also included a section which broke down counsel's fees for the four silks and four juniors instructed by the Bank and a further section on fees for the same periods payable to FTI Consulting (Mr Thompson and Mr Bezant), KPMG, Deloitte, Transperfect, Opus and the experts on Ukrainian law, Cypriot law and real estate and aircraft valuation. The last page of the schedule gave the hourly rates charged by Hogan Lovells for the period 17 August 2017 to 16 July 2025: partners: £724 to £1028 ph, counsel: £645 to £844 ph, senior associates: £533 to 776 ph, junior associates: £380 to £648 ph and trainees, paralegals etc: £165 to £328 ph.
105. The principal criticism made on behalf of Mr Bogolyubov is that the hourly rates claimed are way above the guideline hourly rates, a figure which as the Court of Appeal has recently reemphasised in *Saipem SPA v Petrofac Ltd* [2025] EWCA Civ 1106 at [28] can only be exceeded to any material extent if a clear and compelling justification is provided. The Court of Appeal made clear this principle applies as much to estimating recoverability for an interim payment as it does to a summary assessment. As a result of previous applications in this case, I have based my calculations on rates in excess of the guideline hourly rates, but nothing like to the extent claimed even where the order has been for costs on an indemnity basis. Mr Bogolyubov also pointed to parts of the Bank's schedule in which very considerable numbers of hours have been claimed for partners when it is said to be likely that more junior lawyers would have been appropriate. It is also said that a team of eight counsel for the trial (including four leading counsel) could not be justified.
106. I agree that there is some substance in the points on quantification made by the Defendants. Even having regard to the fact that I have made an order for indemnity costs, I still consider that a significant reduction in the amount claimed by the Bank is justified in order to make a proper allowance for uncertainty. The Bank says a reduction to 72% is sufficient while Mr Bogolyubov argues for one third of the amount claimed. In my view, taking into account all of the matters argued by the Defendants and the factors referred to in *Excalibur* at [24], 65% of the profit costs claimed is the right estimate of the likely level of recovery having applied an appropriate margin to allow for error in the estimation (i.e., £42.4 million), 70% of the amount claimed is the right figure for counsel's fees estimated on the same basis (i.e., £10.5 million) and 75% of the amount claimed is the right amount for other disbursements also estimated on the same basis (i.e., £23.5 million). There will therefore be an order against the Defendants for an interim payment on account of costs of £76.4 million.

107. Since the conclusion of the Second Consequential hearing, Mr Bogolyubov has sought an order that the payment on account be payable in 28 days rather than the standard 14 days (CPR 40.11). No specific reason is advanced apart from the substantial size of the payment. I see no good reason to give a further 14 days for payment. It seems to me that it should be payable at the same time as the judgment sum.

Interest on Costs

108. The Bank also seeks a determination in principle on the payment by the Defendants of interest on costs. It submitted that whether to award interest on costs is a matter for English law as the *lex fori*, a submission with which I agree.
109. The power to award pre-judgment interest is contained in CPR 44.2(6)(g), which provides that “[t]he orders which the court may make under this rule include an order that a party must pay ... (g) interest on costs from or until a certain date, including a date before judgment”. As Leggatt J said in *Involnert Management Inc v Aprilgrange Ltd & Ors* [2015] EWHC 2834 (Comm) (“*Involnert*”) at [7], this power to award interest at a commercial rate from the dates when the costs were incurred until the date when interest becomes payable under the Judgments Act is now routinely exercised when an order for costs is made following a trial. Although Leggatt J used the word “incurred”, the Bank, consistently with *Douglas v Hello Ltd* [2004] EWHC 63 (Ch) at [24], accepted that the right starting point was the time at which the costs were actually paid. The Individual Defendants did not oppose an award of interest in principle, but in the absence of the Corporate Defendants, I should make clear that I think that their position was the correct one to adopt. Having regard to the fact that these proceedings were commenced in 2017, at which point the Bank began to incur liability for paying the costs of its own lawyers, I can see every reason to exercise the power in this case.
110. The Bank seeks interest at the Bank of England base rate plus 3%, as to which it submitted in its skeleton argument that it relied on the evidence of the Bank’s US\$ borrowing and lending rate and the Bank’s general characteristics as a nationalised Ukrainian bank. This appeared to involve not just looking at the rates at which the Bank actually lent and borrowed, but also the objective question of where the Bank stands in the market as a result of its own characteristics. As Mr Hunter pointed out, the rate sought is one percentage point higher than the award made in *Involnert*. Although they did not deal with this in their skeleton arguments for the Second Consequential hearing, the Individual Defendants did not accept that the rate sought by the Bank was an appropriate starting point.
111. The appropriate rate is a matter for the court’s discretion to be exercised in light of the purpose of such an award, which is to compensate a party who has been deprived of the use of his money, or who has had to borrow money to pay for his legal costs (*Jones v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 363 at [17]). As Sharp LJ went on to explain, the relevant principles do not materially differ from those applicable to the award of interest on damages under section 35A, which Mr Hunter submitted meant that the court had to take a relatively broad brush approach, a submission which is supported by cases such as *Kazakhstan Kagazy* at [70] and with which I agree.
112. Mr Hunter submitted that the Bank of England base rate plus 3% was equivalent in commercial terms to US prime plus 2%, which was the rate that he submitted (and I

have accepted) should be applied for the purposes of quantifying pre-judgment interest on the principal judgment sum, although I did not understand it to be suggested that it should receive interest on costs on a compound basis. He said that this equivalence between Base rate plus 1% and US Prime followed from the analysis of Aikens J in *Mamidoil-Jetoil Greek Petroleum Company SA v Okta Crude Oil Refinery AD* [2003] 1 Lloyd's Rep. 42 at [16], as cited and relied on by Picken J in *Kazakhstan Kagazy* at [78]:

“When damages are assessed in pounds sterling the conventional rate of interest that is awarded in commercial cases is ‘base rate plus 1 per cent’. That is the rate that a commercial borrower of good credit will have to pay to borrow sterling in London. But when the currency of the loss and the currency of damages is U.S. dollars, then the Commercial Court will consider the cost of borrowing U.S. dollars. That is the position in this case. The cost of borrowing U.S. dollars is usually expressed by reference to the U.S. Prime Rate. That is the rate that commercial banks charge their most creditworthy customers if they are borrowing U.S. dollars. It is a short-term borrowing rate. Prime Rate includes an element of profit for a bank, so that the most creditworthy borrowers can obtain loans at Prime Rate itself. Less creditworthy borrowers will have to pay Prime Rate plus one or more percentage points.”

113. Mr Morrison, who argued this point for Mr Bogolyubov, made a deceptively simple submission in response to the argument advanced by the Bank. He said that the evidence on which the Bank relied for the appropriate rate was what it said was “its US\$ borrowing and lending rates, as set out above”, which he said was a reference back to the table in Mr Thompson’s evidence which recorded the Bank’s US\$ denominated borrowing rates dropping from 3.7% in 2017 to 0% in 2021 and thereafter (see paragraph 24 above). He then demonstrated that the Bank of England base rate plus 3% figures were significantly higher than the weighted average interest rates on the Bank’s figures from 2018 onwards and even the base rate without any uplift was higher from 2022 onwards.
114. I do not accept this submission. What the Bank was referring back to included its lending rates as well as its borrowing rates, but in any event and taking a broad approach to the award, the rate should be a commercial rate reflecting the appropriate category into which the judgment creditor (in this case the Bank) falls as a borrower of the relevant currency. This was one of the bases on which the Bank advanced its claim to pre-judgment interest on costs in its skeleton argument (although it also referred to its own borrowing and lending rate encapsulating as it did the 0% reflecting the consequence of the de-dollarisation of the Ukrainian economy).
115. I agree with the Bank’s submission based on *Kazakhstan Kagazy* that it is appropriate to equate US prime with the Bank of England’s base rate plus one per cent for the purpose of assessing the starting point for a commercial rate. To that can then be added an appropriate uplift reflecting the creditworthiness of the Bank, which is an additional 2%. It follows that, in the case of a costs award in sterling, being the currency in which the Bank’s costs have been incurred and paid, the starting point is that the appropriate rate of interest is 3% over the Bank of England base rate from time to time. Such an award would be consistent with the award I have already made in relation to the judgment sum, but having proper regard to the currency in which the relevant obligation

to its lawyers has been incurred. In my judgment this rate best meets the justice of the case.

116. As to post-judgment interest on costs, the default position is set out in CPR 40.8(1), which is that interest at that rate (8%) is payable from the date of the judgment awarding costs, sometimes referred to as the incipitur date (*Simcoe v Jacuzzi UK Group plc* (CA) [2012] 1 WLR 239 (“*Simcoe*”) at [47] and [48]). This is the starting point, although it can be departed from “if that is what justice requires”. The Bank submitted that, as costs had been incurred and paid in sterling (and therefore section 44A did not apply), there was no justification for departing from the normal time from which interest should run, viz., the date of the award.
117. Mr Haydon submitted that what Mr Hunter had to say on timing was wrong, because it failed to take into account Leggatt J’s discussion in *Involnert* at [18] to [26] of how and why it might be appropriate to defer the running of post-judgment interest on costs until a date three months after the orders for costs were made. The issue arises because of the oddity that an award of costs is still to be treated as a judgment debt for the purposes of section 17 of the Judgments Act 1838 (*Hunt v RM Douglas (Roofing) Ltd* [1990] 1 AC 398), even though, until the costs have been assessed, there is no sum for which execution can be levied (*Involnert* at [6]). It was then said to be just for such a deferral to be granted in respect of that element of the costs award which exceeded the amount of the interim payment largely on the basis that it was only after three months that the paying party would be provided (pursuant to CPR 47.7) with a detailed statement of the costs claimed so that it could take an informed view of the amount of its liability. This was an important refinement to *Simcoe* where the rival arguments were whether judgment interest should normally run from the incipitur date or the date of agreement / assessment (i.e., the allocatur). It does not seem to have been suggested that the solution later adopted by Leggatt J in *Involnert* was the right starting point.
118. I see force in Mr Haydon’s submission, because it reflects the underlying principle that it may not be just to make an order under which interest begins to run at the rate appropriate for unpaid judgment debts before the paying party could reasonably be expected to pay the debt. This will be the time at which (as Leggatt J put it in *Involnert* at [23]) “the party liable for costs has received the information needed to make a realistic assessment of the amount of its liability before it begins to incur interest at the rate applicable to judgment debts for failing to pay that amount”.
119. Leggatt J’s approach is regularly cited with approval and in my judgment is often the right one to adopt. However, it seems to me to be important that, although an interim payment had been sought and ordered in *Involnert*, the information supplied to the paying party was not sufficient to make it reasonable for it to make any payment over and above the amount for which the interim payment had been ordered (see the description at [27]). This seems to have been the real reason why it was unjust to make an order which had the effect of judgment interest running before much greater detail was provided. Although I suspect that the schedules supplied by the Bank in support of their interim payment application contained more detail than the information provided in *Involnert*, I still consider that the same principle applies in the present case.
120. The result is that the Bank is entitled to interest on its costs from the time of payment to the time at which the costs are payable at the Bank of England base rate plus 3% and thereafter at the post judgment statutory rate. To the extent of the interim payment, the

time at which the rate converts from base rate plus 3% to the judgment rate is the time at which the interim payment falls due. For the balance of any ultimate costs liability, the time at which the rate converts from base rate plus 3% to the judgment rate is three months after the date of this judgment.

Permission to appeal: Mr Kolomoisky

121. Mr Kolomoisky’s first Ground of Appeal is that I was wrong to decide that, where the source of what was said to be a repayment was an Intermediary Drawdown made under a Relevant Loan or an Intermediary Loan or the value of a Transferred Asset or one of the New Loans, that repayment will not serve to reduce or extinguish the Bank’s claim in tort as it was improperly paid out of the Bank’s own resources.

122. Mr Haydon accepted Mr Kolomoisky’s prospects of success on Ground 1 depended on his ability to persuade the Court of Appeal to review and then to reverse some of my conclusions on Ukrainian law, which are ultimately questions of fact, albeit fact of what the Court of Appeal has called a peculiar kind (see for a recent example: *Byers v Saudi National Bank* [2022] EWCA Civ 43 at [103]). He submitted that the extent to which the Court of Appeal will be prepared to embark upon that task may well be affected by the extent to which the principles and legal concepts in issue may be familiar to an English lawyer. As the Court of Appeal said in *Macmillan Inc v Bishopsgate Investment Trust Plc (No 4)* [1999] CLC 417 at [13]:

“When and to the extent that the issue calls for the exercise of legal judgment, by reference to principles and legal concepts which are familiar to an English lawyer, then the court is as well placed as the trial judge to form its own independent view.”

123. In contending that the Court of Appeal is likely to be prepared to review the findings I made on Ukrainian law, Mr Haydon relied on the more recent decision of the Court of Appeal in *Cassini SAS v Emerald Pasture DAC* [2022] EWCA Civ 102 at [46] to [48] in support of the proposition that findings as to foreign law are not subject to the same restrictions on scrutiny by an appellate court as other findings of fact, especially where a novel point of foreign law was an issue. Snowden LJ said the following about the expert evidence of French law in that case:

“Although an appellate court will bear in mind that the trial judge had the advantage of seeing and hearing the expert witnesses, and of clarifying their evidence directly with them, the appellate court is entitled to consider the expert evidence afresh and form its own view of the cogency of the rival contentions in determining whether the trial judge came to the correct conclusion.”

124. Mr Haydon also submitted that some of the conclusions I reached on Ukrainian law were made at a high level of generality and based on principles which are familiar to English lawyers. It therefore followed that they were more susceptible to review by an appellate court. I do not think that the way this was put in his skeleton argument demonstrated quite the right approach.

125. I accept the Bank’s submission that the way in which it can be expected that the Court of Appeal will approach the findings of Ukrainian law I made is by reference to the

decision of the Privy Council in *Perry v Lopag Trus Reg No 2* [2023] 1 WLR 3494, as adopted and explained by the Court of Appeal in *Banca Intesa Sanpaolo SPA v Comune di Venezia* [2023] EWCA Civ 1482. Factors which are likely to carry considerable weight include the similarity which the foreign system has to English law, including whether or not it is a common law system, whether the foreign law is expressed in a foreign language and the extent to which the judge at first instance had depended on the assistance of extensive expert evidence to explore and explain the many court decisions to which the experts referred in support of their contentions.

126. It seems to me that the Court of Appeal will also have in mind that I reached my view based on an assessment of each expert having regard to their evidence as a whole, and the way in which they answered the questions posed to justify their opinions. As with the types of factual finding under consideration by Lewison LJ in *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, the Court of Appeal will recognise that I had regard to “the whole of the sea of evidence presented to [me] whereas an appellate court will only be island hopping”.
127. I do not consider that in the present case, these principles are affected to any material extent by what is said in Mr Kolomoisky’s skeleton argument about the significance of delay in the handing down of the Judgment. Unlike Mr Bogolyubov, Mr Kolomoisky does not raise delay as a specific Ground of Appeal. However, it was submitted that delay may well have contributed to the findings sought to be appealed and what are said to be certain relevant inconsistencies in the Judgment and misunderstandings or failures to take into account points made on behalf of Mr Kolomoisky in his closing submissions.
128. I will come back to what are said to have been the errors, but I should say something about the delay itself. I much regret the length of time which it took to produce the Judgment and it is right that my estimates from time to time of how much longer the task would take were significantly over-optimistic. It took so long to prepare because of the enormity of the task inherent in the nature of the case and the way it was litigated. The case was multifaceted, the submissions were voluminous and almost every issue had to be determined under a foreign law to be decided with the assistance of extensive expert evidence. Paragraph 203 of the Bank’s skeleton argument for the Second Consequential hearing gives some flavour of the task. I would only add this to what is said there. Quite apart from their length and the level of detail they contained, the cross references in the parties’ closing submissions to earlier submissions, witness statements, expert evidence (including detailed appendices and numerous decisions of the Ukrainian and Cypriot courts) and handouts distributed during the course of the trial were voluminous and many of them had to be tracked down during the course of preparing the Judgment because there had been insufficient time to take the court to them during the course of oral argument. I also found it necessary to re-read all of the transcripts when considering and re-considering the evidence and the submissions (some on more than one occasion). This was a time-consuming exercise which provides a partial explanation for the delay, but it is important to appreciate that in my view this improved rather than undermined my ability to make a proper evaluation of much of the evidence. This may be reflected in the fact that the vast bulk of my findings are not challenged in the Defendants’ Grounds of Appeal.
129. I say this only because it seems to me that the Court of Appeal will take into account all the many aspects of the case when determining whether there might have been a

denial of justice to the losing party by reason of the delay. On this aspect of his application for permission to appeal, Mr Kolomoisky must show that there is a real prospect that it will reach that conclusion, because serious delay is not of itself a sufficient ground to impugn a judgment (*Phones 4U Ltd v EE Ltd* [2025] EWCA Civ 869 (“*Phones 4U*”) at [218]), and indeed the contrary is not submitted to be the case. The Individual Defendants must still show that I was wrong or that the Judgment is not safe and that to allow it to stand would be unfair (per Falk LJ at [222]).

130. Doing the best I can in the circumstances, I do not consider that there is any real prospect of Mr Kolomoisky showing that the delay made any difference to my determination of the points he seeks to challenge. Although it was said in Mr Kolomoisky’s skeleton that I found it difficult to determine the crucial issues on the Repayment Defence because of some confusion and ambiguity in what Mr Beketov had to say ([1078] and [1094] of the Judgment), I have difficulty in seeing how it can be said that those findings were affected in any way by delay and the same can be said about what is also submitted to be inconsistencies in my approach to the Repayment Defence more generally.
131. Turning then to the detail of Mr Kolomoisky’s Grounds of Appeal, I agree with the Bank’s submissions that much of what is challenged in Ground 1 falls at the first hurdle. He criticises my conclusion that purported repayments (recorded as they were by ledger entries) which were sourced from the further dishonest use of the Bank’s own resources (i.e. Intermediary or New Loans or the excess of Transferred Assets above their true value), did not reduce or extinguish the loss arising from the Relevant Drawdowns. A similar challenge was also made by Mr Bogolyubov as his Ground 5. As Mr Bogolyubov simply adopts Mr Kolomoisky’s case in the alternative to his own Ground 4 with no additional reasoning, what I say in this part of my judgment should be treated as a response to Mr Bogolyubov’s Ground 5 as well. This was an argument which was run in a number of different ways throughout the trial, but I agree with the Bank’s submission that it has no real prospect of success. The core, and in my view unsurprising, answer is that, since the purported repayments were in fact further frauds purporting to make transfers from the Bank’s own resources, they did not provide any genuine value.
132. As to the further specific Ground 1 points made by Mr Kolomoisky, I do not think it is arguable that the findings I made that each of the drawdowns under Intermediary and New Loans comprised movements of the Bank’s money is in any way inconsistent with the conclusion that these so-called repayments should be disregarded on the grounds that they provided no benefit to the Bank. I also do not think it is arguable that *Yurov* provides an answer to the Bank’s case because it was different on this point from the present case, being concerned with an outstanding debt owed by a borrower not loss caused by a void transaction by which money was misappropriated. I accepted the Bank’s argument (see [1069] to [1071] of the Judgment) that the clear evidence of Ukrainian law derived from Mr Beketov and the decision of the Grand Chamber in *Ukoopsilka* was that the loss arising from the making of the Relevant Drawdowns is not co-extensive with what were only the purported contractual debts under the Relevant Loans, which were void.
133. Like the Bank I had some difficulty in following the contention that I had confused the Bank’s loss caused by a Relevant Drawdown, which was the loss in respect of which the Bank sued, with the Bank’s overall loss. I do not see that there is a real prospect of

showing that I was wrong to conclude that the later grant of an Intermediary or New Loan or the later transfer of a fraudulently overvalued Transferred Asset did not extinguish or reduce the Bank's original loss. There can be no confusion if it is recognised, as Ukrainian law does, that it is open to the Bank, as a victim of the unlawful acts, to make the election I described in [1148] to [1153] of the Judgment. I also agree with the Bank's submission at the Second Consequential hearing that the challenge to my finding that the purported repayments under further fraudulent transactions fell to be disregarded is not very clear, but if I understand what is being said, I do not think it has a real prospect of success. Article 216 is only part of the analysis. This is an example of a challenge to the reasoning which takes a single part of the argument out of its proper context. As I made clear in [1086] of the Judgment, the justification for disregarding the payment is that it does not provide the "full compensation" for the harm which the Bank suffered at the time the Relevant Drawdown was made and to which (per [1066] of the Judgment) the Bank is entitled under Article 1166.

134. Finally on Ground 1, I do not agree that the Individual Defendants have any real prospect of showing that I should have rejected Mr Beketov's evidence which supported the conclusion I reached. My assessment of his evidence was that it was not incoherent and internally inconsistent for the reasons I gave in [1059] to [1066] of the Judgment, against the background I had set out in paragraphs [1035ff]. I consider it is clear that I was entitled to reach the conclusion I did, that it reflected the law of Ukraine.
135. The second Ground of Appeal was that I was wrong to decide that the choice by the Bank to treat what is said to be a repayment of a void loan as a discharge of the borrower's restitutionary liability in relation to the loan does not in and of itself extinguish the Bank's claim against the third party for the loss sustained in the amount of the loan. It is said that there was no satisfactory evidence of Ukrainian law to support the proposition that the Bank must separately choose to treat the liability in tort as discharged and that my findings in relation to this issue were inconsistent with my findings in relation to Asset Transfers. The third and fourth Grounds of Appeal also challenged my findings on choice, the former in relation to my conclusion that the Defendants sought in closing to advance an unpleaded new case and the latter in relation to the Bank's choice to credit the Borrowers with the inflated value of the Transferred Assets. These points are all interlinked and I shall adopt the course adopted in the Bank's skeleton argument of dealing first with the pleading point raised by Mr Kolomoisky in Ground 3(i).
136. This Ground of Appeal appears to be that I was wrong to hold that Mr Kolomoisky was advancing a new case. I reached that conclusion on the basis that he said in terms that he was no longer contending that liability was automatically extinguished by the ledger entries recording repayment of the Relevant Loans in the Bank's books ([1087ff] of the Judgment). Rather, as I explained, his case shifted in closing to rely on the factual question of what choice the Bank had made. The shift in case could not have been clearer, and the fact that Mr Kolomoisky now relied on the factual question of whether a choice had been made as opposed to the previous case that the liability was automatically extinguished was reiterated in a number of places in his written closings.
137. I do not think that Mr Kolomoisky has any real prospect of persuading the Court of Appeal that the conclusion I reached as to why it was not open to him to run the argument on choice that he did ([1083] to [1095] of the Judgment) was wrong. I evaluated the way that the argument was developed, explained why it was new and

explained why it would be wrong to permit the case to be run in a manner which was open to me. I consider that the Court of Appeal will not interfere with the conclusions I reached.

138. Grounds 2, 3(ii) and 4 only arise if the Court of Appeal concludes that I was wrong to find that it was not open to the Defendants to run their new case on free choice. Grounds 2 and 3(ii) challenge the findings I made on Mr Beketov's evidence as to Ukrainian law (1076] to [1082] of the Judgment) and Mr Oleksiyenko's evidence as to what actually happened post-nationalisation ([1096] to [1123] of the Judgment). As I explained in [1096] to [1097] of the Judgment, an assessment of the facts was not easy in the light of the way in which the point had come to be argued in closing (see above), but these are all challenges to my evaluation of the evidence (both expert and factual) with which I consider that there is no real prospect that the Court of Appeal will interfere. As to Ground 4, this relates to an unpleaded allegation that the Bank made a free choice to accept the fraudulently inflated values of the Transferred Assets. I analysed the evidence and explained my conclusions on the facts in [1161] to [1174] of the Judgment. In my view there is no real prospect that the Court of Appeal will interfere with that evaluation.
139. For these reasons I refuse Mr Kolomoisky's application for permission to appeal.

Permission to appeal: Mr Bogolyubov

140. Arguments relating to delay in production of the Judgment are front and centre of Mr Bogolyubov's application for permission to appeal. Ground 1 contends that excessive delay has resulted in a judgment that the Court of Appeal cannot be satisfied is safe and which is unfair. It is said that a number of errors which went to key findings in the Judgment were likely to have been caused by the delay "in particular given the length of the delay, the complexity of the case and the volume of evidence and submissions before the court at trial".
141. Most of the findings challenged by Mr Bogolyubov are challenges to my findings of fact. I have already explained my understanding of the approach that the Court of Appeal will take to findings made in a judgment which has been subject to a significant delay, irrespective of the reasons for it. I have therefore approached this application for permission to appeal having regard to the principles the Court of Appeal applies when determining an appeal on the facts where the handing down of a judgment has been delayed. These are explained in the judgment of Falk LJ in *Phones 4U* at [218] to [228] and again at [321] to [328]. It is right to record that Ms Montgomery accepted in her oral submissions that, even where there has been what she characterised as excessive delay, the test remains that the Court of Appeal must be satisfied that the conclusions I reached on the facts were plainly wrong.
142. I do not understand there to be any challenge based on illegitimate compartmentalisation (see Falk LJ's discussion at [229] to [232] and *Bank St Petersburg PJSC v Arkhangelsky* [2020] EWCA Civ 408). The absence of any such challenge is important in the sense that it is not said by either of the Individual Defendants that I failed to step back and look at the picture as whole.

143. Eight points are then relied upon as indicators that delay might have affected my recollection of the evidence on material points. It seems to me that what is said in paragraphs 4.1 to 4.8 of Mr Bogolyubov's skeleton argument amounts to a series of cherry-picked examples of the whole sea of evidence which I took into account in making the factual findings relating to (a) how the Scheme was administered, (b) Mr Bogolyubov's ongoing involvement in the Bank, (c) what were said to have been Mr Thompson's concessions, and (d) what were said to have been the misremembering of aspects of the evidence and Mr Bogolyubov's case. The challenges identified in these paragraphs cut across the basic principle that merely because a judge does not refer to a particular piece of evidence does not mean that it was overlooked. None of them have substantial significance in their own right and they all suffer from being a single piece of evidence or a single discrete argument wrenched out of the context in which they sit.
144. In my view, these complaints amount to a miscellaneous collection of points which fall well short of establishing that the findings I made (a) that there was a Misappropriation from which Mr Bogolyubov benefitted, (b) that Mr Bogolyubov had not stepped back from the Bank at the time of the Misappropriation, (c) that Mr Bogolyubov controlled the relevant entities involved in the Misappropriation or (d) that the Misappropriation caused harm to the Bank were wrong because of the delay, or indeed were wrong at all. I do not consider that Mr Bogolyubov has a real prospect of successfully establishing that the Judgment was unsafe or unfair on these grounds.
145. As to Ground 2, it is said that I erred in failing to determine the relevant issues, failed to take into account the relevant evidence and arguments and adopted an approach that was inconsistent with other aspects of the Judgment when I concluded that there had been a misappropriation carried out by way of the Relevant Drawdowns and the Unreturned Prepayments. I do not think that the various challenges made under Ground 2 (and summarised below) have any real prospect of success.
146. The first complaint under this Ground of Appeal related to the approach I adopted to accounting methodology. In my view it is misplaced (see [306] to [310], [952] and [1131] to [1144] of the Judgment). Taken as a whole, the Judgment makes quite plain why I preferred the approach adopted by Mr Thompson.
147. The Bank said that it did not fully understand the second Ground 2 criticism to the effect that I erred in treating the Relevant Drawdowns as a unitary group. Ms Montgomery's response in her oral submissions was that I went wrong by looking at the drawdowns on a compendious basis because it was common ground at trial that each of the Relevant Drawdowns was itself a separate tortious act and I did not grapple with the detail of each one separately. This was central she said because of a failure to analyse what can be inferred to have been Mr Bogolyubov's role in relation to each one of them. I do not accept that this argument means that the appeal has a real prospect of success. I looked at each of the Relevant Drawdowns by reference to the SOFs ([296ff] of the Judgment), while the section of the Judgment which considered the Relevant Drawdowns ([373] to [405]) did so by reference to the different types of drawdown which formed part of Mr Bogolyubov's case. The findings I made in relation to the role which each of the Individual Defendants played in the Misappropriation ([793] to [802] of the Judgment) are also relevant to this criticism and I returned to this exercise when considering Mr Bogolyubov's use of funds and the bigger fraud argument ([1124ff] of the Judgment).

148. The third Ground 2 criticism is that I did not take into account two aspects of the forensic accounting expert evidence. I disagree. This whole issue of the funding of Unreturned Prepayments was considered both in the section of the Judgment dealing with Relevant Drawdowns and in the section dealing with the Use of Funds Defence. Further the issue of the overdraft was considered in [392] to [394] of the Judgment and it is difficult to see why specific reference to Mr Thompson's evidence on the point needed to be made.
149. The fourth Ground 2 criticism refers in very general terms to a failure to refer to Skypes and e-mails showing how the Scheme was administered. This point was also referred to as one of the Ground 1 examples. Ms Montgomery explained in her oral submissions that this was intended as a reference to material which related to Mr Bogolyubov's case that he did not give specific instructions in relation to specific drawdowns. In the light of the findings I made in the Judgment as to Mr Bogolyubov's role in the Misappropriation (see e.g., the summary at [793] to [802] of the Judgment), I do not think that this challenge has any real prospects of success.
150. Likewise I do not understand the reference to a notice to prove in relation to the Bank's transactional data. This was referred to in Mr Bogolyubov's written and oral openings, and was also addressed by the Bank in opening, but it was not pursued thereafter. The Bank said very clearly in its written closings that it understood that no challenge to authenticity was maintained and that, if this was wrong, Mr Bogolyubov would no doubt explain the position in his closing submissions. Nothing was then said about the notice to prove in his written or oral closings, and as the Bank has pointed out he himself relied on the transactional data on a number of different occasions.
151. The third Ground of Appeal (Ground 3) again relates to the conclusions I reached in relation to Mr Bogolyubov's involvement in the Misappropriation. Apart from repeating the submission that my overall recollection of the evidence was affected by delay, it is said that I made three particularly significant errors in reaching this conclusion.
152. The first error (Ground 3A) is said to be that I erred in drawing an inference that all of the Bank's allegations on liability were established as a consequence of Mr Bogolyubov's decision not to give evidence. This inference was said to have been drawn at large and amounted to a reversal of the burden of proof. I do not think that this argument has a real prospect of success, whether or not the Court of Appeal decides that it is necessary to adopt what Falk LJ in *Phones 4U* at [328] called "the additional level of scrutiny required of a delayed judgment", when deciding whether I was plainly wrong on the factual findings I made.
153. The incontrovertible facts which made it appropriate to draw the inferences against Mr Bogolyubov as to his role in the Misappropriation in the absence of evidence from him personally were wide ranging. They included (a) the fact that he and Mr Kolomoisky were very close associates, (b) the fact that between them they held virtually all of the shares in the Bank, (c) the fact that they were two of the three members of the Supervisory Board, (d) the fact that Mr Bogolyubov was the Bank's chairman, (e) the fact that Mr Dubilet, Mr Novikov and Ms Gurieva who specifically approved each of the Relevant Loans were all were closely associated to both of the Individual Defendants, (f) the fact that Mr Bogolyubov admitted ownership interests in some of the Borrowers and some of his assets (like those of Mr Kolomoisky) were put up as

purported security for the lending, (g) the fact that Mr Bogolyubov, like Mr Kolomoisky, later used his own assets to discharge some of the lending as part of the Asset Transfer, (h) the fact that he like Mr Kolomoisky expressed no surprise and took no action when the NBU started to uncover the true state of the Bank's loan book and (i) the fact that notwithstanding his case that he stepped away from the Bank in 2014, he actually started to employ a number of PBC nominees and former Bank staff in 2017. In my view it is not realistic for Mr Bogolyubov to argue that these facts on their own were insufficient to shift the evidential burden to Mr Bogolyubov to explain why the inferences that he knew all about the Misappropriation, authorised the steps which were taken to put it into action and is likely to have benefited from it should not be drawn in the absence of evidence from him to the contrary.

154. The second error (Ground 3B) is said to be that I erred in concluding that Mr Bogolyubov benefited from the Misappropriation, relying on this to conclude that he was involved in it. It is said that I took the wrong approach to the drawing of inferences in the section of the Judgment ([769] to [792]) in which I made the findings under challenge. I do not think that Mr Bogolyubov has a real prospect of success on this ground for very similar reasons to those I have already outlined in relation to Ground 3A.
155. The third error (Ground 3C) is said to be that I was wrong in finding that Mr Bogolyubov had not stepped away from the Bank. In my view this Ground of Appeal also has no real prospects of success. In [669] to [691] of the Judgment, I explained in some detail why I was not prepared to give the evidential weight for which Mr Bogolyubov argued to the recitals contained in the Deeds of Waiver and why I concluded that those recitals were not an accurate record of what in fact happened in 2014. In particular, given all the circumstances of the case, I do not consider it to be inherently improbable that the recitals were false even if the Deeds of Waiver themselves were authentic. No reason for that being improbable is suggested. Likewise I do not understand the contention that I was wrong to take into account the fact that the solicitor who witnessed Mr Bogolyubov's signature was not called to give evidence in verification of its authenticity. As the Bank submitted, my finding was that the Deeds were probably signed when they purported to be signed in May and June 2015 and to that extent were authentic. The reference to the solicitor was recited as part of the background to what occurred but was not otherwise relied on in my analysis of the Bank's arguments.
156. Nor do I think it is arguable that there was any procedural unfairness in the finding of an adverse inference flowing from Mr Anischenko's absence from the witness box when the point was only raised by the Bank in closing. Although I made the finding earlier in the Judgment, I did not specifically mention it in the relevant section. In any event, it seems to me that, in the light of the Individual Defendants' general approach to not calling evidence at the trial, the possibility that the lack of warning that this peripheral point might be taken against him would prejudice or be unfair to Mr Bogolyubov is vanishingly small.
157. The final challenge to my findings in relation to Mr Bogolyubov stepping back from the Bank in 2014/5 was the criticism that I failed to refer to Ms Rozhkova's evidence. I think this is wholly misplaced. Ms Rozhkova's evidence related to what occurred in 2016 not what had occurred a year or more earlier being the period with which Ground 3C is concerned.

158. Ground 4 challenges the conclusions that I reached in relation to the harm the Bank suffered as a result of and at the time of the Relevant Drawdowns. The first complaint in Ground 4A is that I failed to take into account the relevant Ukrainian law evidence and took an incorrect approach to the assessment of harm. It is said that I erred in finding that the harm was established without looking at the reality of what happened to the Relevant Drawdowns. I do not agree that there is a real prospect of success on this ground for the reasons that I gave in a number of parts of the Judgment, most especially in the section at [1124] to [1152]. I also do not agree that the point made about burden of proof by reference to [771] of the Judgment has any real prospects of success. It fails to engage with the analysis of Ukrainian law (and English law too) at [948] to [953] of the Judgment.
159. As to Ground 4B the essence of the complaint is that I was wrong to conclude that harm was sustained by the Bank at the time of the Relevant Drawdowns. This argument has no real prospect of success. My conclusions (at [1158] of the Judgment) were based on the evidence that an electronic transfer of funds to an account with the Bank was capable of constituting harm to the transferor as a matter of Ukrainian law and that that was what happened in the present case. As I had already held, the consideration for the transfers was illusory (see the analysis in [1006] to [1026] of the Judgment).
160. I have difficulty in seeing what Ground 4C adds to the remainder of Mr Bogolyubov's arguments on harm, or why there is said to be an arguable case on inconsistency between different parts of the Judgment. The reasoning said to underpin this criticism was not developed in oral submissions and as currently formulated I do not see that it has a real prospect of success.
161. Ground 4D challenges my decision to use the Bank's methodology for analysing full compensation. As is recognised in this ground, my reasons for doing so are summarised in [1532] of the Judgment, but that summary has to be considered in conjunction with the other parts of the Judgment in which I explained Mr Thompson's general approach as compared to Mr Davidson (e.g., [307] to [310], [381], [392ff] of the Judgment, and more specifically by reference to the Bank's entitlement to full compensation ([952] of the Judgment)). In my view this Ground of Appeal seeks to challenge an evaluative assessment on which I was entitled to reach the conclusion that I did. I do not think that it has a real prospect of success.
162. For these reasons I refuse Mr Bogolyubov's application for permission to appeal.

Stay of Execution

163. The Individual Defendants sought a stay of execution pending appeal in relation to payment of the judgment sum including interest and any order for the payment of costs. The main basis on which they did so related to the fact that they are both subject to sanctions imposed by the President of Ukraine which are said to have a consequential impact on the ability of the Bank to return to them any recoveries it may make if the appeal is allowed. It was also said in Mr Kolomoisky's skeleton argument that the Bank intended to pay any money it may recover from the Defendants, together with other amounts of its profits, to assist in its war with Russia, which means that they will stand little prospect of recovering it if successful in their appeal. This latter point was

not developed in oral submissions and for reasons which I will come to rather faded in significance during the course of the hearing.

164. Mr Bogolyubov also submitted that there is a risk that his appeal will be stifled if the stay is refused over the entirety of the judgment amount. The solution to this part of Mr Bogolyubov's application is that an appropriate sum should be ring-fenced from enforcement to allow him to pay his costs of the appeal, costs relating to other English litigation and foreign proceedings in which he is currently engaged, the costs of complying with his obligations under the WFO and his living costs. Mr Morrison, who argued the stay application on behalf of Mr Bogolyubov, submitted that, if a stay based on the possible application of sanctions is granted, the second argument based on stifling is moot.
165. Mr Kolomoisky did not advance an argument based on stifling in quite the same way. Mr Haydon's argument relied on the risk that for one reason or another the Defendants would not get their money back from the Bank if their appeal were to succeed; a risk which outweighed any prejudice to the Bank if there were to be further delay in enforcement, more particularly because of the protection which the Bank already had from the continuation of the WFO, which the Defendants accepted should not be discharged at least until the appeal has been determined.
166. This court has a general power pursuant to CPR r.52.16 to stay all or any part of the order it makes pending appeal. It applies the same principles as those which will be applied by the Court of Appeal. The correct approach has been summarised in *Hammond Suddards v Agrichem* [2001] All ER (D) 258 at [22], *Leicester Circuits Ltd v Coates Brothers plc* [2002] EWCA Civ 474 at [13] and *DEFRA v Downs* [2009] EWCA Civ 257 at [8] to [9]. I can summarise the position as follows:
 - i) The default position, confirmed by the language of CPR 52.16 itself, is that an appeal does not operate as a stay.
 - ii) The court has a discretion to grant a stay, but it must be satisfied that the application is based on solid grounds.
 - iii) If solid grounds are established, the court will undertake a balancing exercise taking into account all the circumstances of the case and weighing the risks of injustice to each side if a stay is or is not granted.
 - iv) When considering whether solid grounds have been established by the appellant, the court will normally be concerned to identify whether there is some form of "irremediable harm", as opposed to a "temporary inconvenience" to the appellant if a stay is not granted.
 - v) Examples of such harm may include the risk of the appeal being stifled and the risk that the appellant may be unable to recover any monies paid to the respondent in the event that the appeal is successful.
 - vi) If such harm is established, the court must weigh in the balance the prejudice to the respondent that further delay in enforcement may entail, including issues relating to possible asset dissipation and competition with the appellant's other creditors.

- vii) While the normal rule is for no stay to be granted, where the justice of that approach is in doubt, the answer may depend on the perceived strength of the appeal.

Stay: the impact of sanctions

- 167. The argument in relation to sanctions was advanced on behalf of Mr Bogolyubov, although it was adopted by Mr Haydon for Mr Kolomoisky without further development. Accordingly, when I describe what was said on behalf of Mr Bogolyubov it should also be taken to apply to Mr Kolomoisky as well.
- 168. It is not in issue that, since 12 February 2025, Mr Bogolyubov has been subject to sanctions ordered by the President of Ukraine pursuant to a decision of the National Security and Defence Council made under the Ukrainian Law on Sanctions of August 2014. The expert evidence was that these sanctions are of indefinite duration and their effects include asset freezing, prevention of capital withdrawal from Ukraine, suspension of performance of economic and financial obligations, and a prohibition on concluding transactions with the sanctioned person. Mr Bogolyubov explained that challenges to the lawfulness of the sanctions to which he is subject are ongoing. Mr Bogolyubov also explained in some detail in his evidence that the sanctions ordered against him form part of the hostile economic and political environment to which he is currently subject in Ukraine.
- 169. It is also common ground that, although Ukrainian law provides that any transaction entered into in breach of the sanctions is null and void (see Article 228 as referred to at [972] of the Judgment), it does not yet back these sanctions with criminal penalties. However, it seems that there is at least one bill currently being progressed through the Verkhovna Rada (the Ukrainian legislature) which would, if enacted, impose criminal liability for deliberate breach and circumvention of sanctions. Mr Bogolyubov submitted that there is at least a real risk that any breach of the sanctions to which he is subject will be criminalised within a matter of weeks.
- 170. Initially Mr Bogolyubov expressed concern that, if he took steps to deal with his assets (both in Ukraine and elsewhere) so as to fund payment of the judgment debt or fund his appeal he might be acting in breach of the sanctions. This way of putting his case has changed in circumstances which I shall come to shortly, such that the focus has shifted to a submission that he would suffer irreparable prejudice if a stay is not granted because there is a material risk that the sanctions, and the possibility of their extension, mean that the Bank may not be able to return funds to him if the Judgment or costs orders are reversed on appeal.
- 171. Mr Bogolyubov contended that there can be no real dispute that sanctions could apply to prevent a return of assets (or their proceeds) if the relevant assets were held inside Ukraine and he relied on NBU Regulation No 65, which prohibits a Ukrainian bank from carrying out any transaction that breaches, facilitates, or may facilitate the breach or circumvention of restrictions imposed by sanctions. The Bank did not accept that this was the case, because its position was that transfers made in the context of enforcement of judgments were not caught by the sanctions and it relied on a letter from the NBU dated 15 June 2022 (the “NBU Letter”) to that effect.

172. However, Mr Anderson KC said that the Bank’s position on this aspect of the argument was really only advanced for completeness because the principal ground for saying that sanctions did not give rise to irremediable prejudice to the Individual Defendants was that they have no extraterritorial effect. I shall come back to the enforcement argument a little later in this judgment.
173. The Bank’s primary position was that the sanctions have no extraterritorial effect unless and until a mechanism is put in place, via international cooperation, for their enforcement abroad. It said that for the Individual Defendants not to accept that is the case exposes a tension with the fact that Mr Bogolyubov continues to make payments to Enyo, counsel, Mr Marchukov, Primecap (although another issue has recently arisen in relation to Primecap) and the other CSPs. It therefore took the position both that Mr Bogolyubov is free to pay the judgment sum from his assets outside Ukraine and that there is no material risk that the sanctions would prevent the Bank from effecting a return of assets or the proceeds of assets held outside Ukraine if Mr Bogolyubov is successful in his appeal.
174. Mr Bogolyubov contended that, even if that were to prove to be correct, the risk has to be assessed not just by reference to any present liability in connection with sanctions but also by reference to the risk of unfounded allegations of breach of sanctions being made, given that the mere existence of that risk may well be sufficient to deter parties from dealing with the assets in question out of caution. In support of these submissions, Mr Bogolyubov relied on the following expert evidence from Mr Marchukov:
 - i) transfers of assets within Ukraine are subject to (and prevented by) the sanctions;
 - ii) the sanctions would prohibit entities or persons in Ukraine from being involved in facilitating a transaction with a sanctioned person, even if the transaction takes place abroad;
 - iii) given the ambiguity in Ukrainian case law, there is a clear risk that the sanctions purport to apply to prevent transactions by sanctioned persons outside Ukraine;
 - iv) the sanctions would prevent the Bank from returning funds to Mr Bogolyubov by agreement, because any such agreement would be precluded by the sanctions, or the transfer pursuant to the agreement would be in breach; and
 - v) the sanctions would be likely to prevent the return of funds in Ukraine, even if ordered by the English court, as there is no measure permitting enforcement of a judgment in favour of a sanctioned person, but in any event, it would not be possible for Mr Bogolyubov to receive funds through Ukrainian banks, as the sanctions would prevent those banks from cooperating.
175. It was at the root of Mr Bogolyubov’s argument that such case law as there is supports the risk identified in Mr Marchukov’s evidence. In two cases arising out of the same underlying events (resolutions of the Supreme Court dated 14 May 2025 in case No. 320/14459/2 (“*Pulp Mill I*”) and dated 26 May 2025 in case No. 160/1038/24 (which together with *Pulp Mill I* I shall call “*Pulp Mill*”)), Person 2, who was a Russian citizen resident outside Ukraine, was the UBO of an Austrian holding company (*Pulp Mill Holding*), which itself owned several Ukrainian companies. Person 2 was therefore

registered as the UBO of the Ukrainian subsidiaries on the Ukrainian Unified State Register (“USR”). He was the subject of an asset freezing sanction. Under an Austrian-law agreement, ultimate beneficial ownership of Pulp Mill Holding was transferred from Person 2 to an Austrian citizen not subject to sanctions. The intention behind the transfer was circumvention of the sanctions. The transfer agreement and other documentation was then submitted to a private notary in Kyiv and a state registrar in Dnipro to effect the necessary changes to the USR. The Ministry of Justice concluded that the notary and registrar had acted unlawfully, because they had assisted a transaction that was subject to sanctions or had circumvented sanctions, and revoked their rights of access to the USR. Both the notary and the registrar brought proceedings challenging the Ministry of Justice decision.

176. The transfer itself was contrary to Ukrainian public policy and of no legal effect under the law of Ukraine. The Supreme Court found that, notwithstanding the lack of any specific prohibition on registering a change of UBO involving a sanctioned person, the registration should have been refused under the general rule that the documents submitted contradicted the laws of Ukraine. Mr Morrison stressed the significance of this, submitting that this illustrated that the Ukrainian sanctions have extraterritorial effect at least to the extent that Ukrainian law regarded the transaction relating to Pulp Mill Holdings which was carried out under Austrian law as void.
177. It was also said on behalf of Mr Bogolyubov that it was not right that the only two conclusions to be derived from *Pulp Mill* were that an asset freezing sanction had been imposed against Person 2 and that the Austrian law transfer agreement outside Ukraine aimed at circumventing an asset freeze should be refused recognition in Ukraine, i.e., by registration on the USR in Ukraine. The Supreme Court held that a failure to refuse recognition by a Ukrainian registrar and Ukrainian notary amounted to unlawful conduct by those parties and justified the revocation of their licence to access the Ukrainian state registry. It followed, so it was said, that a similar approach may be applied in relation to any individual or entity (such as the Bank) involved in assisting with the return of assets to Mr Bogolyubov if his appeal were to succeed.
178. Mr Morrison drew particular attention to [51] of *Pulp Mill 1*, which I should quote in full because it founded a submission that the Supreme Court has decided that the sanctions can apply both where the relevant transaction is abroad and where the relevant assets are located abroad:
- “Thus, the application of sanctions based on Law "On Sanctions" is allowed, in particular, in respect of foreign legal entities or individuals. At the same time, taking into account that the content of such sanction as asset freeze pursuant to paragraph 1, part 1, Article 4 of Law "On Sanctions" is not limited to the prohibition on the use and disposal of assets located in Ukraine, such prohibition applies to any property (assets) owned or held by the sanctioned person on the basis of another property right, if such right provides for the possibility of direct or indirect disposal of the relevant property, regardless of the location of the assets.”
179. However, as Mr Morrison accepted this was then qualified in [55] of *Pulp Mill 1* in which the Supreme Court went on as follows:

“Thus, even though the President of Ukraine does not have direct powers to regulate transactions of sanctioned persons abroad, he ensures the implementation

of the sanctions policy through the NSDC. Therefore, since Law "On Sanctions" does not limit the effect of sanctions only to assets located in Ukraine, the relevant restrictions may also apply to assets abroad if: 1) they are owned by a sanctioned person; 2) there is a mechanism for the enforcement of sanctions through international cooperation."

180. Mr Morrison submitted that an analysis of these two paragraphs identified the crux of the dispute. He asked rhetorically: is it the position that the Ukrainian law of sanctions does not purport to apply to any transaction outside Ukraine unless the assets are owned by a sanctioned person or there is scope for enforcement via a mechanism of international cooperation? Or does the law still purport to prohibit that transaction, but the sanctions will not apply in practice unless one of these two conditions are met because there is no way to prevent it? He accepted that, prior to *Pulp Mill*, it had been assumed that transactions outside Ukraine were not subject to sanctions, but submitted that the position was now unclear. He said that this was sufficient for his purposes because the material risk of a breach of the Ukrainian sanctions regime, if the proceeds of enforcement were required to be returned to Mr Bogolyubov at the conclusion of any successful appeal, itself causes a real risk of prejudice which weighed heavily in the balance in support of Mr Bogolyubov's application for a stay. He said that such prejudice could only be avoided if it were to be clear that the Ukrainian sanctions do not apply to transactions outside Ukraine unless one of those two conditions is met.

181. Although his submission was to the effect that the position was at best ambiguous, the substance of his argument was that the better view is that the sanctions are extraterritorial as a matter of principle, in support of which he also relied on [59] of *Pulp Mill 1*:

"Thus, the sanctions imposed on a person under Law "On Sanctions" are extraterritorial in nature, meaning that their effect is not limited to the territory of Ukraine. If a person subject to sanctions formalises the alienation of assets in another state, this does not lift the sanction imposed by Ukraine. The asset freeze applies to any property (assets) owned by the sanctioned person or in respect of which such person has any other property right that provides for the possibility of direct or indirect disposal of the relevant property, regardless of the location of the assets."

182. The submission that *Pulp Mill* gave rise to some ambiguity is said to be supported by Mr Marchukov's evidence to the effect that it remains unclear from the respective statements of the Supreme Court whether Ukrainian sanctions have extraterritorial effect as a matter of Ukrainian law (even if there is no practical means of enforcement) or whether their extraterritorial effect is subject to the preconditions (amongst others) that there is a mechanism for compulsory enforcement through international cooperation. But he fairly accepted that the latter approach was more aligned with the position from which he had started, viz.:

"In general, the territorial effect of a Ukrainian legal act (including the Law on Sanctions) may extend to the entire territory of Ukraine, the relevant administrative-territorial unit(s) or to a specific part thereof. This, logically, places a limitation on the possibility of Ukrainian legal acts (including the Law on Sanctions) being effective outside the territory of Ukraine."

183. In further development of his argument based on lack of clarity, Mr Morrison posited three different scenarios. The first is where the transaction relates to assets within Ukraine, the second is where the transaction relates to assets outside Ukraine but an entity in Ukraine would need to be involved in some way by doing something in Ukraine and the third is where the asset, the relevant act and the entity involved are all outside Ukraine. In relation to the second scenario, it was submitted that, as the Bank is incorporated in and managed from Ukraine, is regulated by the NBU, and is owned and controlled by the Ukrainian state, it stands in a similar – or potentially more difficult – position to the notary and registrar in *Pulp Mill*. If the Bank were ordered to repay any sums paid under it, or to restore any properties or other assets following a successful appeal, the Ukrainian authorities would be likely to rely on the existence of sanctions and the asset freeze as a basis for preventing the Bank from effecting any such return.
184. It was also said that, even if the immediate transaction was to be effected outside Ukraine, the NBU's Regulation would prevent the Bank itself (or any other financial institution based or operating in Ukraine) from giving effect to it by taking any steps within Ukraine. It was submitted that *Pulp Mill 1* makes clear that any transaction involving the return of assets to Mr Bogolyubov might be considered to circumvent sanctions, thus being unlawful and contrary to Ukrainian law. It followed that any entity or individual in Ukraine was not in a position to cooperate in giving effect to the transaction without facing serious professional, and potentially criminal, consequences.
185. As to the third scenario, where in theory the assets and all the individuals are outside Ukraine, and the Bank has effectively forgone any involvement in the process because any enforcement proceeds are held outside Ukraine and then re-transferred to Mr Bogolyubov outside Ukraine in the event of any successful appeal, Mr Morrison submitted that there would still at least arguably be a breach of Ukrainian law. He said that there would be difficult issues which arose on how instructions for the re-transfer were to be given. He also submitted that any need to keep the proceeds of enforcement outside Ukraine pending the determination of the Defendants' applications for permission to appeal (and if granted the appeal itself) is inconsistent with one of the bases on which the Bank opposes the application for a stay: that it needs the funds as soon as reasonably practicable in the broader interests of the state of Ukraine as the Bank's shareholder, a factor which itself contemplates the domestication of the proceeds to Ukraine.
186. There were two main elements of Mr Beketov's evidence in answer to the Defendants' case on the impact of sanctions. The first was that he did not agree with Mr Marchukov's view that there would necessarily be a breach or circumvention of sanctions if the agreements and transfer of funds were to take place outside Ukraine, on the basis that in his view sanctions do not have any extraterritorial effect on either the agreement or the transfer. The second is that any return to Mr Bogolyubov would ultimately be made to him in his capacity as a judgment creditor holding an English court order that the Bank return the funds in question. He said that actions taken in furtherance of the enforcement of any such order are not prevented by the sanctions to which Mr Bogolyubov is subject, in support of which he relied on the NBU Letter which related to the application of sanctions to Ukrainian banks and which was said to have "specifically addressed... enforcement proceedings".
187. As to the first of these points, Mr Beketov and the Bank relied on the resolution of the Grand Chamber dated 7 November 2024, in case No. 990/184/24, *Person 1 v the High*

Council of Justice. Mr Beketov explained that this case illustrates an established principle that, while for citizens everything not expressly prohibited by law shall be allowed, for state authorities only what is expressly permitted by law shall be allowed. It followed that, in order for sanctions enacted by the executive or legislative authorities of Ukraine to have effect outside the territory of Ukraine, there must be an enabling provision in Ukrainian law expressly authorising those authorities to enact sanctions that have extraterritorial effect and that the instruments enacting those particular sanctions must expressly provide for them to have such effect. In his view there is no such authority. On this aspect of the argument, Mr Marchukov's evidence was to the same effect: "I certainly do not disagree that Ukrainian legal acts (including the Law on Sanctions) have effect only within the territory of Ukraine."

188. The Bank then relied on another decision of the Grand Chamber which was specifically concerned with sanctions, but which was not referred to in either of the *Pulp Mill* resolutions: resolution of the Grand Chamber dated 13 January 2021 in case No. 9901/405/19, *Person 1 (Eidelman) v President of Ukraine* ("Eidelman"). As a decision of the Grand Chamber, it is more authoritative than the *Pulp Mill* resolutions ([818] of the Judgment) and in my view supplies the answer to the Individual Defendants' submission.
189. In *Eidelman* the sanctioned person (Mr Eidelman), who was Moldovan, did not live in Ukraine and had no assets in Ukraine, sought to challenge the sanctions imposed on him by the President of Ukraine in a form similar to those imposed on the Individual Defendants in this case. Part of the argument was concerned with the application of Article 1 of the First Protocol to the ECHR, and the resolution discussed the balancing of the public interest of the state of Ukraine "to control the use of property in the general interest" against Mr Eidelman's private rights to peaceful possession of his property with which the imposition of the sanctions was said to have interfered.
190. The Grand Chamber concluded that, in all the circumstances including the fact that the interference with Mr Eidelman's right to peaceful enjoyment of his property was only a temporary restriction on the possibility of exercising this right *in Ukraine*, the interference was proportionate to the legitimate aim pursued and did not constitute an excessive burden on him. It also went on (at [63]) to make the following finding:
- "Moreover, the plaintiff does not indicate that he has any property on the territory of Ukraine and therefore does not demonstrate the reality of a violation of his right, nor does he specify whether such interference occurred with respect to him at all."
191. The Grand Chamber's conclusion that, because Mr Edelman had no property in Ukraine, he had not demonstrated the "reality of a violation of his rights" and had not shown whether such interference occurred with respect to him "at all" was emphasised in [67] where the Grand Chamber spelt out that the state's interference in Mr Eidelman's peaceful possession of his property did not deprive him of the right of ownership but "only temporarily - for a clearly defined period - restricts the possibility of exercising this right in Ukraine". It follows that it was an essential part of the Grand Chamber's reasoning that one of the reasons that the sanctions were proportionate was that he had no property in Ukraine, which was the only property to which they could attach. It was not suggested that the form of the sanctions imposed on Mr Eidelman were materially different to the sanctions imposed on the Individual Defendants.

192. Mr Anderson also submitted that a proper analysis of *Pulp Mill* demonstrates that those two decisions do not stand for the propositions on which Mr Bogolyubov relies. The foreign element in those cases was the change in beneficial ownership of the Austrian parent of the Ukrainian subsidiaries, but it also amounted to a change in the UBO of the Ukrainian subsidiaries themselves, which was then recorded on the USR in Ukraine. As it was put at [67] of *Pulp Mill 1*:
- “From the analysis of the above provisions, it follows that if the transaction on the alienation of assets was carried out under the laws of a foreign state, it will become legally binding in Ukraine only after the relevant changes are made to the Unified State Register. This means that by entering information on the change of the ultimate beneficial owner of a legal entity into the Unified State Register on the basis of a foreign document on the disposal of assets, Ukraine officially recognises this legal fact, even despite the existing decision of the NSDC to impose sanctions on the previous ultimate beneficial owner.”
193. The Supreme Court then went on to explain that, since the entry of information into the USR on the change of the UBO of the Ukrainian subsidiaries from a sanctioned person to another person was an official recognition in Ukraine of the relevant facts, the state registrar must refuse to carry out such registration having regard to the purpose of the sanctions. It was said that, if the new UBO of a legal entity is already registered under the laws of a foreign country (in that case Austria), this did not mean that this fact was automatically recognised in Ukraine.
194. I agree with Mr Anderson that this part of the Supreme Court’s reasoning makes clear that the issue before it was one of recognition. The question was whether the transaction effecting a change in ownership of the Austrian parent should be recognised in Ukraine by recording the change of UBO in the Ukrainian register of Ukrainian companies (i.e., the subsidiaries). The analysis was that the consequences in Ukraine of what had occurred in Austria were incompatible with public order within Ukraine and could not therefore be recognised by a change in the USR in Ukraine.
195. Mr Anderson therefore submitted that the evidence of Ukrainian law shows that it is only if there is an effect on an asset in Ukraine that the sanctions bite at all. In the *Pulp Mill* cases, the court was only concerned with the Ukrainian subsidiaries and their UBO. Its interest in the Austrian holding company had nothing to do with the fact that it was an asset outside Ukraine to which the sanctions might have applied – they did not. Its only relevance was that the change of UBO of the Austrian holding company is what had the effect in Ukraine of changing the UBO of the Ukrainian subsidiaries. He said that this situation is quite different from the situation in the current case, if and for so long as the assets enforced against by the Bank remain outside Ukraine and are returned to Mr Bogolyubov outside Ukraine in the event of a successful appeal. In those circumstances there is no need for anything to be recognised in Ukraine and there is no Ukrainian effect on a Ukrainian asset. It followed that the approaches adopted in *Pulp Mill* simply do not apply.
196. This conclusion takes its force from the manner in which Mr Beketov deals in his 15th report with the paragraphs in *Pulp Mill 1* relied on by Mr Morrison. I accept Mr Anderson’s submission that his analysis of the Supreme Court’s decision is that sanctions are capable of having extraterritorial effect only where a mechanism for their recognition and enforcement in a particular foreign jurisdiction is put in place through

international cooperation. This is spelt out in paragraph [55] and the mandatory nature of Ukraine’s obligation to act only in accordance with international agreements is stressed in paragraph [57]. Nothing that is said in paragraphs [51] and [59] cuts across that qualification when read in the factual context applicable in that case.

197. In my view, Mr Beketov’s analysis is compelling for the reasons he gives. It is more consistent with the general approach adopted by the law of Ukraine in relation to extraterritoriality and reflects the decisions of the Grand Chamber I have identified. I shall come back to how such risk that this is wrong is proposed to be dealt with, but the final part of the jigsaw is whether there continues to be a risk that any of the assets against which the Bank might enforce if a stay were not to be granted might become subject to sanctions after enforcement by reason of any steps taken by the Bank during the course of the enforcement process, of which a transfer to Ukraine is the most obvious example.
198. Mr Bogolyubov also submitted that the Bank’s argument that he would be able to receive back assets even within Ukraine does not stand up to scrutiny. It was pointed out that Mr Beketov simply says that he does not agree that a breach or circumvention of sanctions would *necessarily* occur if the Bank were to return assets to him by agreement. It was also said that the NBU Letter is mere guidance which does not supersede Ukrainian caselaw, that its contents are now out of date (referring as it does to legal instruments which have, themselves, been superseded) and that it is expressly concerned with enforcement against the frozen bank accounts of a sanctioned person. It is said that it therefore provides no support for the proposition that a Ukrainian bank could credit the account of a sanctioned person as part of the unwinding of a wrongful enforcement process, because there is plainly a world of difference between the debiting of a frozen bank account in favour of a non-sanctioned creditor by Ukrainian authorities, and the payment by a Ukrainian bank in favour of a sanctioned entity.
199. The Bank’s short response to this part of the case was that the point did not arise because there was no question of enforcing against assets in Ukraine or returning Ukrainian assets back to the Individual Defendants in Ukraine. But I was shown two cases which gives some qualified support to the Bank’s position: resolution of the Commercial Court of the Odesa Region dated 21 July 2025 in case No. 916/159/24, *MTB Bank* and resolution of the Fifth Administrative Court of Appeal dated 6 January 2023 in case No. 420/17341/22, *Southern Tobacco Company*, the latter of which referred to and adopted what was said in the NBU Letter. Mr Anderson submitted that they confirm that, even if the proceeds of the assets enforced against were in Ukraine, it would be open to the Individual Defendants to sue the Bank for recovery of such proceeds based on any order of the Court of Appeal requiring the Bank to do so, and the existence of sanctions would not be a defence available to the Bank in those circumstances.
200. I think that there is some substance in that submission and it was supported by the evidence not just of Mr Beketov but also that of Mr Marchukov as well. As Mr Marchukov said:

“This means that, strictly speaking, there are no grounds to suggest that enforcement of judgments (including recognised foreign judgments) in Ukraine against or in favour of sanctioned persons is blocked.”

However, there is no decision of the Supreme Court which confirms that this is the case and, if this were to be the only argument available to the Bank as to why the Individual Defendants would suffer no irremediable prejudice absent a stay, the risk that this is not the law of Ukraine would have weighed slightly more heavily in the balance against the Bank than the argument it has based on the fact that the sanctions have no extraterritorial effect.

201. In recognition of the potential uncertainty in relation to the application of sanctions, there was a certain amount of correspondence between the parties on the question of how much comfort the Defendants could be given as to the risk of any return to Mr Bogolyubov being a breach of the Ukrainian sanctions regime. This culminated in a letter from Hogan Lovells to Enyo (copied to Fieldfisher) dated 3 October 2025, which gave the following confirmation:

“Pending the dismissal of your client’s application for permission to appeal (or, in the event that permission is granted, pending the outcome of any substantive appeal):

1. Our client is prepared to undertake that any enforcement proceeds are held in this firm’s (English) client account (the “HL Account”) to be held to the further order of the court.
2. Our firm will give a similar undertaking.
3. Our client agrees not to seize or otherwise obtain title to any non-cash asset, provided that, for the avoidance of doubt: (a) our client will be permitted to seek charges or other security over such assets and/or orders for sale; and (b) our client will be permitted to seek interim and final third-party debt orders (or their local equivalents), with any proceeds realised as a result of those orders being paid into the HL Account.”

202. The Defendants’ position was that this was good so far as it went, but it did not deal with an important point which they said mattered and which was then raised in a letter from Enyo dated 5 October: whether the Bank or Hogan Lovells would oppose the court making an order for return of any assets recovered as part of the enforcement process on the grounds that it would require them to act in breach or circumvention of the sanctions to which Mr Bogolyubov is or may in the future become subject. It was submitted that there was no good reason for the Bank not to confirm they would not do so in circumstances in which the Bank’s position was that there was no risk of breach.
203. In a subsequent letter Hogan Lovells confirmed that what they had said in paragraph 3 of their 3 October letter amounted to an undertaking, and that the Bank was also willing to undertake that it would not seek to sell any Ukrainian assets pending the final determination of the Defendants’ applications for permission to appeal or the dismissal of any substantive appeal for which permission is given. However, in answer to the confirmation sought by Enyo in their 5 October letter, it was said that the Defendants’ position was unreasonable, particularly in circumstances where any substantive appeal is unlikely to be determined for at least a year and potentially much longer. It was pointed out that the Defendants were protected by the fact that the court will make whatever order is appropriate and by the undertaking to hold any proceeds to the further order of the court.

204. Mr Anderson also confirmed in open court that the Bank's position is that, as the law stands, sanctions would not prevent the Court of Appeal from making an order for repayment, or the Bank from complying with an order for repayment in the event that the appeal is allowed. He agreed that this position could be explicitly recognised in this judgment. He accepted that the Bank would get short shrift if it sought to mount a sanctions-based opposition to an order to return the proceeds of any enforcement on a successful appeal, in circumstances in which the law in Ukraine remained unchanged.
205. In all these circumstances, I cannot say that there is no risk at all of a sanctions-related problem of the type relied on by the Defendants, but I do not consider that it has significant weight in the balance when assessing what order best accords with the interests of justice.

Stay: the arguments based on stifling and the balance of justice

206. The second argument advanced by Mr Bogolyubov in support of his application for a stay was based on stifling. Save in a very limited sense (see paragraphs 238 to 240 below), Mr Haydon did not run an argument on behalf of Mr Kolomoisky based on stifling, which was a realistic position to adopt, recognising as it did that the evidence did not demonstrate that Mr Kolomoisky does not have access to funds. He did make some submissions about the impact of Mr Kolomoisky being in prison and the effect that would have on his ability to do certain things, but for the most part they were concerned with the precise terms of the WFO and the DDO to which I shall come shortly. I did not understand that Mr Kolomoisky's imprisonment was relied on as a factor which in and of itself pointed towards the grant of a stay.
207. The strength of Mr Bogolyubov's stifling argument was affected by discussions between the parties during the course of the Second Consequential hearing. Those discussions were concerned with the nature and extent of a ring-fencing proposal designed to permit Mr Bogolyubov to pay his costs, the legal costs of the appeal and other English litigation and foreign proceedings to which he is subject, much of which relates to claims by the Bank itself. The underlying concept was that a sum should be ring-fenced in the client account of Mr Bogolyubov's English solicitors, Enyo, and excluded from the assets over which the Bank would otherwise be entitled to enforce its judgment. To this extent there would be a limited stay of execution to mitigate the risk that his appeal might otherwise be stifled, a factor which weighs in the balance when the court is considering the risk of injustice to each side if a stay is or is not granted.
208. There was some but not full agreement on the precise terms of the ring-fencing proposal and the extent to which it is capable of mitigating any prejudice to Mr Bogolyubov caused by the refusal of a general stay. I will come back shortly to deal with the specific issues on which the parties still disagree, for the most part in quite summary form, but I have reached the conclusion that the form of CO which I propose to make, and which I will describe in more detail shortly, is sufficient to give protection to Mr Bogolyubov's ability to pursue his appeal and his case in the other litigation to which he is a party. The consequence is that arguments based on the risk of stifling or other legitimate

prejudice to his conduct of litigation have little weight in determining the Individual Defendants' application for a more general stay.

209. The next question is to ask whether the Bank will suffer any specific prejudice if a stay is granted, by which I mean does it rely on something more than the starting point in every case which is that a successful litigant is not to be prevented from enforcing his judgment even though an appeal is pending?
210. Initially the Bank relied on the fact that it is of systemic importance to the Ukrainian economy and plays a vital role in funding the Ukrainian war effort. This means that the funding demands placed upon it are urgent. However, given that the Bank has now agreed that, for sanctions-related reasons, the proceeds of any enforcement should be held in Hogan Lovells' client account in England pending appeal, this is no longer a factor of any real significance as, for that reason alone, recovered funds will not be available for that type of use.
211. Of much greater weight is the likely effect of a stay on the Bank's ultimate ability to make a full recovery. The factors relevant to this consideration include the size of the judgment sum, the complexity of the corporate structures within which the Individual Defendants held their assets and the multiplicity of potential enforcement jurisdictions. These factors all point to the likelihood that the enforcement process will be lengthy. The Bank submitted that, for so long as it is precluded from enforcing the judgment sum, it is left in a peculiarly vulnerable position, not just from the risk of further dissipation of the Individual Defendants' assets (a risk which is mitigated but not excluded by the existence of the WFO), but also from the risk that other creditors may seek to enforce against the assets of the Individual Defendants while the Bank is precluded from doing so.
212. As to the first of those risks, in the Bank's evidence in opposition to the application for a stay, its solicitor, Mr Lewis a partner at Hogan Lovells, gave many examples in paragraphs 26 to 46 of his witness statement of the occasions on which findings I made in the Judgment gave support to a conclusion that the Defendants' conduct appeared to have been in breach of the WFO, including the funding by the Individual Defendants of the Corporate Defendants' defence and the non-disclosure of their interests in Primecap, Sanderlyn, Versala and Dilorsano. Another example of enforcement-related prejudice was the conclusions I reached on Mr Bogolyubov's conduct relating to the striking off and dissolution of certain BVI companies which I determined "provides some foundation for the Bank's belief that Mr Bogolyubov is behaving in a manner which is directed at making it more difficult for the Bank to enforce any judgment it may obtain". There was also late disclosure by Mr Bogolyubov of valuable receivables which only occurred after pressure from the Bank.
213. Those conclusions were of course reached applying the civil standard of proof having regard to the seriousness of the conduct. To that extent they do not demonstrate or prove that contempts of court have been committed because for that purpose the criminal standard is required. Nonetheless, and leaving aside Mr Lewis' contentions that an actual breach of the WFO has been proved, this section of his witness statement contains what I regard as highly material evidence in support of my conclusion that it would be wrong for the court to assume that the continuation of the WFO will provide the Bank with full protection from continuing dissipation. This is more particularly the case as the Individual Defendants have so far successfully opposed the Bank's

applications for recognition of the WFO in Cyprus and Switzerland, both being jurisdictions which are highly relevant to the Bank's enforcement efforts.

214. As to the second of the risks referred to in paragraph 211 above, the WFO does not of itself provide for security for the Bank's claim. It is therefore exposed to competition from other creditors until such time as it is able to obtain charging orders (and similar protection), which anyway in most jurisdictions requires a currently enforceable judgment debt. There is evidence that the Individual Defendants have other creditors for substantial sums (e.g., Mr Pinchuk who is said by Mr Bogolyubov to be a creditor of his for in excess of US\$100 million and his former wife who is seeking substantial sums in pending matrimonial proceedings). I also accept the submissions (a) that it is reasonable for the Bank to want to take steps as soon as practicable to protect itself in competition with other creditors and (b) that it is possible that fictitious creditors seeking to stymie legitimate enforcement by the Bank might emerge.
215. I have formed the view that, in all the circumstances there will be real and material prejudice to the Bank if it is not permitted to take steps to enforce the judgment it has now obtained. Weighing this prejudice in the balance against (a) the sanctions-related arguments which I have concluded are weak (more particularly in light of what I have explained in paragraphs 201 to 204 above) and (b) the stifling arguments the significance of which have for all practical purposes been disposed of by the ring-fencing provisions in the CO, I have reached the clear conclusion that the solution which best accords with the interests of justice is to refuse the application for a general stay of execution, but to do so on terms for which the CO will now provide. I now turn to that issue, because some of the precise terms of the CO remain in dispute.

The Form of the Consequential Order

216. The parties have produced a document dated 13 October 2025 called List of Issues for Determination, which identifies the issues for determination on the face of the CO, the WFO and the DDO. At the same time they also circulated new versions of the CO, the WFO and the DDO together with further supplementary written submissions (from which it is apparent that some of the points in the parties' skeletons for the hearing have fallen away, while some different ones have emerged). All of this material, which has also been supplemented by further correspondence, was produced after the conclusion of the Second Consequential hearing. I had hoped that the issues would have been narrowed much more than has proved to be the case and that it would be possible simply to accept or refuse to accept particular forms of words so that the order could then be sealed. Unfortunately the number and nature of issues in dispute means that this is not practicable and so a yet further version of the CO, the WFO and the DDO will have to be drawn up, having regard to the points of principle which I shall now determine.
217. Some of the matters still in issue on the latest draft of the CO have been resolved by determinations made elsewhere in this judgment (e.g. the precise amounts of the judgment sum and interest). The remaining outstanding points on the CO relate to the ring-fencing proposals and the stay more generally, to which I can now turn.
218. The first question arises on one of the recitals and is whether Mr Bogolyubov should be required to undertake (a) to use all reasonable endeavours or (b) to use best

endeavours to take the steps identified in the penultimate recital to the CO. In broad terms this recital relates to the procedures he is to adopt for the transfer of cash and the proceeds of other assets to what is called the New Enyo Account. In my view the appropriate language is “all reasonable endeavours”, recognising that in this particular context that may require Mr Bogolyubov to incur reasonable expenditure to ensure that the steps he has undertaken to take are indeed taken.

219. The next question relates to the time periods within which Mr Bogolyubov will undertake to liquidate certain assets and transfer the proceeds of them into the New Enyo Account (also referred to in the penultimate recital to the CO). The Bank seeks 21 days, while Mr Bogolyubov seeks 28 days for three listed categories of asset and 36 days for assets held with UBP Switzerland and ING Bank. While I appreciate that Mr Bogolyubov has had the benefit of the period until the CO is made in order to make arrangements for the transfer, I accept that it is possible that there may be difficulties if a sealed order is not available particularly in respect of assets subject to freezing orders in local jurisdictions and the need for consent from the local regulatory bodies. The evidence as to this is not fully particularised, but there is enough to justify the longer periods sought by Mr Bogolyubov.
220. I have already explained my determination on interest for the purposes of paragraphs 2 and 3 of the draft CO. As I do not propose to grant a general stay, the proposals to extend time for payment of the judgment sum until after determination of the appeal will not be included in the CO and so the question of whether they should be 14 or 28 days thereafter do not arise. At the beginning of this judgment I explained that I could see no good reason to extend the standard period for payment of the judgment sum beyond the 14 days for which provision is made by CPR 40.11.
221. The next issue relates to living expenses being the first purpose for which the ring-fenced funds are to be used (CO, paragraph 3E(2)(a)). This is also an issue which arises on the form of WFO. The version of the WFO made by the Court of Appeal earlier in these proceedings allowed Mr Bogolyubov £151,600 per month. The court is required to consider what is just when setting the right figure, although the burden of persuasion is on Mr Bogolyubov as the facts relevant to his assets and spending requirements are within his own knowledge and not that of the Bank. The court must make its assessment having regard to a range of factors including whether there are assets not caught by the freezing order which could be used to make the relevant payments, and whether the Court has received complete disclosure of Mr Bogolyubov’s asset position.
222. The Bank also submitted that there was reason to believe that Mr Bogolyubov has been spending funds well in excess of this allowance and has not disclosed where the resources used to discharge those living expenses have been paid from. I accept that there is evidence to that effect, although I do not think it is either necessary or appropriate to make detailed findings as to the respects in which he personally might have expended more than the Court of Appeal’s allowance since the order was made in 2019. It suffices to say that there are credible indications that he may have done so, not least because the source of the cash said to have been used to pay many of his expenses to date is opaque and the means by which he has funded the maintenance of some of his assets such as the ‘Lauren L’ and a flat in Cyprus is difficult to understand.
223. Nonetheless, having regard to the concerns the court has about the incomplete nature of the information on the way Mr Bogolyubov has been funding his lifestyle since the

WFO was first made, the only question is what is a reasonable figure taking into account the fact that he is now a judgment debtor with enormous undischarged liabilities, albeit subject to an application for permission to appeal. In my view the right figure is £30,000 per month, which is significantly less than the amount which Mr Bogolyubov was originally permitted to spend, but is in my judgment appropriate in light of the evidence and the stage which the proceedings have reached. This will therefore be the figure for inclusion in both the CO and the WFO.

224. The next issue relates to the total amount that has been ring-fenced for legal fees and expenses and what Ms Montgomery called “the specificity which is required in order to identify payments that can come out of the ring-fenced amount”. There are a number of aspects to this and the differences between the parties are identified in the draft of the CO at paragraphs 3E(2)(b) and 3E(3).
225. The first is whether there should be a breakdown on the face of the order of the amounts to be applied in payment of legal costs and expenses relating to particular sets of proceedings, which is the solution for which the Bank contends, or whether a single composite total ought to be included. At the time of the Second Consequentials hearing, Mr Bogolyubov was seeking US\$23 million by reference to the nine itemised categories of legal expenditure to September 2026 as described in paragraphs 54 and 55 of Mr Maling’s 19th witness statement (“Maling 19”) and paragraphs 15(ii) and 15(iii) of Mr Maling’s 21st witness statement (“Maling 21”). The figure which the Bank says should be allowed as the aggregate of the nine categories of legal expenditure other than the costs of compliance with the CO, WFO and DDO is £14,745,000. Ms Montgomery submitted that the component elements of this figure advanced by the Bank were all reached by what she characterised as an arbitrary reduction in the amounts that had been identified by Mr Maling so as to produce a number that is almost exactly half of what had been asked for. Since the conclusion of the Second Consequentials hearing, Mr Bogolyubov has written to Hogan Lovells and the court seeking a further £1.5 to £2 million to enable him to defend new proceedings which the Bank commenced on 23 October 2025 against Mr Bogolyubov and his brother-in-law, Mr Stanislav Sheykhetov, for declarations relating to the ultimate beneficial ownership of certain interests in Hotel Split.
226. In my view, the estimates made in Maling 19 and Maling 21 are the appropriate starting point. They are made by a solicitor who has clearly advanced them in good faith, albeit on the basis of estimates produced by other lawyers in relation to proceedings of which he does not have the conduct. Bearing in mind that I cannot rule out the possibility that Mr Bogolyubov may have access to other sources of funding for payment of these fees, I nonetheless think that these estimates should only be reduced if it can be seen that they are overdone. I reach that conclusion in light of the purpose for which the ring-fencing is being introduced (viz., to minimise the potential for prejudice to Mr Bogolyubov pending determination of his proposed appeals).
227. However, in agreement with the Bank’s submission, I think that permitted expenditure must be identified as having been quantified by reference to the particular categories of legal expenditure identified in the language suggested by the Bank. The reason for this is so that there is no doubt as to how the total has been arrived at. For the avoidance of doubt the amounts to be included in the body of CO paragraph 3E(2)(b) based on Mr Maling’s evidence should be as follows:

- i) £1.9 million in respect of the costs of any appeal in these proceedings;
 - ii) £1 million in respect of the costs of the s. 423 proceedings referred to at paragraphs 54.2 and 54.3 of Maling 19;
 - iii) US\$13.75 million in respect of the Delaware proceedings referred to at paragraphs 54.4 and 75 to 77 of Maling 19;
 - iv) US\$4 million in respect of the Shulman proceedings referred to at paragraphs 54.5 and 78 to 80 of Maling 19;
 - v) US\$1.13 million in respect of the Israeli proceedings referred to at paragraph 54.6 of Maling 19;
 - vi) €130,000 in respect of the Cypriot proceedings referred at paragraph 54.7 of Maling 19;
 - vii) £310,000 in respect of the family proceedings referred to at paragraph 15(iii) of Maling 21;
 - viii) €500,000 in respect of the extradition proceedings referred to at paragraph 15(ii) of Maling 21; and
 - ix) A contingency of £500,000 for other legal proceedings, which in my view should be drafted in a manner which enables a top-up to be applied to one of the preceding eight categories of expenditure as well as other legal proceedings more generally.
228. The position is more complicated when it comes to the application for an additional ring-fenced fund in relation to the new proceedings against Mr Bogolyubov and Mr Sheykhetov. It is said on behalf of Mr Bogolyubov that it is unsatisfactory that the Bank had not raised the fact that these proceedings were already intended by the time of the Second Consequential hearing. It is said that, if they had been raised as imminent at that stage, a further sum to be added to the ring-fenced amount would have been sought. By way of response, the Bank pointed out that Enyo have not yet been instructed to act or accept service in relation to these proceedings and it is clear from the correspondence that their estimate is only very approximate. It is also said in the Bank's further Note to the Court that there may be additional headroom arising out of developments in the Shulman proceedings. Taking into account all of these considerations, I think that at this stage the appropriate course is to add a further £500,000 to the figures to be included in the body of CO paragraph 3E(2)(b).
229. I should add that the opening words of paragraph 3E(2)(b) of the CO contemplate a single aggregate figure to be identified as the relevant element of the ring-fenced funds either currently in or to be transferred into the New Enyo Account. That amount should be included as a figure in sterling amounting to the aggregate of the nine categories of legal expenditure using an exchange rate for the US\$ and € amounts for the day before the order is made.
230. In light of the fact that the permitted expenditure has been quantified by reference to the allocations I have identified (based as they are on Mr Bogolyubov's own evidence),

I think it is appropriate for the notification provisions in CO, paragraph 3E(2)(b) to extend to an obligation to notify Hogan Lovells of the legal proceedings to which each particular element of expenditure relates. It is accepted that payees should be identified, which in a number of instances will immediately identify the general purpose of the expenditure and I do not see that there is any principled distinction between that situation and the breakdown in relation to Enyo's fees. I think that this level of policing is justified at this stage, and I do not consider that this limited further information is likely to give rise to any privilege issues. The Bank's suggested language in the 4th last line of CO, paragraph 3E(2)(b) should therefore be included although the words "without prejudice to any claim to privilege," should be inserted between "and" and "where".

231. However, the fact that notification of the type sought by the Bank is necessary for some level of control over legal expenditure does not mean to say that Mr Bogolyubov should be restricted by paragraph 3E(3) of the CO from using the funds referred to in one of the sub-paragraphs to 3E(2)(b) on legal costs relating to proceedings described in another of the sub-paragraphs to 3E(2)(b). In my judgment this would be too restrictive and the appropriate balance is struck by the fact that the notification procedures mean that the Bank will know where this has occurred and can apply if it is being abused. This result can be achieved by not including "(i)-(viii)" after (b) in the second line of the 13 October draft of the CO.
232. The next question is what should be ring-fenced for the purposes of paying legal costs fees and disbursements required to comply with the CO, the WFO, the DDO and any other order made in these proceedings (CO, paragraph 3E(2)(c)). At the time of the oral argument at the Second Consequential hearing the issue was should it be £12 million (Mr Bogolyubov's position) or should it be £2.9 million (the Bank's position)? At first blush Mr Bogolyubov's figure seemed to be extraordinarily high. Ms Montgomery submitted that it was all down to the very large number of foreign asset-holding corporate entities (306 of them) which needed to be kept alive to ensure compliance with the terms of the WFO. She illustrated this by reference to a schedule that those fees included such work as an annual monitoring fee charged by the agent and annual fees for the provision of a registered agent, a registered office address, a secretary, a director and two nominee shareholders for an identified period.
233. Having regard to the nature and extent of the relief sought by the Bank, the new version of the WFO and the DDO and also taking into account the underlying purpose of the ring-fencing provisions, I have reached the clear, albeit reluctant, conclusion that Mr Bogolyubov's figure is the right one to include, subject only to the fact that I disagree with Mr Bogolyubov's proposal in relation to the Emmetica Holdings £500,000. I recognise that the amount seems extravagant and I am conscious of the possibility that there may be an element of overcharging and that there may be other readily available sources from which the outstanding fees and the fees to be incurred may be capable of being paid. I also considered whether I should apply what would be a little more than an arbitrary reduction to reflect my scepticism of the true costs, but in the end determined that this was not the right way to proceed. In my judgment, it is in no party's interests for non-payment of what might appear to be the extravagant demands of the CSPs to result in either (a) further obfuscation of a proper understanding of the Individual Defendants' asset-holding structures or (b) unnecessary argument as to why it has been difficult or even impossible to comply with the terms of the WFO or the

DDO. In the absence of clear proof of other liquid resources, payment of these amounts is part of the price for the refusal of a general stay of execution and for facilitating full compliance with the WFO and the DDO.

234. I should add that, since the conclusion of the Second Consequentials hearing, it has become apparent that Primecap has gone into liquidation and (on 15 October) Hogan Lovells wrote to the court saying that this had an impact on the amount to be set aside for its assistance. They sought a substantial reduction given that £2.1 million of the £12 million related to historic fees due to what was a company now in liquidation and should not have to be paid. The difficulty with this submission is that the liquidators have informed Enyo that they will only assist going forward if the historic debt is discharged. I cannot say that this is a contrived position, and so it seems to me that the intervention of the Primecap liquidation does not affect the right answer.
235. I determine the remaining points on paragraph 3E of the draft CO as follows:
- i) The first £1 million from the Enyo Client Account may be allocated to the costs of compliance (3E(2)(c));
 - ii) The £500,000 may remain in the account in the name of Emmetica Holdings, but only if it is deducted from the £12 million (3E(2)(c) and Schedule B(1));
 - iii) 3E(2)(d): In the light of Enyo's recent letter of 4 November the reference to £300,000 both in this paragraph and in Schedule B(2) is to be replaced with £231,637.71 (an amendment which I understand to be agreed between the Bank and Mr Bogolyubov). The words "if consent is given" are to be included where they appear in the penultimate line of the paragraph 3E(2)(d) of the 13 October draft of the CO.
 - iv) The language of paragraph 3E(6) is to reflect my refusal of permission to appeal. This means that the first phrase in italics can be deleted but the second phrase in italics is to be included.
 - v) 3E(7): The issue on this paragraph of the draft CO may have been superseded by what is said in the recent letter from Enyo dated 4 November which explains that the Torcensta funds have now been transferred to Enyo's client account. If that is wrong, and given the time which has already expired, the time for compliance is to be 14 days from the date the order is sealed. Given the sums at stake, I had initially considered that the amounts currently in the Enyo client account should be shielded from enforcement even if the proceeds of the Schedule A(1) and (2) assets are not paid into the New Enyo Account within 14 days. However on reflection I think that would be the wrong approach. The situation contemplated in paragraph 3E(7) is one in which the ring-fencing structure put in place to avoid prejudice to Mr Bogolyubov in the context of his application for a stay has failed through his non-compliance with its terms. I agree that, in that situation, enforcement should be permitted on assets held in the jurisdiction including the Enyo client account funds, more especially because there will (ipso facto) be assets available to him outside the jurisdiction (i.e., the Schedule A(1) and (2) Torcensta assets) which can be used to prevent stifling.

- vi) The dispute on paragraph 3E(9) raises the question of how much of the funds in the Enyo Client Account and the proceeds of the Schedule A(1) and (2) assets Mr Bogolyubov is permitted to use for payment of legal fees pending the transfer of the Schedule A(3) Barclays Westcliffe asset. As to which (i) given the relatively short time for which this will be operative, the Bank is correct to say that the £1 million figure should be included and (ii) Ms Montgomery explained that the answer to this is affected by the amount which I have said can be ring-fenced for compliance purposes. I think that is correct and so the figure should be 50%.
 - vii) Paragraph 3E(10): Notwithstanding the time which has already expired, the time for compliance with the obligation to pay the proceeds of the Schedule A(3) Barclays Westcliffe asset into the New Enyo Account is to be 28 days from the date the order is sealed.
236. Paragraph 3F of the draft CO contains a form of words explaining the parties' intention to agree a charge over the New Enyo Account. The language has very recently been agreed, and I am not therefore asked to resolve any dispute in relation to it.
237. The figure for interest that I have already determined to be payable by the Corporate Defendants (paragraph 55 above) is to be included in paragraph 4 of the draft CO and the time for payment will be 14 days as anticipated by paragraph 5 of the draft CO.
238. Paragraph 4C raises an issue on the question of how much of any sums transferred to Fieldfisher's client account in accordance with paragraph 4A should be ring-fenced for Mr Kolomoisky to use to fund legal fees and to enable compliance with the terms of the WFO and the DDO. The amount to be paid in accordance with paragraph 4A is Mr Kolomoisky's share of certain assets held jointly with Mr Bogolyubov at UBP Switzerland and ING Bank. They are listed in Schedule D to the CO and are three of the four assets identified as "Other assets subject to the Second Defendant's undertaking" listed in Schedule C to the CO (see paragraph 219 above).
239. Mr Haydon said that the entirety of the sums transferred should be ring-fenced, while the Bank submitted that the ring-fence should be limited to 50%. Mr Kolomoisky submitted that, if the whole amount was not to be ring-fenced, it should be the first £3 million of any sums transferred. Since the conclusion of the Second Consequentials hearing Fieldfisher have written to explain that 50% of what they understand to be Mr Kolomoisky's interest in the assets in Schedule C is not enough to cover their outstanding fees and Mr Kolomoisky's future legal fees and expenses in relation to any appeal in these proceedings and compliance with the CO, the WFO and the DDO and any other orders of the court in these proceedings.
240. In my judgment the alternative order sought on behalf of Mr Kolomoisky is the correct order and, on such evidence as there was, serves to extinguish any stifling argument there may have been. Mr Kolomoisky should be permitted to use up to £3 million of his share of the Schedule C / D assets to fund Mr Kolomoisky's legal expenses as described in Fieldfisher's letter, with any excess to be transferred to Hogan Lovells in partial satisfaction of Mr Kolomoisky's costs liability under paragraph 9 of the CO.
241. Paragraphs 9(1) to 9(5) are to be completed to reflect the determinations I made earlier in this judgment. Paragraph 9A is to be deleted. Paragraph 10 is to provide for the

parties to have permission to apply on the papers for determination of the costs of the applications made at the Second Consequential hearing. The parties are urged to make every effort to agree an appropriate order.

The form of the Worldwide Freezing Order

242. The next series of issues relates to the WFO. The Defendants accept that, as a matter of principle, a WFO should continue in force post-judgment, but there are a large number of detailed points on the precise terms of the order to be made, which the parties have not been able to agree. In determining these issues I have well in mind that, even after judgment, the WFO is directed at preventing unjustified disposition and the WFO itself is not intended as a safeguard against insolvency or as a means of providing security for a claim: *Les Ambassadeurs Club Ltd v Yu* [2021] EWCA Civ 1310 at [14] to [17]. Indeed the fact that it does not have that purpose is one of the reasons why the Bank was justified in submitting that it would be significantly prejudiced if a general stay pending appeal were to be granted.
243. The first point is that, in light of my refusal to grant a general stay, the words in square brackets at the end of paragraph 6 of the draft WFO should be deleted.
244. The next issue arises on paragraphs 9(b), 11(b) and 12A of the draft WFO. The question is whether the ‘Lauren L’ should be required to return from Montenegro to the European Union, the United Kingdom or Monaco by 31 December 2025, which is the Bank’s position or 1 May 2026 with an update on the 18th of December 2025 which is Mr Bogolyubov’s position. I indicated during the course of the hearing that I hoped that this matter could be dealt with by agreement between the parties, but unfortunately that does not seem to have been possible.
245. Having regard to what is said on this subject in the evidence from Mr Maling and Mr Lewis, in my view the Bank has not established that the proposals made by Mr Bogolyubov are unreasonable or that there is a special risk to this asset if his proposals are not implemented. I consider that Mr Bogolyubov’s version of the Yacht Restrictions should apply so that the ‘Lauren L’ may be docked in Montenegro until 1 May 2026 and the instructions to the captain and crew may be formulated accordingly. I did not understand that the italicised and highlighted periods in paragraphs 11 and 12 of the draft WFO were in issue and I am content to include that language.
246. The next question on the draft WFO is whether Mr Bogolyubov should be required to identify the amount and purpose of expenditure on legal fees or simply the amount and the payee. Consistently with the ruling I have made on the language of paragraph 3E(2)(b) of the CO, the Bank’s wording at the end of paragraph 14(a) of the WFO is to be included.
247. The next question arises on the language of paragraph 14(b) to the draft WFO. Should Mr Kolomoisky, who is in prison, be permitted to spend up to £2,000 per week on living expenses or only a reasonable sum to be determined by the court and should he be required to keep receipts? Mr Haydon had no instructions on the amount actually required but sought £2,000 per week. In my view this is very substantial for someone who is imprisoned. As I have very little detail of why it may be required and Mr

Haydon has no clear instructions, I think that the right figure is a reasonable sum up to £1,000 per month, but I consider that the provision for receipts is disproportionate in all the circumstances.

248. In the context of the ring-fencing provisions in the CO, I have already ruled on Mr Bogolyubov’s ordinary living expenses. I consider that £30,000 per month is the right figure. I do not think that receipts are required at this stage and in my judgment Mr Bogolyubov’s suggestion that he should provide a monthly breakdown of any items in excess of £1,000 is sufficient and proportionate for policing purposes.
249. Paragraphs 15 to 20A of the draft WFO relate to the preservation of companies. There are a number of miscellaneous disputes in relation to the appropriate language on which I rule as follows:
- i) I can see no good reason why the obligation in paragraph 15 should only run from 5 December 2025. The mere fact that this is the final date from which the obligation to disclose companies worth more than £100,000 arises is to take effect does not affect my view, because the obligations are qualitatively different and are not linked in the manner in which Mr Bogolyubov’s submission assumes that they are. In any event the paragraph 15 obligation will be to use all reasonable endeavours. In my view it should commence with immediate effect.
 - ii) I think that Mr Kolomoisky should be under the same obligation as Mr Bogolyubov, which means that the references to the First Respondent must be included in paragraphs 15 to 20A. The language in paragraph 15 should be “all reasonable endeavours”, recognising (a) that in this particular context this language may require each of the Individual Defendants to incur reasonable expenditure to ensure that the steps are indeed taken and (b) that what is reasonable for Mr Kolomoisky to do may be affected by his imprisonment.
 - iii) The timing in paragraph 15(c) should remain at two clear working days for Mr Bogolyubov, but should be 14 days for Mr Kolomoisky. The language requiring the discovery to be that of the Individual Defendants personally or their solicitors is to be included, although the phrase should be “is discovered by or comes to the attention of”. I do not agree with the Bank’s submission that phrased in this way, the obligation is cut down to nothing and the unqualified language suggested by the Bank is insufficiently precise.
 - iv) The Bank’s language at the beginning of paragraph 17 of the draft WFO is to be included.
 - v) Mr Bogolyubov’s suggested language in the opening words of paragraph 19 should not be included but the language suggested by both Mr Kolomoisky and the Bank in paragraph 19(a) should be included. This adequately deals with the appropriate proviso and provides for further time to Mr Kolomoisky in recognition of what is said to be the impact of his imprisonment.
 - vi) I agree with the reasons advanced by Mr Bogolyubov in paragraph 10 of the Note on the Order dated 13 October 2025 that the Bank’s proposed paragraph 19(b) is not necessary in the light of his other obligations. I also think there is

force in the submission that it would be disproportionate and potentially unworkable. It should not be included.

- vii) The language for 20(b) suggested by Mr Kolomoisky is to be included. It provides him with an appropriate degree of further time in recognition of what is said to be the impact of his imprisonment.
 - viii) As to the issues which arise on the BVI Orders and the ability of the Individual Defendants to oppose the appointment of a receiver for the purpose of restoring any companies in which they hold an interest or which otherwise holds assets for them, I do not agree with Mr Bogolyubov's submission that it would extend to receivership appointments for any other purpose. In the light of this and, given the history of the manner in which companies associated with the Individual Defendants have been struck off or dissolved, I think that the right solution is to include the Bank's language for paragraph 20A. In these circumstances, I understand it to be accepted that the BVI Orders can be set aside, which on the face of it seems to me to be a sensible course. This means that paragraph 20AA (and the third recital at the beginning of the WFO) should also be included.
250. Turning to the provisions on preservation of receivables, paragraph 21 of the draft WFO must include Mr Kolomoisky and must use the language of "all reasonable endeavours" recognising (a) that in this particular context that may require each of the Individual Defendants to incur reasonable expenditure to ensure that the steps are indeed taken and (b) that what is reasonable for Mr Kolomoisky to do may be affected by his imprisonment.
251. As to the points of principle on paragraph 22 of the draft WFO, the first point is that Mr Kolomoisky objects in principle to the calling in of debts on account of his application for a stay of execution pending appeal. In my judgment this objection is not well-founded. The structure of paragraphs 22 and 22A imposes obligations which are reasonably required to minimise the prospects of the recovery of debts becoming statute barred, which objectively speaking is for the benefit of all parties. It is drafted in such a manner as will give rise to the least intrusion practicable in the ability of the Individual Defendants to deal with their receivables in a legitimate manner and enhance the prospects of them continuing to be available for enforcement in due course.
252. The next question relates to timing under paragraphs 22(b) and 22(c) of the draft WFO. The Bank seeks 28 days and Mr Bogolyubov seeks 3 months because of the need for accounts to be prepared. In light of the time which has already elapsed, the right time period is 56 days. The second aspect is how the obligations affect Mr Kolomoisky. This is unclear because the opening words of paragraph 22 do not work as introductory language for all of the sub-paragraphs. The opening words originally suggested by Mr Bogolyubov worked better, because using the phrase "the following steps shall without limitation be taken" would then enable there to be a proper focus on which of the sub paragraphs relate to Mr Bogolyubov and which relate to both of the Individual Defendants.
253. So far as Mr Kolomoisky is concerned, the drafting should reflect the fact that his obligations in paragraphs 22(a), 22(c), 22(d) and 22(e) are "all reasonable endeavours" obligations recognising as before that this may require him to incur reasonable

expenditure to ensure that the steps are indeed taken and that the timescale within which it may be reasonable for him to take any step may be affected by his imprisonment. While I accept that the evidence shows that Mr Kolomoisky's ability to instruct lawyers to commence legal proceedings is compromised by his imprisonment, I do not agree that he is not in a position to give appropriate (and if necessary, general) instructions on which his lawyers can act to ensure that limitation periods do not expire.

254. Paragraph 22(d) of the draft WFO: in my view the Bank's wording is the right language to include. It is appropriate for the Bank to be required to consent to proceedings not being taken, but that is subject to a proviso that the Bank's consent must not be unreasonably withheld. This latter provision is important and ensures that an appropriate balance has been struck in the processes required for preserving the value of uncollected receivables.
255. As I understand it, Mr Bogolyubov agrees to the Bank's language in paragraph 22(e) of the draft WFO, but it must be revised to reflect the general point made in paragraph 250 above in relation to Mr Kolomoisky.
256. As to paragraph 26 of the draft WFO, it is appropriate that it imposes a forthwith obligation on Mr Bogolyubov. However, for the reasons I have already addressed the obligation on Mr Kolomoisky must be that he is to take all reasonable steps to deliver or procure the delivery of the identified items. The language should be "The First Respondent shall use all reasonable endeavours to forthwith deliver and the Second Respondent shall forthwith deliver ...".
257. As to paragraphs 28 and 29 of the draft WFO, I do not accept that what is likely to be a very onerous disclosure exercise is necessary or proportionate for the purposes of preserving material relating to the identification or preservation of assets against which the Bank may wish to enforce its judgment. I consider that it is insufficiently focused on the particular individuals who are likely to have information in relation to particular types of asset and why it is appropriate for communications with them to be enumerated or searched for at this stage of the proceedings. It seems to me that the Bank's request for this category of relief is disproportionate, anyway at a stage prior to the determination of the Defendants' proposed appeal.
258. Paragraph 30 of the draft WFO relates to Mr Bogolyubov's obligations to take steps under the draft WFO which require expenditure. Mr Bogolyubov agrees that, once the funds identified in paragraph 3E(2)(c) of the CO are spent, and provided that the Bank's consent or the court's permission is obtained, he should look to any of his available non-ring-fenced assets to defray such expenditure. With some hesitation, more particularly in light of the fact that the court's permission is included as an alternative to the Bank's consent, I have concluded that the wording suggested for insertion by Mr Bogolyubov is the right order to make.
259. The next issue gives rise to a more substantial point of principle. It relates to the language of paragraph 38 of the draft WFO in respect of which the Bank seeks two changes to the standard *Babanaft* proviso, i.e., the proviso which identifies the categories of person outside the jurisdiction of the court who are, and those who are not, treated by the order as affected by it. The relevant part of the *Babanaft* proviso in the form used in the model order now prescribed by CPR 25.14(1) reads as follows:

“The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court:

...

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state”.

260. The Bank's proposal, contained in paragraph 38(b)(iii) of the draft WFO, is that it should take the following amended form:

“The terms of this Order will affect the following persons in a country or state outside the jurisdiction of this court:

...

(iii) any other person (including, without limitation, the persons identified in schedule B), only to the extent that this Order is enforceable pursuant to Article 39 of Regulation (EU) No. 1215/1212 in that country or state, or is declared enforceable by or enforced by a court in that country or state.”

261. Schedule B contains a list of 144 individuals. The evidence is that the list comprises the Individual Defendants’ nominees who hold interests in assets on their behalf, as identified in their asset disclosure and subsequent correspondence together with previously undisclosed nominees and other individuals identified in the Judgment as having played a significant role in administering the Individual Defendants’ assets. It was not said on behalf of the Individual Defendants that this was not the case. The Bank submitted that it is appropriate for them to be named in this manner because they will be bound by the freezing order once it is enforceable or enforced, that being the legal effect of the freezing order as it stands. It is important that these individuals, who administer assets worth huge sums of money held within Byzantine structures, understand that they are required to comply with the order when it is enforced. It is said that it is appropriate to impress on them the need to take their obligations seriously not least because they have demonstrated exceptional loyalty to the Individual Defendants.
262. Although the Bank has not identified any authorities where this form of order has been considered and approved in a reasoned judgment, I was shown an order made by Teare J on 23 November 2012 in *JSC BTA Bank v Ablyazov* in which Schedule H listed a large number of corporate service providers, registered agents, banks and liquidators who were specifically identified as other persons within the standard form of *Babanaft* proviso. I do not know the reason why Schedule H was included by Teare J in *Ablyazov* or whether there was any dispute as to whether or not it was an appropriate thing to do.
263. It was said by Mr Bogolyubov that adding language which specifically referred to particular individuals would cause those individuals great uncertainty. This was not accepted by the Bank on the basis that the individuals concerned hold assets for the Individual Defendants and cannot deal with them or should not be dealing with them otherwise than in compliance with the WFO. It was also said on behalf of Mr Bogolyubov that individuals so named may not be bound by the order, may refuse to take steps in relation to assets or may resign out of concern about the potential impact

of the WFO. But the Bank pointed out that what was sought to be achieved was a minimisation of the risk of dissipation, and a refusal to deal in relation to a legitimate transaction is something which can be dealt with by consent, while a refusal to deal in relation to an illegitimate transaction is precisely the sort of reaction which the individuals ought to have.

264. I think that there is substance in Mr Bogolyubov's submission to this extent. The relevant third parties are individuals not subject to the jurisdiction who may have legitimate concerns that they will be faced with proceedings for contempt in England if they do not comply with an order that may or may not be enforceable in their home jurisdiction. The inclusion of the schedule gives the impression to the named individuals that this court has determined that English law regards them as being affected by the order without more. For reasons that I will explain in relation to the second proposed change I do not consider that this is the correct approach to take.
265. The second proposed change would mean that the Bank does not have to obtain a declaration of enforceability by a foreign court where the order is enforceable pursuant to Article 39 of Regulation EU No. 1215/2012 ("Brussels Recast"), which is applicable because these proceedings were initiated before the end of the EU Withdrawal Agreement transition period. Article 39 reflects the abolition of the exequatur set out in the earlier 2002 version of the Judgments Regulation. As Article 42 of Brussels Recast explains, all that an applicant now needs to do is provide the competent enforcement authority with a copy of the judgment and a certificate confirming its enforceability. Article 39 provides that:

“[a] judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.”
266. Articles 45 and 46 of Brussels Recast then provide for a process by which the foreign court can (on a number of identified grounds) refuse recognition on the application of any interested person and can refuse enforcement on the application of any person against whom enforcement is sought. These grounds are similar to the grounds on which an exequatur could have been refused under the earlier versions of the Judgments Regulation which were superseded by Brussels Recast in January 2015. The effect is that from a procedural perspective, the position has been reversed: pre-2015 a declaration of enforceability was required but could be opposed on certain grounds, while post-2015, a judgment was enforceable unless steps were taken to challenge it on what were essentially the same grounds.
267. The Bank seeks this second change against the background of the opposition with which it was faced in Cyprus when seeking to apply for standalone relief. In January 2023 it had sought permission from this court pursuant to the Dadourian jurisdiction to enforce the WFO in amongst other places Cyprus. On the Dadourian application, the Bank's explanation of why it had decided to seek a standalone freezing order from the Cypriot court, rather than rely on the automatic enforcement regime provided by the relevant provisions of Brussels Recast was driven in part by its evidence that no Cypriot case had decided that contempt proceedings can be brought in Cyprus in relation to a breach of an order that is automatically recognised, and it may be argued that this is impermissible. Having chosen to take the route of making a Dadourian application, this has not led to the result the Bank hoped for because, when it came to applying in

Cyprus, it was faced with what it has described as outright opposition and lengthy delay, which it has not yet been able to overcome.

268. In response to the Bank's complaint about the Defendants' opposition in Cyprus, Ms Montgomery submitted that the Dadourian order was made without prejudice to Mr Bogolubov's right to oppose in any relevant country. In particular, she drew attention to the fact that, at the time the Bank sought Dadourian relief, the Bank's evidence made clear that third parties would be able to challenge the form of Cypriot freezing order to be sought.
269. The Bank also submitted that the inclusion of the additional words in the proviso is justified because there is said to be a lacuna in the standard form wording of the *Babanaft* proviso: it envisages that a declaration of enforceability will always be made by a foreign court, despite the fact that there has been no such requirement in EU jurisdictions since the Brussels Recast regime came into effect.
270. As to this last point, Mr Bogolyubov's case was that the Bank's proposal would amount to an exorbitant and extra-territorial exercise of the court's jurisdiction and that no authorities have been identified where this has been done. It was said that there was no lacuna, and that the rationale behind the standard form wording of the *Babanaft* proviso is not just that a WFO will not generally be enforceable overseas without an order of the foreign court. Rather, it reflects the fact that the English court has no personal jurisdiction over foreign non-parties, that it would be inappropriate as a matter of comity to attempt to impose obligations on persons abroad and that foreign courts may wish to impose protections as to the applicability of the WFO more particularly as against third parties who are not defendants and have not been served. It was also pointed out that Article 2(a) of Brussels Recast provides that protective measures are not judgments automatically enforceable under Article 39 where the order has been made without notice, unless the order containing the measure is served on the defendant prior to enforcement.
271. I am not satisfied that a WFO containing this second proposed change is an appropriate order to make, anyway in the present case. This is not just because I was shown no precedent where such an order has been made, although if the Bank were to be correct, that is surprising given the period of time over which Brussels Recast was in force in the United Kingdom. The more substantive point is that what is said to be the justification for adapting the proviso in the manner sought by the Bank does not engage with part of the underlying purpose of the proviso.
272. In *Bank of China LLC v NBM LLC* [2002] 1 WLR 844 at [17], Tuckey LJ said the following when articulating two general propositions applicable to a case in which the *Baltic* proviso was in issue:

“Firstly the limit of the court's territorial jurisdiction and the principle of comity require that the effectiveness of freezing orders operating upon third parties holding assets abroad should normally derive only from their recognition and enforcement by the local courts.”
273. One of the reasons that the role of the foreign court is important where the English freezing order may be enforceable against the defendants to the proceedings pursuant to Article 39 is that this court cannot anticipate the basis on which, as a matter of the

local law, the enforceability against the defendants has effect as against third parties such as the other parties named in Schedule B to the draft WFO who are on notice of it. This is the kind of issue with which a foreign court might be expected to engage when considering the effect on third parties of the WFO being enforceable abroad. It also makes it clear to the persons notified of the order that the local court to whose jurisdiction they are subject has accepted that the English order is enforceable in Cyprus, and that it may have consequences to them in Cyprus, notwithstanding that they are not parties to and have not been served with the application in which the English order was made. It seems to me that, if foreign third parties are to be potentially subjected to the contempt jurisdiction of the English court, it is important that they know with clarity when the order is capable of affecting them in accordance with its terms and that an important part of that clarity would be removed in any state where Brussels Recast has effect if the language proposed by the Bank is included.

274. During the oral argument I asked Mr Akkouch whether the effect of the order being enforceable against the defendants in (e.g.) Cyprus (which may well be the case as a result of Article 39) meant that it was possible to treat those who are notified of a freezing order in exactly the same way as if they were notified of it in England. He agreed that this was probably a matter of Cypriot law, but said that it did not matter because the only effect of the words which were included was to make it enforceable against third parties to the extent that it is in fact and law enforceable in Cyprus without a declaration by the Cypriot court.

275. I do not think that this is an answer, because (as explained in *Gee on Commercial Injunctions* at 19-057) whether non-parties are affected by the order is a different question from the question of whether the court has established jurisdiction over defendants to the proceedings. In my view, this gives rise to a more substantive objection to the Bank's proposal. As Nicholls LJ said in *Babanaft International Co v Bassatne* [1990] Ch 13 at [44]:

“It would be wrong for an English court, by making an order in respect of overseas assets against a defendant amenable to its jurisdiction, to impose or attempt to impose obligations on persons not before the court in respect of acts to be done by them abroad regarding property outside the jurisdiction. That self-evidently would be for an English court to claim an altogether exorbitant, extra-territorial jurisdiction.”

276. Both *Bank of China* and *Babanaft* were decided before Brussels Recast came into force and so the courts were not looking at a situation in which enforcement could be effective without a declaration of enforceability and it might therefore be said that this explained the language in the judgments which focused on the role of the foreign court. However, in my view, the judgments also made clear that the important point is not just that the order is enforceable in (e.g.) Cyprus against the defendants who have been served, and in respect of which this court exercises *in personam* jurisdiction. The decisions in *Bank of China* and *Babanaft* both emphasise that it would be exorbitant for the order of this court to have an effect on unserved third parties outside the jurisdiction over whom this court does not exercise *in personam* jurisdiction, save and insofar as the enforceability of the order flows from the order of a foreign court which does exercise *in personam* jurisdiction over them. This is entirely understandable in circumstances in which the impact with which the language of the *Babanaft* proviso is concerned is the effect on

unserved third parties who are not subject to the jurisdiction of this court rather than the impact on served defendants who are.

277. For these reasons I do not think it is appropriate to adapt the language of the *Babanaft* proviso in the present case. Of course, it is most unfortunate that challenges have been mounted to the Bank's attempts to obtain standalone relief in Cyprus and that the backlog for cases to be determined in Cyprus is as significant as I was told that it is. However, in the light of the rationale for the *Babanaft* proviso, I do not think that it is open to me to grant relief which might give the impression that this court is itself seeking to exercise jurisdiction over persons who are not in fact subject to its jurisdiction. In the light of that conclusion, and in any event because I prefer Mr Bogolyubov's submissions on the point, I also think it would be wrong to include Schedule B.
278. The penultimate point on the WFO arises on paragraph 41 of the draft and relates to fortification for the cross undertaking in damages. It was said by the Bank that, now it had obtained an enormous judgment against the Individual Defendants, fortification is no longer required. In support of this submission the Bank relied on the judgment of Picken J in *Kazakhstan Kagazy* at [147] in which the judge directed release of the fortification on the basis that the claimants had succeeded in a very substantial claim.
279. However Picken J went on (at [148]) to explain that it appeared that the defendants would in any event be liable to the claimants for a very substantial sum even if the main ground of appeal were to succeed. It followed that it was likely that a set off would be available against any claim in respect of the cross undertaking in damages. It is right that Picken J also said that "in any event, the Claimants having won so comprehensively in relation to the Claims, in my view, exercising what both Mr Howe and Mr Foxton acknowledge is a discretion, the right course is to release the fortification", but it seems to me that his whole approach was driven by the fact that, because of the potential for set off, it was not necessary for fortification to continue.
280. I was not asked to reconsider the original requirement for the cross undertaking in damages to be fortified, but I do not consider that its release at this stage is justified merely because the Individual Defendants have been held liable for very substantial sums. In my view, and given that the amount is US\$10 million, which is relatively modest in the context of this case, it is not right for the fortification of the cross undertaking in damages to be released at this stage. The position may well change if the application for permission to appeal (or if granted the appeal itself) is dismissed.
281. The final point on the WFO only emerged after my draft judgment was circulated to the parties. Mr Kolomoisky objected to the inclusion of the words "100% of the shares in" before the references to Sanderlyn Limited, Versala Limited and Dilorsano Consulting Limited in paragraph 5(c). It was pointed out, correctly, that this language had not appeared in any of the earlier drafts. Both for that reason, and because my findings in the Judgment in relation to those three companies were rather more nuanced than this language conveys, the words "100% of the shares in" will not be included.

The form of Delivery Up and Disclosure Order

282. The first issue on the DDO is whether the Individual Defendants should be required to deliver up share certificates and stock transfer forms to be held by the Bank's solicitors and if so whether what the Bank says should be an absolute obligation should be qualified as one to use all reasonable endeavours? There is also a question as to whether Mr Bogolyubov should be required to do so by 5 December 2025 or 5 February 2026 with Mr Kolomoisky being required to comply two months later.
283. The justification for this relief is that the evidence establishes that nominees for some at least of the Individual Defendants' shareholdings have given them documents (including declarations of trust and blank stock transfer forms) which evidence the nominees' obligations to act in accordance with their instructions. In the case of Mr Bogolyubov I was shown material demonstrating that the nominees had undertaken not to transfer, deal with or dispose of those shares save as they may from time to time direct and which indicated that the relevant share certificate together with a blank transfer form has been deposited with Mr Bogolyubov as the true owner. Neither of the Individual Defendants have asserted that the share certificates and stock transfer forms do not exist, but the correspondence with the Individual Defendants' solicitors relating to the disclosure and delivery up of this material has stalled and their location and how the documents are now held remains opaque.
284. Mr Bogolyubov objects that the relief proposed by the Bank is extremely intrusive and goes beyond freezing assets within the hands of the Individual Defendants and even beyond freezing relief by way of receivership in which the documents might be held by an independent officer of the court. It is said that actively handing over documents to the Bank's own solicitors requires particular justification and none has been offered.
285. The Bank recognises and indeed asserts that the order it seeks does not in itself grant any form of proprietary or security interest in the documentation or more importantly the underlying asset. That is only achievable by a process of enforcement in the jurisdictions in which the relevant documentation is held and/or the relevant asset is located. Notwithstanding, it is said on behalf of Mr Bogolyubov that it amounts to the first steps in executing the judgment debt against the Individual Defendants, which goes beyond the purpose of freezing relief and has become a process of equitable execution. Indeed it is asserted that the Bank's evidence suggests that is exactly what is intended. Mr Morrison also submitted that there may be sanctions-related questions around the ability of the Bank to return the documentation to the Individual Defendants if the court were ultimately to order their return, whether in consequence of a successful appeal or otherwise.
286. I accept that the order sought amounts to an interference with the Individual Defendants' rights to do as they please with their own property, but it seems to me that on the facts of this case, preservation of their interests in the companies to which this nominee documentation relates is required in the form which the Bank seeks. I agree with the Bank's submissions on this point and, subject to questions of comity and the timing issue to which I will revert shortly, I consider that an order should be made in the Bank's form of words set out in paragraphs 1 to 3 of the draft DDO. I also agree that this is an appropriate mechanism at this stage of the proceedings for preserving assets (i.e. the shares themselves) over which the Bank might be entitled to execute in due course and that the documentation referred to in the draft is likely to have come into existence in the first place to facilitate the rapid transfer of assets on the instruction of the Individual Defendants. The underlying assets are therefore at particular risk of

dissipation, a risk which is illustrated by the Bank's evidence to the effect that changes in the structures within which both of the Individual Defendants' assets are held have continued in circumstances in which there have been disputes as to whether or not the proposed changes were prevented by the WFO.

287. I also take into account the fact that Mr Kolomoisky's imprisonment may make it more difficult for him to comply with the order than would otherwise be the case. Nonetheless nothing that has been said satisfies me that he is unable to give the relatively simple instructions to others which will enable him to comply. I shall revert to the question of timing later.
288. In reaching that conclusion I have given careful consideration to Mr Morrison's argument that the order sought was an inappropriate use of WFO relief because it amounted to facilitation of enforcement, which in the case of documentation held abroad was exorbitant in terms of jurisdiction. In his oral argument he submitted that the decision of the Court of Appeal in *SAS Institute Inc v World Programming Ltd*. [2020] EWCA Civ 599 ("*SAS*") supported his position. This case was the converse of the current case because it was concerned with the question of whether the English court should permit an *in personam* enforcement order made by a court in California to be given effect in England (through the assertion of subject matter jurisdiction over English debts) even though enforcement of the original North Carolina judgment on which the California enforcement order had been based had already been refused by the English courts on the grounds of issue estoppel, abuse of process and public policy.
289. In his judgment, Males LJ (at [70] to [71]) explained that the English court will give effect to the principles established by *Société Eram Shipping Co Ltd v Cie Internationale de Navigation* [2003] UKHL 30 that, when making orders for the enforcement of its own judgments, it should respect the territorial jurisdiction of a foreign court over assets located in that jurisdiction. The execution of a judgment is an exercise of sovereign authority and it is a general principle of international law that one sovereign state should not trespass upon the authority of another, by attempting to seize assets situated within the jurisdiction of the foreign state.
290. It is said that it follows that, to the extent that assets over which the Bank wishes to enforce are located in a foreign jurisdiction, this court should not take steps towards enforcement over those assets. That would be to affect property abroad over which this court does not have subject matter jurisdiction, and is only permissible if the order is recognised and enforced by the courts in the state where the property is situated (see *SAS* at [74]). It was submitted that this principle would as a matter of substance be breached if this court were to make an order requiring the delivery up of share certificates and stock transfer forms to solicitors in England where those documents are not currently within the jurisdiction of the English court.
291. The Bank's answer to these submissions was that the order sought did not in any sense amount to enforcement or execution or even a step to that end. It simply operates as an order for the further preservation of assets to which the relevant documents relate, those assets themselves being located in a foreign jurisdiction, i.e., the place in which the shares in the relevant companies are located, which will almost certainly be the place of their incorporation. I accept this submission, because holding the documents concerned to the order of the court is simply restricting one of the means by which the underlying assets might be disposed of. It gives the Bank no proprietary or security

interest in the shares and does not of itself amount to a step by way of enforcement over the shares.

292. It seems to me that this conclusion is subject only to one possible point of principle. It is said on behalf of Mr Bogolyubov that one of the reasons it amounts to a step in enforcement is that it will enable the Bank to collect the documents in England thereby facilitating enforcement in due course when, as matters currently stand, the Bank would have to go to the jurisdiction in which the documentation is currently held to obtain appropriate relief. In reply Mr Akkouch submitted that this is not correct because, if in due course the Bank were to apply by way of execution for an order that share transfer documentation now located in England be filled in by Hogan Lovells (or indeed another officer of the court) as part of the process of seeking and enforcing a charging order over the shares, that could be resisted at that stage on the grounds that it was an attempt to procure the English court to take enforcement steps over an asset (the shares) located elsewhere.
293. I agree. As matters currently stand, the relief sought is simply an appropriate form of asset preservation order which, in the light of what is directed against the Individual Defendants, does not infringe the principles of comity with which the decision in *SAS* was concerned. It does not exceed the permissible territorial limits discussed in the judgment of Lawrence Collins LJ in *Masri v Consolidated Contractors International Co SAL* [2008] EWCA Civ 303, because the only effect of the order is to fortify the existing restrictions on disposition without any interference with the obligation of the Bank to go to the jurisdiction in which the shares themselves are located if and when it seeks to enforce against those shares in due course.
294. The Bank has adduced evidence from Mr Lewis, which explains how the documentation will be held by Hogan Lovells to the court's order, and has confirmed (as is apparent from the language of the order itself) that it is not permitted to do anything with the share certificates or stock transfer forms. I note that the Individual Defendants' own solicitors have not indicated that they are prepared to hold the documentation to the court's order and I am satisfied that the arrangements which have been put in place are sufficient for the purpose.
295. I do not accept the argument that there are sanctions-based reasons why the material should not be handed over to the custody of Hogan Lovells, because of the risk that the documents concerned cannot then be returned to the Individual Defendants in the event that this court directs that this is what should occur. For the reasons that I have already considered in the context of the application for a stay, I do not agree.
296. There is also some dispute about the time within which the documentation ought to be provided. Mr Bogolyubov now seeks 5 February 2026 (having originally proposed a deadline of 5 December 2025). The Bank still seeks 5 December. Having revisited Mr Maling's original evidence on the point and considered what Mr Morrison has said on instructions I think that the right date is 5 January 2026. I also consider that the right date for compliance by Mr Kolomoisky is 5 February 2026. In both cases the order will be to use all reasonable endeavours recognising as before that this may require them to incur reasonable expenditure to ensure that the steps are indeed taken and that the timescale within which it may be reasonable for Mr Kolomoisky to take any step may be affected by his imprisonment.

297. The next issue relates to the specific disclosure to be given by Mr Kolomoisky in accordance with the Bank's proposed paragraph 4 of the draft DDO as particularised in Annex 2. I am satisfied that the documentation is reasonably required by the Bank. It relates to very valuable assets in respect of which it is to be expected that the Bank is entitled to enforce its judgment and in my view it is proportionate for the specific disclosure to be made. However, I agree that the time within which specific compliance is sought by the Bank is unrealistic in the light of the enquiries which the order contemplates are to be made. I also accept (as contemplated by the language of paragraph 4(d) of the draft DDO) that it may not be possible for Mr Kolomoisky to act personally and that he may have to give instructions to others to comply on his behalf. In order to make the position clear the words "either personally or by direction to his solicitors" are to be inserted after the word "required" in the first line of paragraph 4(a).
298. There is a minor point on the form of Annex 2, which is whether the words "use reasonable endeavours to identify" should be included in paragraph 5 of the annex. In my view they are unnecessary because the whole of Annex 2 is qualified by the language of taking all reasonable steps and making all reasonable enquiries where they appear in the second and third lines of paragraph 4 of the draft DDO.
299. The date for compliance is to be 9 December 2025 and the nature of the obligation in paragraph 4(a) is to be "all reasonable enquiries" recognising as before that this may require Mr Kolomoisky to incur reasonable expenditure to ensure that the steps are indeed taken and that the extent of the enquiries which it is reasonable for him to make may be affected by his imprisonment. The words "by a month after the deadline" are to be included in paragraph 4(d) and the word to be included in the last sentence of paragraph 4(e) is "fortnightly".
300. The substance of the equivalent provision for Mr Bogolyubov (paragraph 5) has been agreed. However the date for compliance and the form of Annex 3 has not. The question is whether he should be required to go into the detail contemplated by paragraph 11 of Annex 3 or whether he should simply be required to provide the source from which he has met his living expenses and the total amount from each source. In my view, the obligation should extend to paragraph 11(1) of the Bank's draft but including a start date of 19 December 2017 and without including the words in parentheses. The proposed obligation in paragraphs 11(2) is disproportionate at this stage. As to the time within which this obligation must be complied with, I accept that the detail contemplated by paragraph 11 of Annex 3 will take some time to put together. However, I do not think that a further period just short of six weeks is required. In my judgment 28 days (i.e., by 8 December 2025) is sufficient.
301. The further disclosure to be given in accordance with paragraph 6 of the draft DDO is the next issue in dispute. I am satisfied that it is reasonable for the Bank to be granted this relief in relation to Mr Kolomoisky's UR and Non-UR Assets notwithstanding his imprisonment. Taking into account Mr Kolomoisky's imprisonment and the difficulties to which this may give rise for him in complying with the order, I think that the right time for compliance by Mr Kolomoisky is 5 December 2025 in relation to the Non-UR Assets and 5 January 2026 in relation to the UR Assets. Consistently with the language used elsewhere in the DDO, the nature of Mr Kolomoisky's obligation is to use "all reasonable endeavours" recognising as before that this may require Mr Kolomoisky to incur reasonable expenditure to ensure that the steps are indeed taken and that the extent of what he can do may be affected by his imprisonment. I consider

that the position is clearer if paragraph 6(a) is limited to the obligation imposed on Mr Bogolyubov while 6(b) should be limited to the obligation imposed on Mr Kolomoisky.

302. Mr Bogolyubov's solicitors (Enyo) have now written to explain some of the difficulties which he is having in complying with what he had previously agreed in relation to the identification of his UR and Non-UR Assets and seeking a further extension from the agreed 5 November 2025 deadline in relation to his Non-UR Assets. The Bank's solicitors have responded with a compromise involving the provision of an affidavit at this stage explaining the extent of the enquiries so far undertaken. Although I am sceptical about some of the reasoning in Enyo's letter, in my view the Bank's suggested rewording does not provide a satisfactory solution. The right answer is that Mr Bogolyubov should have until 5 December for his disclosure obligation in relation to both his UR and his Non-UR Assets.
303. As to the paragraph 7 obligation, the opening words of the paragraphs are to read "Henceforth, the First Defendant shall use all reasonable endeavours within two weeks and the Second Defendant shall within three days ..."
304. There is then a dispute over the form of paragraph 9 of the draft DDO which is concerned with the period of time which Mr Kolomoisky should have to disclose certain trust deeds, declarations of trust and other written records of trust and nominee arrangements. Again I am satisfied that in all the circumstances of the case, this disclosure is reasonably required by the Bank for the purposes of preserving the assets against which enforcement may be available. The timetable is agreed by Mr Bogolyubov, but not on behalf of Mr Kolomoisky for whom it has been submitted that it is too tight. Taking into account Mr Kolomoisky's imprisonment and the difficulties to which this may give rise for him in complying with the order, I consider that the obligation should again be to use "all reasonable endeavours" on the same basis as before and the right time for compliance is 5 January 2026 for his Non-UR Assets and 26 January 2026 for his UR Assets.
305. The next issue relates to the precise wording of the self-incrimination exception in paragraph 11 of the draft DDO. The wording included by the Bank derives from the model form of freezing injunction referred to in CPR 25.14. The wording suggested by Mr Haydon on behalf of Mr Kolomoisky more accurately reflects the language of section 14(1) of the Civil Evidence Act 1968. I doubt that in practice there is very much difference between the two forms of words, but I see no reason to depart from the wording now included in the model form.
306. The next issue relates to paragraph 11A(a) of the draft DDO. It is in the same form as paragraph 30 of the draft WFO and the same issue arises. I therefore give the same answer on the language to be included (see paragraph 258 above).

Conclusion

307. This judgment has had to deal with a very long list of issues remaining in dispute. In part its length is because of the complexity of some of the arguments raised on the applications for interest, permission to appeal and stay of execution. However it is also because of the very substantial number of miscellaneous outstanding disputes on the

forms of the CO, the WFO and the DDO, which impose very detailed obligations on the Defendants, but which were in a state of flux throughout the hearing and thereafter as counsel sought to narrow the issues. The final versions of the orders to be made will now be circulated to the parties with this judgment.

308. Any applications to me for permission to appeal against the determinations made in this judgment are to be made on or before 24 November 2025, and the Second Consequential hearing will be further adjourned to enable those applications (if made) to be determined. The parties are agreed that time for filing any appellants notices with the Court of Appeal will be extended to 21 days after the sealing of the CO, or in the event that an application is made to me for permission to appeal against the determinations made in this judgment, 21 days after determination of that application.