



Neutral Citation Number: [2025] CIGC (FSD)69

**GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 203 OF 2020 (NSJ)

BETWEEN:

ABDULHAMEED DHIA JAFAR

Plaintiff

AND

1. ABRAAJ HOLDINGS

(in official liquidation)

2. GHF GENERAL PARTNER LIMITED

(In its capacity as general partner of GHF Fund LP (formerly Abraaj Growth Markets Health Fund LP) and GHF Fund (B) LP (formerly Abraaj Growth Markets Health Fund (B) LP))

3. THE GHF GROUP LIMITED

(formerly The Abraaj Healthcare Group Limited)

4. ABRAAJ GENERAL PARTNER VIII LIMITED

(in its capacity as general partner of Neoma Private Equity Fund IV LP (formerly known as Abraaj Private Equity Fund IV LP))

Defendants

Before: **The Hon. Justice Segal**

Appearances: **Paul McGrath KC and Luka Krsljanin instructed by David Lee and Will Porter of Appleby for the Plaintiff**

Mark Simpson KC and Sarah Tresman instructed by Shelley White, Matthew Goucke, Charlotte Raynor, Laure-Astrid Wigglesworth of Walkers for the Second and Third Defendants

Henry Phillips instructed by Jennifer Fox, Rebecca Findlay and Farrah Sbaiti of Ogier for the Fourth Defendant

Heard: **9 July 2025**

Supplemental evidence received: **16 July 2025**

Judgment circulated: 18 July 2025

Judgment delivered: 25 July 2025

The open justice principle - application by Plaintiff for an order that the Court's trial judgment not be made public until thirty days after he had filed his notice of appeal – Plaintiff intended to challenge on appeal the findings made and comments in the judgment that were critical of the Plaintiff, his principal witness and his son who was neither a party nor gave evidence – Plaintiff asserted a risk that publication would cause him and them very serious and irreparable harm

JUDGMENT ON PLAINTIFF'S APPLICATION FOR A DELAYED PUBLICATION ORDER

Introduction

1. Following the trial of the Plaintiff's claims I distributed my draft judgment in two parts. The first part deals with liability issues (the *Liability Judgment*). The second part deals with quantum issues (the *Quantum Judgment*). The nature of the claims and the background to the current proceedings, and details of the parties and the relevant witnesses, is set out in the Liability Judgment. I use in this judgment the definitions which are contained in the Liability Judgment save for terms which are separately defined herein.
2. The Liability Judgment was distributed in draft on 28 April 2025 for the purpose of allowing the parties to provide corrections and other comments and raise any issues arising out of the judgment. It was subject to the usual embargo. The draft Liability Judgment explained why I had decided that the Plaintiff's claims should be dismissed. It is a very long judgment of some 782 pages. Accordingly, I gave the parties more time than usual to review and respond to the draft judgment. The parties' corrections and comments were provided to the Court on 13 June 2025. I considered these and circulated a further draft on 8 July 2025. I said that the Liability Judgment was in final form and ready to be handed down, subject to any further orders made at the hearing on 9 July 2025 of the Plaintiff's summons dated 16 June 2025 (the *Summons*), to which I shall return shortly.

3. The Quantum Judgment was distributed in draft on 8 July 2025 (a copy was circulated on 7 July 2025 but, being a public holiday in the Cayman Islands, the draft judgment was treated as having been distributed the following day). Pursuant to a consent order dated 17 June 2025 (the **Consent Order**), it was ordered that the parties should provide their corrections by 22 July 2025.
4. It was also ordered in the Consent Order that the Liability Judgment and the Quantum Judgment be treated as two parts of a single judgment (the **Trial Judgment**) to be handed down following the finalisation of the Quantum Judgment and that an order dismissing the Plaintiff's claim (the **Dismissal Order**) would be made following hand-down. It was also directed that the time for the filing of the Plaintiff's notice of appeal was to run from the "*date of perfection of [that] order*" (which I take to mean the date on which such order is sealed and that it is intended that this be the same day as that on which the Trial Judgment is handed down).
5. As I have already noted, on 16 June 2025, before the distribution of the draft Liability Judgment and before the Consent Order was made, the Plaintiff issued the Summons:
 - (a). in [1] of the Summons the Plaintiff sought an order in the following terms (the **Delayed Publication Order**):

"That the Judgment on liability, distributed in draft to the parties on 28 April 2025, and the Court's forthcoming Judgment on quantum, be sealed and kept confidential until 30 days after the Plaintiff's Notice of Appeal is filed, subject to any further Order of this Court or of the Court of Appeal."
 - (b). in [2] of the Summons the Plaintiff sought an order that the Summons and the evidence filed in support be sealed and kept confidential pending further order of the Court (the **Sealing Order**).
6. The Defendants consented to the making of the Sealing Order and so I confirmed that I was prepared to make an order in those terms (the form of order is in the process of being drawn up).
7. The Plaintiff provided his Fifth Affidavit (**Jafar 5**) in support of his application for the Delayed Publication Order.

8. The Second and Third Defendants (the *GHF Parties*) and the Fourth Defendant (*GP8*) opposed the Plaintiff's application for the Delayed Publication Order. In support of their opposition, Mr Lewis has provided his Nineteenth Affidavit (*Lewis 19*) and Mr Hayward has provided his Twenty-First Affidavit (*Hayward 21*).

The 9 July hearing

Attendance and privacy order

9. The Summons was heard on 9 July 2025. At the hearing Mr Paul McGrath KC appeared for the Plaintiff, Mr Mark Simpson KC appeared for the GHF Parties, and Mr Henry Phillips appeared for GP8.
10. In the Plaintiff's skeleton argument it was noted that in the letter from the Plaintiff's new Cayman Islands attorneys, Appleby, dated 16 June 2025, the Plaintiff had indicated that he would apply for an order that the Court hear the Summons in private pursuant to GCR O.32. This was because a public hearing of the Summons would undermine the purpose of the application. At the beginning of the hearing, Mr McGrath moved that application and Mr Simpson and Mr Phillips confirmed that their clients consented to such an order being made. I confirmed that I would make an order that the hearing be held in private so that no members of the public were entitled to attend (in person or remotely) and that the proceedings conducted at the hearing should not be made public without a further order of the Court.

Mr Norris-Jones' First Affidavit

11. Very shortly before the hearing commenced, I received a copy of an affidavit (*Norris-Jones 1*) sworn on 8 July 2025 by Mr James Norris-Jones which had just been filed by the GHF Parties. At the beginning of his submissions, Mr Simpson applied for permission to admit this evidence so that the GHF Parties could rely on it for the purpose of opposing the Plaintiff's application for the Delayed Publication Order and of seeking an order that the Court immediately direct that the dismissal of the Plaintiff's claim be made public and communicated to the authorities in the Emirate of Sharjah. He submitted that it

contained relevant evidence which had only recently become available and which it was important that the Court see in connection with the Plaintiff's application.

12. Mr Norris-Jones noted that in Lewis 19, Mr Lewis had referred (at [12]) to a recently filed criminal complaint filed in Sharjah (the *Sharjah Criminal Complaint*). He had said this:

“... a criminal complaint that had recently been made in Sharjah alleging money laundering in connection with certain Healthcare Fund [the AGHF] entities (and perhaps entities in other funds as well)... The Sharjah Criminal Investigation has adversely affected professionals who have previously worked for companies within the [AGHF] Structure. Since the Draft Liability Judgment was circulated several such individuals have been subjected to travel bans and prevented from leaving the UAE while the Sharjah Criminal Investigation is ongoing. I understand that between 70 and 80 people may be subject to this investigation”

13. Mr Norris-Jones said that he was now in possession of further information relating to the Sharjah Criminal Complaint and, in particular, had details of three of the professionals who had been placed under investigation and the issues being considered in the Sharjah Criminal Complaint. He said that he had been told that the investigation related to and concerned the alleged crime of money laundering by AH and related entities and monies invested through companies within the AGHF. Mr Norris-Jones said that he understood that two individuals were suffering acute difficulties as a result of the travel ban and that none of the individuals had yet been provided with a copy of the relevant complaint.
14. Mr Simpson said that the GHF Parties wished to rely on this evidence (both that of Mr Lewis and of Mr Norris-Jones) for the purpose of proving their case that the Plaintiff was seeking the Delayed Publication Order for a collateral purpose (so that the application was an abuse of process) and that the Consent Order should be varied to provide that the Dismissal Order be made immediately before the handing down of the Trial Judgment. The GHF Parties claimed that it was likely that the Sharjah Criminal Complaint had been made by Mr Jafar and that the order was being sought to avoid the Trial Judgment being disclosed to the Sharjah Authorities and used to assist the individuals who were subject to the travel ban and to defend the allegations being made against the AGHF professionals. Mr Simpson took me to the correspondence between the GHF Parties' Cayman Islands attorneys (Walkers) and Appleby in which Walkers had repeatedly requested that the Plaintiff confirm whether he had made the Sharjah Criminal Complaint

and which showed that despite promises that a response would be forthcoming no response had been provided, despite Walkers having informed Appleby that, in the absence of a response, the GHF Parties would be raising the issue with the Court at the hearing and inviting the Court to infer from a failure to confirm the position that the Plaintiff was responsible for the complaint.

15. The Plaintiff opposed the application to admit Norris-Jones 1. Mr McGrath argued that Mr Norris-Jones' evidence was based on discussions with unnamed third-parties and extensive speculation. It was clear, he said, that the evidence adduced by the GHF Parties could not support the inference that the GHF Parties would invite the Court to make and did not show that disclosure of the Trial (or Liability) Judgment or the dismissal of the Plaintiff's claim would have any impact on the Sharjah Criminal Complaint or benefit the individuals subject to the travel ban. Mr McGrath said that the Plaintiff was subject to duties of confidentiality in relation to the Sharjah Criminal Complaint and needed to take local law advice on his position and that this was the principal reason for the delay in providing a response to the GHF Parties' requests. Mr McGrath also said that the Plaintiff opposed the application to amend the Consent Order and provide for the immediate making of the Dismissal Order (before the handing down of the Trial Judgment).
16. I decided that, on balance, Norris-Jones 1 should be admitted and that the GHF Parties be permitted to rely on it at the hearing. It seemed to me, although because of its arrival only half an hour before the start of the hearing I had only been able to read it rapidly, that it related to serious issues arguably affecting the basis on which the Plaintiff was seeking this Court's relief and also the well-being and liberty of individuals for whom the GHF Parties had some responsibility. While it may well be based on speculation and while establishing the inference that the GHF Parties wished the Court to make was likely to be very difficult, I did not consider it right to exclude the evidence. There also seemed to be good reasons as to why the further evidence had been filed so late.
17. Having decided to admit Norris-Jones 1, it seemed to me that the Plaintiff should be given a brief opportunity to file responsive evidence if he wished to do so. Mr McGrath confirmed that the Plaintiff did wish to do so and I directed that such responsive evidence be filed within the next seven days. In the circumstances I decided that it was not

necessary or appropriate to give the GHF Parties an opportunity to file further evidence in reply. I was only prepared to allow Norris-Jones 1 to be admitted if it did not interfere with or delay the conduct of the hearing and the GHF Parties, in filing late evidence, needed to accept that they would only have one bite at the cherry and would have to make their case based only on Norris-Jones 1 (I explained my reasoning on this in an email dated 17 July 2025 sent by my PA to the attorneys).

18. At the end of the hearing I told the parties that I would review the Plaintiff's further evidence once it was filed and then deliver a written judgment setting out my decision on the Plaintiff's application for the Delayed Publication Order, which I now do. Mr Simpson pressed the GHF Parties' case that, in order to assist and protect the individuals who were subject to travel bans in Sharjah, I should, without waiting for the Plaintiff's responsive evidence or for my judgment to be completed, immediately make the Dismissal Order so that the outcome of these proceedings could be conveyed to the Sharjah authorities. I declined to do so. I explained that, while I was very concerned to hear about the severe personal difficulties of those subject to the travel bans, I was not in a position to rule on the GHF Parties' application (which had not yet been made by summons) for a variation of the Consent Order. It would be premature to do so in circumstances where I have given the Plaintiff permission to file further evidence and where the Plaintiff had made it clear that he opposed the GHF Parties' applications.

Summary of my conclusions

19. I note that the Plaintiff based his case for the Delayed Publication Order on two different jurisdictional grounds. First, by reference to, and a balancing of, (a) the risk of irreparable harm that he says that he and the non-parties will suffer if the Trial Judgment is published before his appeal has been decided and (b) the limited interference with open justice that would flow from prohibiting publication of that judgment until thirty days after the date on which he files his notice of appeal. Second, by reference to the Court's inherent (case management) powers to stay the effect of its decisions and orders pending the hearing of an appeal so as to prevent the appeal being futile or nugatory. I have decided that the Plaintiff has failed to make out his case on both grounds to the requisite high standard that is needed to justify the Court ordering a restraint on publication of a judgment following a public trial, even for the relatively short period proposed by the Plaintiff

(which period is not so de minimis or trivial as to require little or no justification). The Plaintiff's application for the Delayed Publication Order therefore falls to be dismissed. Although, having dismissed the application, it is not necessary to deal with the GHF Parties' application that the Plaintiff's application be dismissed because it had been made for a collateral purpose and was an abuse of process, I have explained that I do not consider that the GHF Parties have made out their case as to this. I also have concluded that they have not demonstrated that the agreed timetable in the Consent Order should be amended and that the Dismissal Order should be made and published now before the handing down of the Trial Judgment which is currently anticipated to take place next week on 25 July 2025.

20. It seems to me, however, that the Plaintiff should be given an early opportunity to make his case to the Court of Appeal for a prohibition on publication of the Trial Judgment for the duration or periods of the appeal and that the proper way for this to be done is by way of an appeal of the dismissal of his application for the Delayed Publication Order. I am prepared to give him permission to appeal that decision and prepared to make a short term order prohibiting publication of the Trial Judgment after its handing down (and prohibiting the publication of this judgment and of the Summons and other aspects of this application) provided that directions are made to expedite the making of the application for permission to appeal and then for the filing of the appeal itself. In my view the length and period of the prohibition on publication needs to be as short as possible having regard to (and so as to be consistent with) the requirements of procedural fairness and the practicalities of arranging a hearing before the Court of Appeal (having regard to the demands on the Court of Appeal as much as on the Plaintiff). It seems to me that it would be wrong to limit the Plaintiff's time in which to file his appeal (even assuming this Court has jurisdiction to do so and in the absence of hearing from the Plaintiff on the point). Therefore, the appeal should be filed within fourteen days of the handing down of this judgment. I am prepared to extend the prohibition on publication beyond that for a further twenty one days after the filing of the appeal to allow the Plaintiff to make an urgent application to the Court of Appeal for the extension of the twenty one day period or for such other relief as he considers appropriate. The Plaintiff will need to move rapidly but it seems to me that twenty one days will give the Plaintiff time to apply to the Court of Appeal and the Court of Appeal time to decide whether to grant an interim extension of that period in light of the procedural timetable that will need

to be adopted in respect of the appeal of the dismissal of the application for the Delayed Publication Order and in light of any other applications that the Plaintiff will make (about which this Court currently has no visibility). This timetable, consistent with the open justice principle, ensures that the restraint on publication is limited to that which is strictly necessary to prevent injustice. I appreciate that this may result in the Court of Appeal being under some time pressure but if the learned Justices of Appeal, when fully briefed as to the Plaintiff's applications and the appeal process, consider that they need more time to deal with the matter it will be open to them to grant a short term and interim extension to the twenty one day period. This timetable will also mean that, on the basis that the Trial Judgment is handed down next week, the Plaintiff will have filed his notice of appeal of the Trial Judgment before the expiry of the twenty one day period.

The current state of play and likely procedural timetable

21. As I have noted, pursuant to the Consent Order, the parties are to provide their corrections to the draft Quantum Judgment by 22 July 2025. This will allow me to finalise the Quantum Judgment by 25 July 2025 and the Trial Judgment will then be ready to be handed down on that date. The Dismissal Order can be prepared and settled in advance and can then also be sealed and made on 25 July 2025. The Plaintiff's time for filing his notice of appeal will then start to run. It is unclear at present when the Plaintiff will be ready and will wish to file his notice of appeal. He has not committed himself to filing his notice of appeal by a certain date, beyond stating that he will do so within the prescribed timetable. Appleby have recently said that the Plaintiff "*intends to comply with the usual timetable set out in the [Court of Appeal] Act and [the] Court of Appeal Rules.*" The Plaintiff has also noted that his grounds of appeal are to be filed and served subsequently and that he will have a further twenty one days to do so after filing his notice of appeal. The Plaintiff has also not, as discussed below, explained whether he intends to file, at the same time as he files his notice of appeal, an application seeking orders from the Court of Appeal prohibiting the publication of the Trial Judgment pending the determination of the appeal and related confidentiality protections. The terms of the Delayed Publication Order that seek an interim prohibition on publication until thirty days after the filing of the notice of appeal suggests that this is his intention but the timing and relief to be sought in any such application currently remain unclear.

The Plaintiff's submissions

22. Despite a statement in the Plaintiff's skeleton argument that it was both unnecessary and premature for the Court to determine the Plaintiff's "*confidentiality application*" Mr McGrath made it clear in his submissions that the Plaintiff was asking the Court to deal now with his application for and to make the Delayed Publication Order. As I understood his argument, which had only been briefly outlined in the Plaintiff's written skeleton and required elaboration and explanation during the hearing, Mr McGrath put the Plaintiff's case on two bases.
23. First, while recognising the force of the open justice principle and the important public interest in the rapid publication of judgments delivered following hearings in open court, there were exceptions which permitted the Court in an appropriate exceptional case to order that publication of a judgment be delayed, and that the circumstances of this case as explained by the Plaintiff in his evidence justified the exercise of that jurisdiction. Because the Plaintiff had adopted a measured approach as regards the nature and duration of the delay that he sought to the publication of the Trial Judgment (only until thirty days after the filing of his notice of appeal), making the Delayed Publication Order would not result in "*a major incursion into the open justice principle*" (using Justice Kawaley's phrase at [10] of his judgment in *Maples Corporate Services Limited and another v Cayman Islands Monetary Authority* [2023 (1) CILR 467] (*Maples*)). When weighed against the real risk of very substantial and irreparable harm to the reputations, interests and financial position of the Plaintiff, Mr Nerguizian and Mr Badr Jafar, the balance fell firmly on the side of delaying, and the interests of justice required a delay of, publication for the short period requested.
24. The real risk of such severe and irreparable harm arose because the Plaintiff considered that the findings and comments I had made in the Liability Judgment regarding his conduct, credibility and motives were wholly unjustified and without proper foundation in the pleadings or evidence. He also considered that the findings and comments I had made in relation to the non-parties, Mr Nerguizian as a witness and Mr Badr Jafar as someone who played no part in the trial, were not only similarly flawed and unjustified but also tainted by serious procedural unfairness (the requirements of procedural fairness had not been observed) because Mr Nerguizian and Mr Badr Jafar were not to be given

an opportunity to respond to these criticisms before the Liability Judgment was handed down. If the Trial Judgment was made public, the reputation of the Plaintiff, Mr Nerguizian and Mr Badr Jafar and those with whom they had business and professional (as well as important personal) relationships would be seriously damaged particularly if those who were competitors or hostile to them or even the media and commentators mis-reported what I had said and found out of context. If, as the Plaintiff believed would happen, he was vindicated on appeal and these critical findings and comments were found to be wrong and wholly unjustified, it would be too late to remedy and undo the damage that will have been suffered, because the appeal process was likely to take many months and probably years, by which time the relevant parties will already have reacted and taken action based on their unfavourable views of the Plaintiff and the non-parties and these views would be difficult to reverse. Severe damage will already have been done for which the Plaintiff and non-parties would never be compensated and it would be impossible to remove the stain and repair the damage caused. Publication of the Liability Judgment could be commercially ruinous, particularly when regard was had to the cultural and regional context.

25. Second, in reliance on what Mr McGrath referred to as the fallback jurisdiction, even if the Court declined to make the Delayed Publication Order on the first ground, the Court had jurisdiction to make the Delayed Publication Order “*to hold the ring to ensure that any application for confidentiality to the [Court of Appeal] is not rendered futile or nugatory*” ([17] of the Plaintiff’s skeleton argument). The application on this ground was not dependent on the substantive merits of the Plaintiff’s application to restrain publication of the Liability Judgment for the duration of the appeal process. That would be for the Court of Appeal to address. The Plaintiff submitted that an analogy could be drawn with cases where a Court decided to discharge an interim injunction but holds the ring by maintaining the injunction pending appeal. Mr McGrath argued that the Court had a broad discretion to order the stay of execution of orders pending appeal, for example, if enforcement may stifle the appeal or lead to irrecoverable payments (citing *Hammond Suddard v Agrichem* [2001] EWCA Civ 2065 and *Heriot African Trade Finance Fund Ltd v Deutsche Bank (Cayman) Limited* [2011 (1) CILR 34] at [22]). As regards issues of confidentiality over judgments, the Plaintiff relied on the dictum of Mr Justice Saini in *Apollo XI v Nexedge* [2025] EWHC 1488 (KB) (*Apollo XI*) at [121]-[122] who had said, while rejecting an application to delay publication of a judgment on

the facts, “[t]here might be rare exceptions to the principle that the public are entitled to see a final judgment at the same time as the parties. An example might be where the court’s reasons may put into the public domain material which a party says should remain private or confidential pending appeal.” Mr McGrath argued that the Plaintiff’s application fell squarely within that exception.

26. Mr McGrath also relied on Justice Kawaley’s judgment in *Maples*. Mr McGrath submitted that Justice Kawaley had accepted that short delays in the publication of a judgment pending appeal could be permitted where there were strong and compelling reasons. In *Maples*, the Cayman Islands Monetary Authority (*CIMA*) applied for an order that Justice Kawaley’s judgment granting the plaintiff’s application for judicial review “*which was formally delivered on 30 March 2023... not be uploaded to the Register of Judgments or otherwise published for a period of seven days from the 30th March 2023.*” CIMA said that this was necessary to give them time to consult with other public authorities regarding the decision made by the learned Judge. Justice Kawaley dismissed CIMA’s application. The following dicta are relevant (my underlining):

“The judgment embargo application

3. *...Concern is expressed that harm will be caused to the financial services industry in the Cayman Islands if the judgment is published before the Authority has had an opportunity to inform and consult additional authorities about its contents.*
4. *The nature of harm that will flow is understandably not particularized but I hopefully do not do the complaints an injustice by summarizing them as follows. The Cayman Islands is presently in a very delicate international regulatory position because of being placed on a grey list. And it is said that the fact that the Grand Court has decided a judicial review application in favour of two service providers, by adopting the construction of reg. 12 of the Anti-Money Laundering Regulations that the service providers contended for, will in some way damage the regulatory reputation of these Islands.*

Governing legal principles

6. *The applicant, the Authority, has not been able to identify any judicial authority which comes close to supporting the idea that it is legally possible to contend that a judgment of this nature should not be published for even a short time after having been delivered because some unparticularized harm may flow from the fact of publication.*

7. *The legal principles which come into play logically start with the Cayman Islands Constitution Order and s.7 which contains the constitutional version of the open justice principle. Section 7 provides...*
8. *In my judgment, there is no ground that falls within those exceptions which has been advanced by the Authority in support of the form of relief it seeks today.³ The Authority relied on the case of R. (Mohamed) v. FCO (1) and the principle that the courts should show deference to the executive's judgment on matters such as foreign policy or national security. I accept that that principle is broad enough to apply to matters such as those with which the Authority is charged with dealing with. However, the basic threshold for that judgment being respected is that the court should be able to clearly identify that the relevant assessment that is being made is indeed one which the relevant public authority is uniquely qualified to form a final and definitive judgment on...*
9. *In my judgment the need to balance competing interests (with open justice) does not arise in the present case because the interests that are recognized by s.7(10)(b) (defence, public safety, public order), are not engaged by the present application. I accepted in the course of argument, that the court does have a flexible jurisdiction to postpone publication of a judgment for a limited time. In fact, earlier in this case, at the interlocutory stage, I took the initiative with a view to promoting settlement to postpone publication of two interlocutory judgments. That was very much the court exercising its own assessment as to where the balance lay between the interests of justice and the promotion of a potential settlement and the publication of judgments that were interlocutory in nature and in relation to hearings which had taken place in chambers.*
10. *In the present circumstance, on the other hand, we are dealing with the question of should a final judgment that has been delivered technically in open court following an open court hearing in proceedings that had been afoot since 2021, be published or not. In my view, there is no proper justification for postponing publication especially in circumstances where the applicant Authority is not even willing to concede today that publication should be limited to seven days. Had the application been made on that basis, I would have been persuaded to accept it, because I would have had no anxiety that the Authority was seeking to make major incursions into the open justice principle.*⁶

FN 6 As I indicated in the course of argument, and contrary to the view I expressed at p.109, n.13 of the judgment, the fact that the Authority wished to consult with other public sector agencies before the judgment was published overrode considerations as to whether or not such consultations should have already taken place sooner. The need for such consultations to enable an appropriate public response to be given to the judgment to my mind fell within the parameters of court's very limited jurisdiction to temporarily postpone publication of a final judgment following a trial in open court "in the interests of justice."

- 11 *Instead, the position is, as Mr. Bowen, K.C. rightly submits, that were this court to embargo publication in circumstances where in effect the right to seek an indefinite embargo is being asserted by the applicant, the court would risk seriously undermining the standing of these courts.*
- 12 *In reality, the standing of this jurisdiction as a jurisdiction which is subject to the rule of law necessitates that when there are legal proceedings involving public authorities, decisions may be made against them. Decisions which may ultimately be held to be wrong, or may ultimately be held to be right. But our system of governance requires that judgments should be published as soon as they are delivered, absent truly "extreme circumstances," as is made clear in the Mohamed case (1) ([2011] Q.B. 218, at para. 41), and that is simply part of the framework within which public authorities and citizens have to operate.*
27. Mr McGrath relied in particular on Justice Kawaley's statement in [10] that if CIMA had been prepared to concede that the delay in publication was to be limited to only seven days he "would have been persuaded to accept it, because [he] would have had no anxiety that [CIMA] was seeking to make major incursions into the open justice principle."
28. The Plaintiff's position and evidence were set out in his letter to the Court dated 30 May 2025 (the **May Letter**) and in Jafar 5.
29. In the May Letter the Plaintiff said as follows (my underlining and emphasis):
- "... While I completely understand and respect the principle of open justice, I hope that the Court will also appreciate and give due consideration to the request in this letter, owing to exceptional sensitivities and personal consequences cited. The nature of the Judgment's findings, as His Lordship indeed has commented, expose not only myself but also individuals who were not parties to the proceedings - most notably my son, Badr Jafar, and Mr. Varouj Nerguizian - to irreparable reputational harm. Moreover, the embargo means that neither of them have had the opportunity to have sight of the Judgment or even to receive any advance notice of its contents. The concern I express in this letter is not with the Judgment itself, nor its findings. Rather, my request is limited and rooted in the **very real risk that isolated excerpts, most notably the inferences that His Lordship has made regarding the character, credibility and intent of Badr and Mr. Nerguizian, will be selectively (if not mischievously) quoted in the media - including through sensationalist "stories" or decontextualised commentary by irresponsible reporting- to inflict widespread and irreversible reputational, commercial and dignity damage to individuals who had limited or no involvement in the litigation and who currently hold public office, touching upon state-related image. **That risk is both serious and imminent.**** The Abraaj affair has already had very wide international and regional coverage and commentary as His Lordship knows.*

Accordingly, I would respectfully ask the Court to consider either:

1. that the judgment remains sealed, at least until the conclusion of the appeal process; or, alternatively,
2. those specific sections referencing Mr. Nerguizian, Badr Jafar and me (or if His Lordship prefers, just Mr. Nerguizian and Badr Jafar) be redacted or anonymised to avoid collateral reputational damage.

Needless to say, I have no issue with the Defendants disclosing to relevant stakeholders or investors that they have succeeded at first instance. I trust that the Court would consider this an appropriate balancing of interests and, accordingly, that no harm or prejudice will be caused to anyone by the Court granting the above request.

Excuse me for approaching the Court directly on this request which I regard to be of the most vital importance, in the hope that its limited and focused nature will be seen as reasonable in the circumstances... ”

30. As can be seen, at that stage the Plaintiff was focussed on the risk that parts (“isolated excerpts... selectively quoted”) of the Liability Judgment would be quoted out of context (“mischievously”) in order to create or with the effect of creating a misleading impression. His focus was on the risk to the non-parties although he also referred to the risk to himself. The Plaintiff proposed two alternatives: keeping the Liability Judgment sealed until the conclusion of the appeal process or only publishing a redacted version of the Liability Judgment. Mr McGrath indicated during his oral submissions that after further consideration the Plaintiff had concluded that making redactions to remove the passages in the judgment that gave rise to these concerns and risk would be impracticable because they could not readily be isolated and cut out without removing large parts of the judgment (and because there were references to or reliance on the findings and comments throughout the very long judgment).
31. In Jafar 5, the Plaintiff set out the position as follows (my underlining and emphasis):

“Findings in the Draft Liability Judgment

- 7 *Upon my and my legal representatives' review of the Draft Liability Judgment (which is still ongoing), it was clear to me that the Court had made very serious findings relating to myself and to non-parties, namely Mr Badr Jafar and Mr Varoujan Nerguizian ("**Non-Parties**"). I need not take time to rehearse those findings in this Affidavit but, to the extent considered necessary, some of these can be identified by my legal representatives in their legal submissions to be filed prior to the hearing of this application.*

8. This application is not, I am advised, the appropriate forum for me or my advisers to challenge the appropriateness or validity of the findings that the Court has made, or its conclusions as to my claim. The merits of the relevant arguments will be tested in the forthcoming appeal process. However, I am very concerned as to the serious impact that these findings **may have on myself and the Non-Parties, if made public, before there has been a proper opportunity to challenge them.** Neither of the Non-Parties is even aware of the Draft Liability Judgment. As non-parties, they are not within the scope of the exception to the embargo imposed on the Draft Liability Judgment. As I explain below, **even a successful appeal may not remedy the adverse impact of some of these findings which are likely to follow in the absence of a confidentiality order in the interim period leading up to that appeal.**

Procedural concerns and harm in respect of non-parties

- 9 *I have not provided a copy of the Draft Liability Judgment to either of the Non-Parties, nor have I discussed the Draft Liability Judgment with either. They are non-parties to these proceedings and so remain unaware of the contents of the Draft Liability Judgment. This raises genuine concerns as to procedural fairness, irrespective of one's views as to the merits of the relevant findings.*
10. *To assist the Court in assessing the likely harm to the Non-Parties in allowing publication of the Draft Liability Judgment before I am afforded the opportunity to challenge it on appeal, I briefly set out some background relating to each of the Non-Parties...*

...

My position

- 13 I am also gravely concerned about the consequences of the Court's findings about me. I will not take up space in this Affidavit setting out the relevant findings I am gravely concerned about. The Court will be well familiar with them. Again, if there is a need to identify these findings, this can be done by my legal representatives in their legal submissions filed in advance of the hearing of this application.
14. *The Court noted that I am a very successful and well-regarded businessman with a "thoroughly well-deserved reputation" [15]; and that I am "a highly regarded and leading member of [my] local business community, with a fine reputation"...*
15. I note that although the Draft Liability Judgment says that the Court does not "intend to impugn" my reputation [15], passages of the Draft Liability Judgment **could be (mis)used to harm my reputation and interests, despite the Court's intention. All this can and is likely to occur well before I am able to exercise my right to appeal; and the harm, likely irreparable in nature,**

will then have been incurred even if my appeal succeeds. That strikes me as wholly unfair.

16. I am the Founder and Chairman of the Crescent Group, which comprises Crescent Petroleum and Crescent Enterprises, two longstanding UAE-based companies with significant operations across the energy, logistics, and private equity sectors. I also serve as Chairman of Dana Gas PJSC, a publicly listed company with over 200,000 shareholders, and the region's first private sector integrated gas company. Over the past five decades, I have held leadership roles in ventures across the Middle East and internationally, including large-scale oil and gas operations, and port operations. Beyond commercial work, I have been active in philanthropy, education, and governance initiatives - including as a founding force behind the Pearl Initiative, a regional non-profit focused on transparency and corporate accountability. My professional and philanthropic profile is highly visible across the Gulf and internationally, including in the United Kingdom. I am deeply concerned that some of the findings in the Draft Liability Judgment may be characterised by others as impugning my honesty and conduct, and be amplified or selectively quoted in ways that are irreversibly damaging and unfair, to me, my family, and to all direct and indirect communities I serve.
17. There has been significant international and regional interest in the Abraaj story for many years, with my loans having also been reported in the international media (Reuters) and publications such as the Wall Street Journal, The New York Times and The Financial Times having displayed ongoing interest.....
18. In the Middle East, reputation and integrity are not just personal virtues - they are essential fundamental pillars of social and professional life. Integrity is not admired - it is demanded. In a region where trust outweighs paperwork, a person's word and reputation can open doors or close them permanently... Even in public life, leaders and public figures are constantly judged by their perceived integrity...
19. The Court should also be aware that some of the projects in which I am, my own family is, or Crescent entities are, involved have their opponents. The Court will appreciate that this is an inevitable feature of commerce at the highest levels. There are individuals or entities that **might seek** to smear my reputation and by extension those of Crescent and the mega projects and other businesses in which Crescent is involved.
20. Crescent Petroleum has current and potential projects in Kurdistan, Iraq and other territories... The projects - and the people who earn their living working on them - **could be affected** if opponents were to weaponize the findings to **seek maliciously/competitively** to oppose these and other projects in which Crescent is involved and is pursuing.
21. Additionally, Dana Gas is a publicly listed company on the Abu Dhabi Securities Exchange (ADX), with a wide base of institutional and retail shareholders. As its Chairman, I am deeply concerned that vindictive,

selective or sensationalised reporting of the findings in the Draft Liability Judgment may result in harm not just to myself, but indirectly to Dana Gas PJSC, undoubtedly affecting market perception and shareholder value....

22. *Even if, which I respectfully believe will be the case, the Court's findings are overturned in due course, I believe that this would in reality/practice do little to remedy the several months (or more) of negative publicity that **may arise and continue** from the publication and repetition of the Draft Liability Judgment before any appeal proceedings are concluded."*

32. While the Plaintiff had not identified the passages in the Liability Judgment which gave rise to his concerns and the associated risks, Appleby in their letter to GP8's attorneys dated 19 June 2025, when responding to requests for particulars of the parts of the Liability Judgment which the Plaintiff said gave rise to these risks, did provide a "non-exhaustive list of examples", at [5] as follows:

- "(a) Mr Jafar: (i) he had turned a "blind eye" to Mr Naqvi's "misconduct" in order to assist him (at [15]); (ii) he had "sanitise[d] and repackage[d] his evidence to improve his case" (at [15]); (iii) he gave evidence which was "disingenuous, misleading and unbelievable" (at [548]); (iv) he had taken "the decision to keep Badr from giving evidence because it was in his interest and Badr's interest to do so" (at [615]).*
- (b) Badr Jafar: (i) he "refused to testify and give evidence because he appreciated that it was likely to be damaging and that his knowledge would be exposed in cross examination" (at [624]); (ii) he "was aware in December 2017 that Mr Naqvi intended to cover up and keep quiet about the fact that he had been forced to obtain emergency loans from Mr Jafar and that these entities were on the brink of insolvency" (at [625]); (iii) "not only did Badr appreciate that Mr Naqvi did not intend to tell the AH nonexecutive directors of the Loans and the circumstances that had caused him to plead for funds in the midst of a cash crisis, but Badr himself failed to tell his fellow non-executive directors until the last minute. This conduct makes it likely that Badr was complicit in that cover up" (at [625]); (iv) "he was aware that Mr Naqvi and the Abraaj private equity funds were accused of misapplying investors' funds" (at [634]).*
- (c) Mr Nerguizian: (i) his evidence indicated a failure to comply with all the requisite internal procedures (at [520]); (ii) he gave evidence which was "disingenuous, misleading and unbelievable" (at [548]); (iii) "... and had also caused him, when the Loans were being structured and made, to cut corners and cover up the existence of BOS's exposure to AIML (Abraaj entity) risk (as I have already said, I consider it likely that he created a false paper trail to hide BOS's exposure from internal or external scrutiny)" (at [561]); (iv) he gave inaccurate evidence to the Court about him and Mr Jafar calling Badr to conduct due diligence (at [570]); (v) he gave evidence which*

was “a self-serving mischaracterisation ... [which damaged] [his] credibility” (at [594]).”

33. Mr McGrath said that it was a matter for the Court to determine the scope of the exceptions to the open justice principle and accepted that the cases dealing with these exceptions established that exceptions would only be made where strictly necessary in the interests of justice and that where restrictions were imposed on openness they must be kept to the bare minimum. In his judgment in *In re Silicon Valley Bank* (unreported, 21 July 2023) (**Silicon Valley**), Justice Doyle, when discussing the judgment of Lord Reed in the Supreme Court in *A v British Broadcasting Corporation (Secretary of State for the Home Department intervening)* [2015] AC 588 (**BBC**), had neatly summarised the position as follows (at [26]) (my underlining):

“At paragraph 27 Lord Reed stated that if the principle of open justice is a constitutional principle to be found in the common law it follows that it is for the courts to determine its ambit and its requirements, subject to any statutory provision. The courts have an inherent jurisdiction to determine how the principle should be applied and there are exceptions to the principle. For example in litigation concerning a secret process “where the effect of publicity would be to destroy the subject matter”. There needs however to be a compelling justification for any departure from the principle of open justice. It must be shown as a matter of strict necessity rather than convenience. Sometimes an order is made to preserve the anonymity of a witness in the interests of national security. The courts have the power to permit the identity of a party or a witness to be withheld from public disclosure where that is necessary in the interests of justice (see paragraph 38 of Lord Reed’s judgment). In some cases anonymity may be necessary in view of the risks to the safety of a party or a witness. In other cases the health of a vulnerable person may be at risk.”

34. Mr McGrath submitted that the cases showed that there was no closed or narrow list of categories which defined the type of harm and prejudice that could justify making an exception to the open justice principle. Lord Reed had made this clear at [41] of his judgment in *BBC* (my underlining):

“... Whether a departure from the principle of open justice was justified in any particular case would depend on the facts of that case. As Lord Toulson JSC observed in Kennedy v Information Comr (Secretary of State for Justice intervening) [2015] AC 455, 525, para 113, the court has to carry out a balancing exercise which will be fact-specific. Central to the court’s evaluation will be the purpose of the open justice principle, the potential value of the information in question in advancing that purpose and, conversely, any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others.”

35. Mr McGrath noted that earlier in that paragraph Lord Reed had said this (my underlining):

“The examples given by the Lord President [in his judgment in the Inner House of the Court of Session in the BBC proceedings] of a party or witness whose safety may be endangered or who may suffer commercial ruin if his identity becomes known, or that of the female pursuer where the decision turns on intimate medical evidence, are all capable of raising issues which could warrant a qualification of the principle of open justice, applying the approach which I have explained. In relation to the last example, which was the subject of particular criticism by counsel for the BBC, I agree with the Lord President that it would be in the interests of justice to protect a party to proceedings from the painful and humiliating disclosure of personal information about her where there was no public interest in its being publicised.”

36. Mr McGrath submitted that the Plaintiff’s evidence should be treated as establishing a real risk of commercial ruin and therefore was within the category that the Lord President had referred to and Lord Reed had endorsed as being capable of raising issues that would warrant the application of an exception to the open justice principle (even though Lord Reed had referred to a case, unlike the present proceedings, where the issue was whether a party’s identity should not be made public). He also noted that, in *Apollo XI*, Mr Justice Saini had accepted that prejudice flowing from publication of a judgment pending an appeal could engage, and justify making, an exception to the open justice principle. Mr Justice Saini had said as follows (my underlining):

“IX. Postscript: delaying public release of the judgment

121. *Following circulation of a draft of this judgment for corrections, Mr Cammerman KC and Mr Davis made an unusual written application as follows. They asked me to delay the publication of this judgment (not the formal handing down) because Mr Liu of Web Pi "...is not a party to the litigation and is therefore unaware of this judgment and its contents he should, as a matter of fairness, be given an opportunity to prepare for publication and should not, as a third party in a different jurisdiction, be surprised by a judgment of this nature." Apollo proposed a delay until 23 June 2025.*

122. *I rejected this application. It is part of the principle of open justice that the court's reasons for its decisions be made public at the same time as notified in final form to the parties. That is achieved by making copies of a judgment available to anyone who wants a copy at court following hand down or as is more usual these days by release to the National Archives. There might be rare exceptions to the principle that the public are entitled to see a final judgment at the same time as the parties. An example might be where the*

court's reasons may put into the public domain material which a party says should remain private or confidential pending appeal. This is not such a case. There is nothing special about Mr Liu's position. He has given evidence in a witness statement in this case which I have commented upon. I have not drawn any final conclusions as to the accuracy of that evidence. Those conclusions must await trial and his oral evidence, if he is called as a witness. A person who submits a witness statement knowing it is for use in court proceedings must know the court may express views as to what the witness has said. This judgment, subject to the confidentiality of Appendix II, will become public today."

37. In any event, Mr McGrath argued, the Plaintiff's evidence when properly and fairly understood showed that the Plaintiff believed and had reasonable grounds for believing that it was likely, or that there was a very real risk, that he, Mr Nerguizian and Mr Badr Jafar would suffer very serious prejudice if the Liability Judgment were published (in an unredacted form) before the appeal process was complete. This kind and the extent of such prejudice and damage were clearly sufficient to engage the balancing exercise referred to by Lord Reed in *BBC* and trigger an assessment by the Court of whether a qualification to the open justice principle was made out and justified. The Court would need to assess and balance the extent of the proposed incursion into and restrictions on open justice against the risk of harm, of the type and duration which it was said was likely to flow from a failure to delay publication, having regard to the interests of justice, in particular, the need to maintain an effective judicial process and the legitimate interests of the parties and non-parties.
38. In the present case the Plaintiff was not seeking an order now that would prevent publication until the conclusion of the appeal process but only an order that would allow the Plaintiff, and protect the Plaintiff's ability, to make an application to the Court of Appeal, once seized of the appeal, for an order that at least the part of the Trial Judgment containing the Liability Judgment be kept confidential until the appeal had been concluded. Mr McGrath said that this was a carefully tailored and limited restriction which represented the minimum necessary to protect the Plaintiff and the non-parties and the limited nature of the restriction on publication was highly relevant to the outcome of the balancing exercise.
39. Mr McGrath said that this was not a case in which the serious damage and prejudice which the Plaintiff sought to avoid by the limited and short prohibition on publication of

the Liability Judgment could have arisen merely from making public the Defendants' defences and allegations and the documents referred to by the Defendants at trial. It was true that the trial had been public and widely publicised, and that the criticisms of the Plaintiff, Mr Nerguizian and Mr Badr Jafar made by the Defendants had already been made public, and were, therefore, already available to the parties whose future conduct had been identified by the Plaintiff as such a serious concern. Instead, the serious damage and prejudice in this case arose from the Court's findings and commentary in the Liability Judgment because the findings and comments of a judge would always be given great weight and treated as being of much greater significance than mere allegations made by the parties who the Plaintiff had sued.

40. Mr McGrath accepted that different considerations applied to the Plaintiff as the plaintiff, than to Mr Nerguizian as a witness and Mr Badr Jafar who was neither a party nor a witness. He accepted that there was a hierarchy because the case law showed that the Court would be less sympathetic (and even give only limited weight) to the concerns of a plaintiff as to publicity following a public trial, since the plaintiff had to accept the publicity (relating to the allegations, evidence and the Court's findings as to these matters and credibility) that ultimately flowed from his decision to litigate in a public forum. While a witness had not initiated the proceedings, the fact that he had willingly given evidence and participated in the public proceedings meant that he too had to accept the consequences of his evidence and the Court's findings being made public. But, Mr McGrath argued, in a case such as this where the Plaintiff faced a real risk of serious and irreparable harm from findings and comments made by the Court which he could not reasonably have expected would have been made (because they went beyond what was legitimate) such risk could still be taken into account and should justify an exception to the open justice principle. The same point was to be made in relation to Mr Nerguizian.
41. Furthermore, there were additional serious concerns relating to Mr Nerguizian and Mr Badr Jafar. Neither of them had seen the draft Liability Judgment and the serious criticisms of their conduct contained therein, and had not been given an opportunity to provide a response before the Liability Judgment had been finalised. This gave rise to serious procedural unfairness and meant that, in addition to giving them a right to challenge these findings and comments in the Liability Judgment on appeal, the Court should give greater weight to the risks of prejudice and damage to them as regards the

publication of critical and adverse findings that they had been unaware of and unable to respond to until after publication.

42. Mr McGrath had included in the Plaintiff's authorities bundle and briefly referred in his oral submissions to the judgment of Mrs Justice Joanna Smith in *Popely v Ayrton Limited and another* [2022] EWHC 3217 (*Popely*) in which the learned judge had found that adverse findings made by the judge below against an individual who was neither a party nor a witness were unlawful and had led to real and significant consequences. She held that the findings were serious and unnecessary and that there was no procedural process for making them against that individual. In addition the judge below appeared to have been influenced to make the findings by his misconceived conclusion that the individual was responsible for not attending the trial. Mrs Justice Joanna Smith had said this (my underlining and emphasis):

“4. The Amended Particulars of Claim, which should have framed the issues for determination at trial, neither made allegations against Mr Popely nor mentioned him as having been involved in the alleged dishonest scheme. Indeed he was not referred to at all in the Amended Particulars of Claim. Nevertheless, the Judge made a number of findings of fact of a serious nature against him which went far beyond the four corners of the case.

...

50. It is extremely unusual in a civil case for the court to make serious findings (with potential legal consequences) on unpleaded matters against a non-party. I am also very struck by the fact that the Judge appears to have concluded that Mr Popely was somehow responsible for not attending the trial ("conspicuous by his absence"), a conclusion which may very well have influenced his willingness to make such serious findings. The assumption that individuals who are not involved in a case and have not been asked to appear to give evidence should nevertheless be putting themselves forward voluntarily appears to me to be fundamentally misconceived and is an important part of the procedural unfairness that occurred in this case. The court may draw adverse inferences in respect of a party's case if a witness who might obviously have assisted with that case is not present, but that is very different from treating a third party against whom no pleaded allegation is made as being responsible for his own non-attendance at trial (notwithstanding evidence to the effect that he was not even approached to give evidence).

51. In my judgment, the seriousness of the Adverse Findings together with what I can only describe as a wholly mistaken approach to the non-attendance of Mr Popely and the total lack of any procedural process to address the fact

*that findings were to be made against a non-party elevate this case to the level required to bring the principles articulated in Re W into play. The circumstances appear to me to be extreme for the same reasons that applied in Re W : first, **the scale of the Adverse Findings**, made against a non-party, is startling, **as is the fact that they were** (as Mr Evans accepts at least in relation to the specific findings of dishonest conspiracy) **unnecessary**; second, the process clearly fell far below the requirements of procedural fairness.*

...

54. *In my judgment, there was no justification for making the Adverse Findings given that Mr Popely was not a party to the Proceedings. However, once the Judge had decided that he was going to make them, he should have canvassed with the parties how the fundamental principles of procedural fairness could then be met. Ordinarily it would have been far too late to contemplate joining a new party to the Proceedings with all of the potentially wasted costs, delay and disruption that would have then ensued. No doubt had the Judge raised the matter, the parties would have pointed this out and the Judge may well have revisited his approach. If Ayton had, on reflection, been prepared to incur the expense of joining another party, then the only fair course of action (subject to the views of the other parties) would have been to join Mr Popely to the Proceedings and adjourn the trial to enable him to take all the steps necessary to defend himself.*
55. *However, in the event, it appears that the Judge's intention to make findings of this nature only emerged upon the circulation of the Findings of Fact, at which point neither the parties nor the Judge seems to have appreciated that there was any issue. Mr Popely himself only became aware of the Adverse Findings several weeks after the publication of the Main Judgment. I consider this to have been intrinsically unfair.*
56. *I have carefully considered Ayton's argument that Mr Popely had no reputation to protect and that accordingly there was in fact no interference with his ECHR rights, alternatively, in so far as there was interference, the consequences of the same are so trivial that a remedy is neither justified nor proportionate. In the latter context I am particularly conscious that, unlike in Re W, the Main Judgment was published over 3 years ago and it is therefore likely that much of the damage caused by its publication has already been done.*
57. *However, on balance I consider Ayton's argument to be misconceived. The consequences of the unfairness are real and significant..."*

43. Mr McGrath said that Mrs Justice Joanna Smith's judgment in *Popely* supported the Plaintiff's case that the criticisms of Mr Badr Jafar in the Liability Judgment were extraordinary and should not have been made and that the failure to give him an

opportunity to respond to those criticisms before the judgment was handed down was improper and resulted in a breach of the requirements of procedural fairness.

44. Mr McGrath submitted that even if the Court was against him and unpersuaded that it could or should grant and make the Delayed Publication Order on the Plaintiff's application, on either of the two grounds he had relied on, the Court could, nonetheless, make such an order upon the Plaintiff's application for permission to appeal the Court's decision to dismiss the application made in the Summons. This was in substance what Justice Kawaley had done in *Maples*. Justice Kawaley had dismissed CIMA's application for leave to appeal against his decision and his order requiring the immediate publication of his judgment but, nonetheless, had been prepared to stay that order for seven days to allow CIMA to apply to the Court of Appeal. Justice Kawaley had considered that CIMA should be given an opportunity to seek an embargo from the Court of Appeal. Justice Kawaley had said as follows (my underlining):

“Leave to appeal/interim stay to enable the defendant to renew its application for leave to appeal and a stay of this decision pending appeal

- 14 *It seems to me that I am bound, on the basis of the decision I have just given, to refuse leave to appeal. I assume you seek leave to appeal orally, against that ruling. [Counsel confirms leave to appeal is sought.]*
- 15 *I decline to grant leave because it seems to me, rightly or wrongly, that there is no arguable ground of appeal against what is effectively, a case management decision based on the open justice principles which are well settled.*
- 16 *But it does seem to me that as a matter of principle your client should be given an opportunity to seek an embargo from the Court of Appeal. It is important to be practical and to take into account how much inconvenience will be occasioned to not just the Authority but the Court of Appeal, if I were to grant a shorter stay.*
- 17 *I stay my decision that the judgment should be published for seven days to allow the Authority, if so advised, to apply for a further stay.*
- 18 *And I should add as I think I have already indicated in my reasons for decision, that had the application been simply for a seven-day embargo and nothing more than that, I would probably have been inclined to grant such relief. The stay that I am granting might seem counterintuitive, but it is not in fact entirely inconsistent with the way in which I view the matter overall.”*

45. Mr McGrath said that the seven day period given by Justice Kawaley was clearly regarded as sufficient in the case before him but would be too short in this case because the Plaintiff needed a sufficient period after the filing of his notice of appeal to file his application and have it heard by the Court of Appeal on an expedited basis.
46. Mr McGrath noted that the Fund Parties had said that they would be prejudiced by the making of the Delayed Publication Order because they would be unable to inform their investors of the outcome of the trial (who needed to know the result in order to comply with reporting obligations) or take instructions from investors (who participated in the Fund Parties' governance structures and needed to be involved in decision making) in relation to the appeal and the further conduct of these proceedings. He submitted that these concerns were unjustified. First, the Consent Order provided for the making and publication of the Dismissal Order which would notify the investors of the result of the trial. Secondly, the Plaintiff was agreeable to the Liability (and Trial) Judgment being disclosed to those individuals with whom the Fund Parties needed to consult to obtain instructions if appropriate arrangements were made to admit them to a confidentiality club. Mr McGrath had originally argued that it was for the Fund Parties to apply and persuade the Court that allowing such individuals to see the Liability (and Trial) Judgment (and possibly other relevant documents) was necessary but during the hearing seemed to soften his stance and indicated that the Plaintiff accepted that such arrangements, if reasonable, were required and would be acceptable. Suitable terms and confidentiality undertakings would need to be prepared and agreed.

The Fund Parties' submissions

47. The Fund Parties argued that the Plaintiff's application in the Summons for the Delayed Publication Order should be dismissed. It faced a number of insuperable problems. As Justice Kawaley had said in *Maples* at [5] "*the notion of stifling the publication of a judgment in relation to proceedings that have taken place in open court reviewing documents that have only to a very limited extent been redacted finds no precedent anywhere.*"
48. The Fund Parties submitted that the Plaintiff's evidence fell far short of what was needed to establish relevant harm in order to justify a restriction on the publication of a judgment

given after a public trial and to justify the making an exception to the open justice principle. The threshold for doing so was very high and Mr Jafar failed to cross it.

49. As regards the prospective harm asserted by the Plaintiff, he had asserted only that he and the non-parties *might* suffer harm *if and in the event* that the Court's findings were misused, or as he put it weaponised or sensationalised, by unidentified third parties acting improperly. The Plaintiff's evidence as to the extent of this risk and who might be responsible was vague and inadequately particularised.
50. On the other side of the balancing exercise, the extent of the restriction sought by the Plaintiff could not be treated as giving rise to only a minor incursion into the open justice principle. The Fund Parties argued that it was important to have the Plaintiff's proposed end-point clearly in view. The Plaintiff was seeking (as Mr McGrath had emphasised) an order that publication of the Liability Judgment be embargoed until the end of the appeal process, albeit that the peculiar procedural route which the Plaintiff had chosen to follow involved two applications, one before this Court to set up his subsequent application to the Court of Appeal.
51. The Fund Parties argued that the Plaintiff had failed to give sufficient weight to the open justice principle in general and the fact that the authorities made it plain that the interests of justice strongly weighed in favour of immediately publishing judgments delivered after a public hearing, in particular.
52. The principle of open justice was a fundamental principle of the common law (see *Scott v Scott* [1913] AC 417 (HL) at pages 440, 476 and 477). It was also enshrined in section 7 of the Cayman Islands Constitution Order 2009 (the **Constitution**). The general rule requiring publicity was only exceptionally overruled in circumstances where it would operate to defeat the paramount object of securing that justice was done (*Scott v Scott* at pages 428-437, 439-440, and 482). Derogations from the principle were only permissible when strictly necessary to secure the proper administration of justice (*Scott v Scott* at pages 435 and 437-438). It was for the party seeking such a derogation to satisfy the Court to the requisite standard that the general rule must, as of necessity, be superseded by the interests of justice.

53. The Fund Parties submitted that the cases made it clear that the Court will only embargo a judgment, or part of a judgment, in extreme circumstances. The common law open justice principle (also enshrined in s.7(9) of the Constitution) required a court to give in public the reasons for its decisions. In *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2010] EWCA Civ 65 (*Mohamed*), Lord Neuberger MR had said this (at [134]) (my underlining):

“So far as such a decision is concerned, there is a very strong presumption indeed that a judgment, containing as it does the judge's reasons for his decision, should be fully available for all to see. In the absence of good reason to the contrary, it is axiomatic that a litigant should be able to see all the reasoning of the court in his case, that justice should be administered and dispensed openly and in public, and that the media should know, and be able to disseminate, all aspects of court proceedings. That was made clear in Scott v Scott...”

54. In addition, in *Mohamed* Lord Judge CJ had said (at [41]) that “[w]here litigation has taken place and judgment given, any disapplication of the principle of open justice must be rigidly contained, and even within the small number of permissible exceptions, it should be rare indeed for the court to order that any part of the reasoning in the judgment which has led it to its conclusion should be redacted. As a matter of principle it is an order to be made only in extreme circumstances.” The Fund Parties said that it was important to note that Justice Kawaley had followed this extreme circumstances test in *Maples* (see [12] of his judgment).
55. The Fund Parties argued that it was clear that the Plaintiff was unable to satisfy this demanding test. The Plaintiff had said that it was necessary to keep the Liability Judgment confidential because of the risk that unidentified third parties “could” and “might” use findings in the Liability Judgment to cause him and others reputational harm that would be irreversible even after a successful appeal. Leaving aside the fact that the Plaintiff had only identified a mere risk of harm eventuating (and that it was impossible from his evidence objectively to assess how real and serious a risk there really was), it was clear that the fact that the publication of the Liability Judgment may lead to reputational damage either to a party or to a witness was viewed in the case law as a normal incident of litigation and was not a proper basis for derogating from the open justice principle.

56. In *Scott v Scott*, Viscount Haldane at page 439 had said when addressing the question of whether hearings should be held in public that a “*mere desire to consider feelings of delicacy or to exclude from publicity details which it would be desirable not to publish is not enough as the law now stands.*” The Fund Parties said that the rationale for this approach was summarised by Justice Andrew Cheung, then the Chief Judge of the High Court of Hong Kong when sitting in the Hong Kong Court of Appeal in *Asia Television Ltd v Communications Authority* [2013] 2 HKLRD 354 (*Asia Television*), as follows:

“unwanted publicity, embarrassment and so forth are some of the normal incidents of litigation. They are some of the inevitable consequences of open justice. As a general rule, no one involved in litigation, particularly the initiating party of litigation, can complain. In many but certainly not all cases, if parties desire secrecy, they may, where appropriate, go for arbitration, mediation or some other form of alternative dispute resolution.”

57. The Fund Parties argued that the authorities established that plaintiffs, and even witnesses who participate in proceedings, must ordinarily accept the normal incidence of the public nature of those proceedings. As Lord Woolf MR had said in *Reg v Legal Aid Board, Ex p. Kaim Todner* [1998] 3 WLR 925 (*Kaim Todner*) at [8]:

“A distinction can also be made depending on whether what is being sought is anonymity for a plaintiff, a defendant or a third party. It is not unreasonable to regard the person who initiates the proceedings as having accepted the normal incidence of the public nature of court proceedings. If you are a defendant you may have an interest equal to that of the plaintiff in the outcome of the proceedings but you have not chosen to initiate court proceedings which are normally conducted in public. A witness who has no interest in the proceedings has the strongest claim to be protected by the court if he or she will be prejudiced by publicity, since the courts and parties may depend on their co-operation. In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule.”

58. They also noted that Justice Doyle in *In re Silicon Valley Bank* (unreported, 21 July 2023) at [32] had cited the passage from the judgment in *Asia Television* which I have set out at [56] of this judgment.
59. The Fund Parties noted the Plaintiff’s reliance on *obiter dicta* in the judgment of Mr Justice Saini in *Apollo XI*. But, they noted, the application in that case to restrain

publication had failed. Furthermore, Mr Justice Saini had regarded the application made in that case, relying on some of the grounds relied on by the Plaintiff now, namely that a witness criticised in the draft judgment had not seen the draft judgment and should be given time to prepare for publication, as “*unusual*”. The Plaintiff’s application in this case was more unusual and restrictive. In the present case the objections raised related to the judge’s reasons being made public. The Plaintiff wished to prevent the Court’s reasons themselves from going into the public domain in circumstances where all the material on which the Court had relied in those reasons was already in the public domain because the trial was heard in open court. The Plaintiff had asserted that the Court’s findings went beyond the scope of the pleadings but, even if that were so, and the Plaintiff was able to make this unparticularised assertion good (which the Fund Parties denied he could), it was only a point to be taken on the appeal and would not justify abrogating the open justice principle.

60. The Fund Parties said that the Plaintiff had suggested for the first time in his skeleton argument (at [20]) that publication of the Liability Judgment could be “*commercially ruinous*.” The Fund Parties submitted that this was a fanciful suggestion on the evidence. It was contradicted by the Plaintiff’s own evidence as to his commercial success and high standing in the business world. The Plaintiff had also not relied on identified findings in the Liability Judgment but on “*embittered opponents utilising and weaponizing*” such findings. The implicit suggestion made by the Plaintiff, that the entire Middle Eastern business community would fail to see through such misrepresentations and misreporting and that the effects of publication and such misreporting could extend to thousands of Crescent employees, was unreal. This unreality was reinforced by the fact that these same unidentified embittered third parties could, if they had wished to, already have weaponised the pleaded allegations of wrongdoing, and the allegations subsequently put to the Plaintiff in cross-examination, in order to impugn his honesty and conduct. The Plaintiff had failed to produce any evidence that they had done so.
61. This was so despite the fact that the Fund Parties had since February 2021 (when the Defences were first filed) relied on allegations of serious misconduct as against the Plaintiff, Mr Badr Jafar and Mr Nerguizian, including that the Plaintiff knew that the alleged fraudulent misrepresentations were false because he knew the affairs of AH and AIML were not sound or proper; that Mr Naqvi had requested that the purpose of each

of the payments under the Loans be identified as "*investment*" to deceive external parties as to the purpose of the funds advanced and that the Plaintiff, Mr Badr Jafar and Mr Nerguizian knew that; and that Mr Badr Jafar, and subsequently Mr Jafar, had known that the purpose of the Third Loan was window dressing. Despite this, the Plaintiff had not applied to seal the Court file or for any part of the trial to be heard in private, in a context in which it was clear that these allegations of wrongdoing had been pleaded and would necessarily be put to him (and Mr Nerguizian) in cross examination. Nor did the Plaintiff make such an application upon such allegations having, in fact, been put to him. He had also not made an application to seal any of the fourteen judgments handed down by this Court to date, at least one of which contained findings regarding Mr Badr Jafar's role in arranging the Loans. The Fund Parties said that if the Plaintiff really had the concerns about reputational damage that he had now raised for the first time he could and should have made an application for confidentiality earlier. They submitted that the Plaintiff had only now relied on and asserted a risk of damage and prejudice because he had comprehensively lost the case and wished to keep the comprehensiveness of that loss secret in the hope that he would win on appeal.

62. The Fund Parties submitted that it was important in this case to recognise and give substantial weight to the following factors:
- (a). as the plaintiff who had initiated these proceedings and who had elected to bring proceedings in this jurisdiction, the Plaintiff had assumed the risks associated with litigation in a jurisdiction which had a strong principle of open justice. He had brought a claim which was dependent upon his evidence being accepted by the Court and his being found to be a credible witness. As was made clear at every stage, the Fund Parties did not accept the truth of his testimony and had advanced a positive case that he was aware that the finances and governance of Abraaj were not "*essentially sound and proper*". The Plaintiff had pursued his case – and given evidence – knowing that the Court may rule against him and make adverse findings in respect of his dealings with Abraaj and his testimony at trial.
 - (b). as a witness, Mr Nerguizian could not legitimately take issue with the fact that the Court had made adverse finding in respect of his dealings with Abraaj and his testimony at trial. *Apollo XI* was directly on point and undermined Mr Jafar's case

as it related to Mr Nerguizian. In that case, as noted above, an application was made to delay publication of a judgment for a period of five days to enable a witness, whose evidence had been criticised by Mr Justice Saini at an interlocutory hearing, to be given an opportunity to prepare for publication. In rejecting that application the Judge observed (at [122]) that: “*A person who submits a witness statement knowing it is for use in court proceedings must know the court may express views as to what the witness has said*”. Furthermore, Sir Julian Flaux PC in his judgment in *The Federal Republic of Nigeria v Process & Industrial Developments Ltd* [2025] EWCA Civ 715 at [158] had emphasised that witnesses could not complain about publication of a judgment in which the court made adverse findings as to his evidence and credibility since it was a foreseeable consequence of giving evidence that the court would need to consider whether to accept or reject his evidence and related questions of his conduct and credibility. The Chancellor had said this (my underlining):

*“So far as concerns Article 8 of the ECHR, I agree with Mr Willan KC that it has no application where, as in the present case, the Court is determining issues which fall within the four corners of the case on which Mr Andrew had given evidence. What the ECtHR said in *DelCampo v Spain* quoted at [90] above is entirely apt: “The Court also reiterates that art.8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one’s own actions...” As Mr Willan KC said, Mr Andrew can hardly complain that his private life has been invaded by virtue of the foreseeable consequence of his coming to the hearing to assert in his evidence that he had done nothing wrong and the court disagreeing and disbelieving him.”*

- (c). Mr Badr Jafar was also unable to take issue with the Court’s findings. Having declined the opportunity to give evidence in circumstances where he must have appreciated that the Court may well make adverse findings (not least given his absence), Mr Badr Jafar could not legitimately take issue with the fact that the Court had made such findings. Contrary to the Plaintiff’s assertions to the contrary, there was no scope for procedural unfairness in circumstances where – as found by the Court – Mr Badr Jafar had intentionally absented himself from this trial notwithstanding his involvement in the underlying matters, the terms of the pleadings dealing with and putting in issue his involvement in the subject matter of the dispute, the documentary evidence establishing his central role in relation to

the events and disputes dealt with at trial and a deliberate decision in the face of these matters not to give evidence. It was clear that Mr Badr Jafar was fully aware of the details of the proceedings and involved in the Plaintiff's case preparation. The metadata spreadsheet made plain that Mr Badr Jafar was extensively involved with Mr Jafar's pleadings and the conduct of the case generally and on 5 May 2023, following this Court's ruling on the custodians summons, Forbes Hare (then the Plaintiff's Cayman Islands attorneys) had sent a letter to Mr Badr Jafar enclosing copies of the pleadings and the key WhatsApp messages. Further, the Plaintiff was wrong to assert that adverse factual findings made against Mr Badr Jafar were not the subject of properly articulated pleaded allegations. During his oral submissions, Mr Phillips argued that *Popely* was a wholly different case from the present case. In this case, the Court had been perfectly entitled to make the factual findings it did.

63. The Fund Parties submitted that the Plaintiff's application was objectionable since he was apparently seeking an order postponing the publication of the judgment for an indeterminate or at least for a lengthy period of time. The Trial Judgment, as matters currently stood, would not be handed down for over two weeks from the date of the hearing. Then the Plaintiff would have two weeks to file his notice of appeal and then he wanted the prohibition on publication to last for another thirty days.
64. The Fund Parties also challenged the Plaintiff's reliance on the second ground for his application. They said that Mr Jafar had sought to portray his application as having an entirely conventional basis to hold the ring to ensure that any application for confidentiality to the Court of Appeal was not rendered futile or nugatory. However, the Fund Parties submitted, there was nothing conventional in the approach taken by the Plaintiff. Its fundamental flaw was that it proceeded on the basis that the question of whether this Court's judgment should be published was properly a matter (in the first instance) for the Court of Appeal rather than this Court. That was wrong because the Trial Judgment is a judgment of the Grand Court and in the ordinary course it is for this Court to determine whether its judgment following trial ought to be made public. The question of whether or not this Court's judgment should be sealed was not properly a matter for the Court of Appeal unless and until this Court had ruled on the application and a party had obtained permission to appeal that decision. The Plaintiff had not

identified any reason of principle or practicality as to why the Court of Appeal should determine (in the first instance) the question of whether this Court's judgment should be made public (in the ordinary way) or sealed. If the Plaintiff's approach was correct, then any would-be appellant who had been the subject of adverse findings in a judgment could always seek to delay publication on the basis that they intended to apply to the Court of Appeal to seek that the judgment remain confidential and that was obviously not the correct approach and there was no support for it in the authorities.

65. The Fund Parties also said that they would suffer serious prejudice if the Delayed Publication Order was made in the form contained in the Summons. As Mr Lewis had explained in Lewis 19 (at [9]-[12]) and Mr Hayward had explained in Hayward 21 (at [12]), the interests of and prejudice to the Fund Parties and their investors needed to be considered. If the Delayed Publication Order was made the Fund Parties would be unable to make known the fact and basis upon which the Plaintiff's claims were to be dismissed. In circumstances where the Plaintiff had pursued very substantial litigation in which serious allegations of wrongdoing were made against the Fund Parties, they had a legitimate and weighty interest in setting the record straight. Further, their investors, who had a significant economic stake in the litigation, will remain unaware of the basis on which the Court had determined that the Fund Parties had been vindicated. As interested parties, it was only fair that they know both the outcome of the trial and the reasons for the Court's decision. This was particularly so in light of the Plaintiff's proposed appeal as the investors will have a legitimate interest in being able to assess the potential outcome of the appeal, which will be impossible if they are not allowed to know the reasons for the Court's decision. In addition, the investors needed to be able to participate in the decision making process and in giving instructions in relation to the appeal.
66. Mr Simpson noted that Mr McGrath had at least initially said that it was for the Fund Parties to show that, and justify why, they needed to give the Liability (and Trial) Judgment to certain individuals for the purpose of obtaining further instructions. Mr Simpson submitted that in fact where the Plaintiff was seeking restrictions on publication, it was for him to show why the Fund Parties' decision makers (including the investors participating in relevant committees and governance structures) who needed to see the judgment for the purpose of giving instructions and the further conduct of the

proceedings should not be allowed to do so and to make proposals for permitting such individuals to have the access they needed even if the Delayed Publication Order was made.

The GHF Parties' claim that the application was brought for a collateral purpose and that the Dismissal Order should be made immediately

67. In Lewis 19 Mr Lewis referred to the Sharjah Criminal Complaint as follows:

- “12. As a separate, and concerning, matter I understand from speaking with service providers engaged by companies within the Healthcare Fund structure that a criminal complaint has recently been made in Sharjah alleging money laundering in connection with certain Healthcare Fund entities (and perhaps entities in other funds as well), which is the subject of "Sharjah Court Enquiry No:4902/2024" (the "**Sharjah Criminal Investigation**"). The Sharjah Criminal Investigation has adversely affected professionals who have previously worked for companies within the Healthcare Fund Structure. Since the Draft Liability Judgment was circulated, several such individuals have been subjected to travel bans and prevented from leaving the UAE while the Sharjah Criminal Investigation is ongoing. I understand that between 70 and 80 people may be subject to this investigation.*
- 13. The GHF Parties are endeavoring to obtain more information regarding the Sharjah Criminal Investigation. However, in the context of the Application, I respectfully suggest that the advent of the Sharjah Criminal Investigation is a further reason in favour of the Final Judgment being handed down and made public as soon as practicable. This Court has had the benefit of examining at trial matters that are potentially related to the Criminal Complaint, and the Draft Liability Judgment exonerates GHF GP as regards Mr Naqvi's conduct in procuring the loans from Mr Jafar that are the subject of the Proceedings. The findings made in the Final Judgment are likely to be of interest to both the Sharjah Prosecutor and the individuals under investigation.”*

68. On the day before the hearing (8 July 2025), Walkers wrote to Appleby in the following terms:

- “2. We enclose by way of service an affidavit from Mr James Norris-Jones, a partner of Cleary Gottlieb Steen & Hamilton LLP, the GHF Fund's international counsel. As Mr Norris-Jones explains, it is now clear, not least from your failure substantively to respond to our letters, that your client is indeed the source of the complaint which has prompted the Sharjah Criminal Investigation. Our clients are now aware of several individuals who are subject to the investigation and have been placed under travel bans in the UAE as a result. As matters stand, those individuals, for obvious reasons, do not know that your client's claims have been dismissed.*

3. *Your client's Skeleton states at paragraph 19(a) that your client does not oppose publication of the Order dismissing the claim (the "Order"), such that interested parties may be informed of the outcome of the Proceedings upon formal hand down.*
4. *The reference to the parties being informed of the outcome of the Proceedings "on formal hand down" reflects the fact that the Order will only be made following hand down of the Draft Liability Judgment and the Draft Quantum Judgment (the "Judgment"): see paragraph 3(b) of the Consent Order. Perfecting the Order is still some weeks away, given the steps still to be taken including pursuant to paragraph 2(b) of the Consent Order.*
5. *For the reasons Mr Norris-Jones gives, it is no longer appropriate to withhold the outcome of the Proceedings from the interested parties while the Draft Quantum Judgment is reviewed for errata. It is now almost 18 months since the trial in the Proceedings came to a close and all parties affected by the Sharjah Criminal Investigation need to know now that the Grand Court has dismissed your client's claims against the Fund Parties.*

... ”

69. In Norris-Jones 1, Mr Norris-Jones explained the steps taken by the GHF Parties to ascertain from the Plaintiff whether he had made or been involved in the filing of the Sharjah Criminal Complaint. He said this (my underlining):

“Inter partes correspondence

18. *On 1 July 2025, Walkers wrote to Appleby seeking confirmation of whether Mr Jafar had any involvement in the bringing of the Sharjah Criminal Investigation, and if so, confirmation as to the nature and extent of that involvement. Walkers' letter requested copies of all relevant correspondence with the Sharjah criminal authorities, a copy of the complaint itself, and a copy of the list of individuals to whom the Sharjah Criminal Investigation related. This request was made on the basis that, to the extent that those documents were in Mr Jafar's possession, they were covered by his ongoing obligation of disclosure in these proceedings. Walkers requested a response to their letter by 3 July 2025 given the imminent hearing in these Proceedings on 9 July 2025....*
19. *On 3 July 2025, Appleby sent a holding letter confirming that they were taking instructions... They have not subsequently provided any substantive response from their client.*
20. *In the absence of a substantive response from Appleby, today (8 July 2025), Walkers again wrote to Appleby noting that "Mr Jafar must know whether or not he made the criminal complaint" and, accordingly, asked Appleby to confirm by 4pm whether it was Mr Jafar who initiated the Sharjah Criminal Investigation and, if so, to provide copies of the relevant*

documents requested in Walkers' letter, dated 1 July 2025.

21. No response has been received from Appleby as at 7pm on 8 July when this affidavit is being sworn.

Publication of the Outcome of the Proceedings

22. *Mr Jafar's skeleton argument in support of his application to embargo the Judgment from publication, which application is listed for hearing on 9 July 2025, has made it clear that Mr Jafar does not oppose publication of the order dismissing his claims (the "Order"), such that (what he terms) "interested parties" may be informed of the outcome of the Proceedings upon formal hand down of the Draft Liability Judgment and the Draft Quantum Judgment (together, the "Judgment").*
23. *The Consent Order dated 17 June 2025 (at page [1] of "JSJ-1") envisages the Order being perfected in a number of weeks' time given, the steps still to be taken being prescribed by paragraphs 2 and 3 of the Consent Order.*
24. *Insofar as it was previously acceptable for the outcome of the Proceedings to remain confidential pending the review of the Draft Quantum Judgment and subsequent hand down of the Judgment, the ongoing events in the UAE mean this is no longer the case. In particular, it is no longer appropriate to continue to withhold the outcome of the Proceedings from the "interested parties", including the GHF Parties and investors in the Healthcare Fund.*
25. *It seems likely that the facts and matters surrounding the making of the loans may underlie the criminal complaint and, given that Mr Jafar apparently has lawyers acting for him in relation to that complaint, that he either lies behind the complaint or knows the substance of it. Yet he has chosen, to date, not to reply to the Healthcare Fund's enquiries on this issue.*
26. *If the facts and matters surrounding the making of the loans do indeed underlie the criminal complaint, the parties affected by the Sharjah Criminal Investigation and (where relevant) travel bans, clearly need to know as soon as possible that the Grand Court has dismissed Mr Jafar's claims against the Healthcare Fund and Fund IV.*
27. *Mr Jafar has not served any evidence regarding any prejudice to him in the interested parties knowing the result of the Proceedings now, as opposed to in some weeks' time.*

28. On the other hand, the prejudice being suffered by individuals who are subject to the Sharjah Criminal Investigation while the result of the Proceedings remain embargoed is real and significant. The individuals affected by the travel ban referred to above remain unaware that Mr Jafar's claims have been dismissed. I presume that the same is true of the Sharjah Prosecutor. The fact that the claims have been dismissed, together in due course with the Court's full reasoning, is likely to be a highly significant matter for the Sharjah Prosecutor to consider when assessing the complaint that has been made. It is therefore of obvious importance for this information, and in the first instance the result of the Proceedings, to be made known to the individuals affected as soon as possible in order that they can make the Sharjah Prosecutor aware of that.
29. If Mr Jafar does lie behind the complaint, and the facts and matters surrounding the making of the loans underlie it, then Mr Jafar is, on the one hand, causing a serious criminal complaint to be made against numerous people, some of whom are subject to onerous travel bans as a result of it, and on the other seeking to suppress publication of a judgment which deals with exactly those matters and in which his claim has been dismissed.
30. *It is in Mr Jafar's power to put in evidence (or, less satisfactorily, to explain in correspondence) that he does not lie behind the complaint and/or that he does not know what it is about, if that is correct, but he has not done so."*
70. At the hearing, as I have noted, Mr Simpson argued that the Plaintiff's failure to deny that he had made or was otherwise behind the Sharjah Criminal Complaint despite having been asked and given ample opportunity to do so meant that the Court could and should draw the inference that he had made the complaint and that he was now acting improperly by seeking to suppress publication of a judgment which dealt with the matters covered by his complaint with the result that various individuals were in effect being unfairly detained in Sharjah. If the Plaintiff's application was dismissed and the Trial Judgment was published, or if at least the Dismissal Order was made and published, it was at least possible that this unfair detention would come to an end. Mr Norris-Jones' evidence was that awareness that the Plaintiff's claims against the GHF Parties had been dismissed, together in due course with sight of the Trial Judgment, was "*likely to be a highly significant matter for the Sharjah Prosecutor to consider when assessing the complaint that has been made.*"

71. On 16 July 2025, the Plaintiff filed and served two further affidavits (both of which had only been signed with sworn versions in the process of being completed and filed). First, his Sixth Affidavit (*Jafar 6*). Secondly, an affidavit sworn by Dr Mahmood Hussain (*Hussain 1*). Dr Hussain is a licensed lawyer and founder of a law firm operating in Dubai and the Dubai International Financial Centre. He is also an adjunct professor at the University of East Anglia. Dr Hussain confirmed that he was not acting for the Plaintiff but had given his evidence as an independent professional. Dr Hussain's evidence addressed the applicable law governing the disclosure of confidential information relating to criminal investigations in Sharjah, which may involve allegations of money laundering and whether any penal authorities in the UAE would cease any ongoing criminal investigation related to money laundering having had sight of a civil judgment issued by the Cayman Islands Courts.
72. In *Jafar 6*, the Plaintiff confirmed that, following being told about the GHF Parties' requests, he had taken UAE legal advice (in respect of which he did not waive privilege). That advice had taken several days to be provided and, after it was received, he decided on the basis of the advice that he could not provide a substantive response to the matters that had been raised in *Lewis 19*, the Walkers' letters and by extension *Norris-Jones 1*.
73. The Plaintiff said that following, and in light of the direction that he provide further responsive evidence made at, the hearing he and his legal advisers had given further consideration as to how he could respond, if at all, to the points that had been raised by the GHF Parties in a manner that was consistent with his obligations arising under Sharjah and UAE law. On 11 July 2025, Appleby had written to Walkers citing the serious nature of matters that been raised in relation to what he referred to in *Jafar 6* as the "*Purported Money Laundering Investigation*" (clearly the Plaintiff wished to comply with his local law duties by only speaking in hypothetical terms) and had set out in a high-level way the confidentiality obligations that arose in respect of criminal investigations in the UAE. Appleby had sought the GHF Parties' consent for a redacted version of *Norris-Jones 1* to be provided to the Sharjah authorities as this would provide the Plaintiff with a basis to seek their guidance on how he might respond in a manner consistent with Sharjah and UAE law (in particular what he could say, if anything, in his responsive evidence). The Plaintiff said that a rapid response had been received from Walkers which did not provide the requested response but instead sought details of the

Sharjah and UAE law advice he had received. Despite further correspondence, the consent he had sought was still not forthcoming.

74. The Plaintiff explained that there appeared to be no dispute that criminal conduct had taken place within the Abraaj entities prior to their collapse and that Mr Naqvi had been convicted of crimes in Sharjah on multiple occasions and was currently awaiting extradition to the United States on fraud charges. Corporate entities had also been subject to large fines by the Dubai regulator. Without commenting on the existence of any Purported Money Laundering Investigation, he said that it should be of no surprise that regulators and prosecutors remain interested in dealings by persons connected to the Abraaj entities or the money criminally adjudged to have been stolen by Mr Naqvi. But, he said, it was unclear how any Purported Money Laundering Investigation related to or overlapped with the issues that arose in these proceedings. He argued that the GHF Parties had not explained how or why this Court's findings on the issues of deceit and corporate attribution would in any way relate to allegations of money laundering within the Abraaj Group, if that was indeed the focus of the Purported Money Laundering Investigation. It was also not clear, he said, how this Court's findings about the circumstances in which he had made the Loans could be relevant to any such investigation. Furthermore, if the Trial Judgment needed to be provided to the Sharjah Authorities it would take some time since the judgment would need to be translated into Arabic. The Plaintiff said that he was not in any way being dismissive as to or failing to take seriously the human cost suffered by those implicated in criminal investigations. He said that he had sought to behave responsibly but the position remained, as confirmed by Dr Hussain, that there was no basis at this stage for concluding that disclosure of the Trial Judgment (or Dismissal Order) will improve the position of those possibly subject to the Purported Money Laundering Investigation.
75. Dr Hussain confirmed in Hussain 1 that strict and wide confidentiality obligations were imposed by UAE federal law on those "*involved with*" or who attended criminal investigations, including investigations relating to money laundering, which prohibited the disclosure, dissemination or sharing of any information whatsoever in relation to any ongoing criminal investigation, including as to the existence of any such investigation, and that any such disclosure would constitute an independent criminal offence. He said that failure to maintain strict confidentiality of any such information may constitute the

independent criminal offence of ‘*tipping-off*’. He said that in his opinion a judgment of this Court was incapable of striking down or ceasing any such ongoing criminal investigation.

76. The Plaintiff argued that it would be prejudicial to him for the Dismissal Order to be made immediately, rather than in accordance with the timetable agreed and set out in the Consent Order. He noted that the Defendants had previously provided assurances that they would maintain a sufficient reserve of funds to be able to meet a judgment in the event that the Plaintiff was ultimately successful but that to date they had failed to confirm that the assurances will continue for the appeal period. He said that there has been extensive correspondence and discussions on this issue (which discussions were continuing) and that these discussions were being conducted with the current agreed timetable in mind so that, if the timing of the making of the Dismissal Order was accelerated, this could necessitate the Plaintiff taking urgent (and potentially unnecessary) action to ensure that assets were preserved for the period of his appeal. He submitted that it would be unfair and wrong to allow the GHF Parties at the last minute and without making a proper application to vary the agreed timetable where (a) that would cause him material prejudice, (b) there was insufficient evidence that it was necessary or beneficial to do so, and (c) when the Dismissal Order would on the current timetable be made shortly.
77. In correspondence with the Court after the filing of Jafar 6 and Hussain 1 Walkers on 17 July 2025 had said that the GHF Parties had now offered to extend their assurances until twenty one days after the handing down of the Court of Appeal’s judgment. In Walkers’ letter to Appleby dated 15 July 2025 (which had been exhibited to Jafar 6) Walkers had confirmed that “*Our clients are content to agree that they will maintain reserves sufficient to meet the full extent of a judgment in Mr Jafar's favour (including costs liabilities) for a period of 21 days after the Judgment is handed down, subject to (i) Mr Jafar agreeing to provide a corresponding cross-undertaking in damages; and, also (ii) Mr Jafar agreeing, in principle, to the provision of further security for the costs which the GHF Parties' have incurred since the conclusion of the trial.*” Ogier had also written to the Court on 17 July 2025 to explain that GP8’s position in relation to assurances was that it was unable to give any further assurances until its manager had been notified of the outcome and reasoning in the Liability Judgment and that, once the Liability

Judgment was no longer embargoed, Ogier will engage with the manager as expeditiously as possible such that appropriate steps are taken. Further, the Fund Parties had repeatedly asked the Plaintiff whether he was willing to provide the usual cross-undertaking as to damages and to fortify such undertaking in circumstances where he is resident outside the jurisdiction, with no known assets in the jurisdiction and he had failed to engage with any of those requests. In these circumstances, Ogier said, there was no risk of asset dissipation.

Discussion and decision

The law relating to the open justice principle and its exceptions

78. The nature of and justification for the open justice, or publicity, principle are neatly encapsulated in rule 20 of John Sorabji's excellent *A Model Civil Procedure Code for England and Wales* (OUP, 2024) at pages 43-44:

- “(1) *The adjudication of civil disputes is inherently public. They must, as a general rule, therefore be open to the public.*
 - (2) *Limitations may be imposed on publicity where they are strictly necessary to protect the proper administration of justice or a relevant public interest. Any such restriction must itself be no more than strictly necessary to achieve its aim.*
 - (3). *Any person seeking a limitation must satisfy the court that it is strictly necessary and of the extent to which it is strictly necessary by clear and cogent evidence.*
- ...”

79. The approach to be adopted when assessing whether an exception to the open justice principle can be justified was authoritatively summarised by Lord Reed in *BBC* at [41] in the passage I have already quoted above. It is worth repeating (my underlining):

“... Whether a departure from the principle of open justice was justified in any particular case would depend on the facts of that case. As Lord Toulson JSC observed in *Kennedy v Information Comr (Secretary of State for Justice intervening)* [2015] AC 455, 525, para 113, the court has to carry out a balancing exercise which will be fact-specific. Central to the court's evaluation will be the purpose of the open justice principle, the potential value of the information in question in advancing that purpose and, conversely, any risk of harm which its

disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others.”

80. The proper approach and factors to be considered were also summarised by Lord Woolf in *Kaim Todner* (a case involving a party seeking anonymity on appeal) (my underlining):

“6. In deciding whether to accede to an application for protection from disclosure of the proceedings it is appropriate to take into account the extent of the interference with the general rule which is involved. If the interference is for a limited period that is less objectionable than a restriction on disclosure which is permanent. If the restriction relates only to the identity of a witness or a party this is less objectionable than a restriction which involves proceedings being conducted in whole or in part behind closed doors.

7. The nature of the proceedings is also relevant. If the application relates to an interlocutory application this is a less significant intrusion into the general rule than interfering with the public nature of the trial.....

...

9. There can however be situations where a party or witness can reasonably require protection. In prosecutions for rape and blackmail, it is well established that the victim can be entitled to protection. Outside the well-established cases where anonymity is provided, the reasonableness of the claim for protection is important. Although the foundation of the exceptions is the need to avoid frustrating the ability of the courts to do justice, a party cannot be allowed to achieve anonymity by insisting upon it as a condition for being involved in the proceedings irrespective of whether the demand is reasonable. There must be some objective foundation for the claim which is being made.”

81. Accordingly, the Court must carry out a case and fact-specific balancing exercise in light of the purpose of the open justice principle, taking into account the extent and nature and impact on open justice of the proposed interference and the risk and nature of the harm that would flow from publication, to assess whether the proposed interference is strictly necessary to prevent injustice to any of the parties (or affected persons) and consistent with the maintenance of an effective judicial process.

82. As Kay JA said in the Court of Appeal in Bermuda in *Director of Public Prosecutions v Cindy Clarke* at [6], open justice is a fundamental principle of the judicial process but while “... open justice is the rule, ... there must be exceptions in circumstances where

publicity would itself be productive of injustice.” This dictum is quoted by Justice Doyle in his judgment in *In re China Index Holdings Limited* (unreported, 23 August 2024) at [100].

The application of the open justice principle where a party seeks to restrain and prevent publication of a judgment given following a public trial

83. But when a party seeks to restrain and prevent publication of a judgment given following a public trial, the scales of the balancing exercise do not start in equilibrium. The starting assumption is that the proper administration of justice and the interests of justice require that the Court’s decision and reasons are made public and it is for that party to satisfy the Court by clear and cogent evidence that the restraint on publication is strictly necessary. The point was made forcibly by Justice Kawaley in *Maples* at [6] and by Mr Justice Saini in *Apollo XI*.
84. What is required to protect and preserve the interests of justice and the administration of justice needs to be understood and assessed in the context of the relevant proceedings. As the authorities cited by the parties make clear, where the Court prepares a judgment after a public hearing “*there is a very strong presumption indeed that a judgment, containing as it does the judge’s reasons for his decision, should be fully available for all to see*” (as Lord Neuberger MR said in *Mohamed* and as I have quoted above). As Lord Judge CJ said in the same case, which I have already also quoted above, “[w]here litigation has taken place and judgment given, any disapplication of the principle of open justice must be rigidly contained, and even within the small number of permissible exceptions, it should be rare indeed for the court to order that any part of the reasoning in the judgment which has led it to its conclusion should be redacted. As a matter of principle it is an order to be made only in extreme circumstances.”
85. This is because the parties, in particular the plaintiff, and other participants in public proceedings can have no reasonable expectation that the Court’s reporting of the evidence, discussion of that evidence and the conduct of those involved in the subject matter of the proceedings as raised in the pleadings and dealt with in the evidence and the credibility and truthfulness of those who gave evidence will be kept private and not made public. Had the party been concerned about the impact of these matters being made

public they could have – before or during the trial – sought to have particularly sensitive matters kept confidential. They could also have sought an alternative means of confidential dispute resolution such as arbitration (although arbitration may often not be an acceptable and practicable option in large fraud cases). As Justice Andrew Cheung said in *Asia Television* in the judgment quoted above, “*unwanted publicity, embarrassment and so forth are some of the normal incidents of litigation. They are some of the inevitable consequences of open justice. As a general rule, no one involved in litigation, particularly the initiating party of litigation, can complain. In many but certainly not all cases, if parties desire secrecy, they may, where appropriate, go for arbitration, mediation or some other form of alternative dispute resolution.*”

86. The statements made by Viscount Haldane in *Scott v Scott* (at page 439) and by Justice Andrew Cheung in *Asia Television* make clear a plaintiff in public proceedings that have proceeded to trial cannot complain about and prevent publication of the judgment merely because of harm flowing from publication which was a reasonably foreseeable result and reasonably to be anticipated to occur as a result of participation in a public judicial process and proceedings.
87. For this reason, ordinarily, certain types of harm are treated as reasonably to be expected and in the contemplation (or should be in the contemplation) of plaintiffs and participants in the proceedings. As Justice Andrew Cheung also said in *Asia Television* at [23] (my underlining):

“the case law has firmly established that the following considerations or matters do not by themselves justify any restriction on open administration of justice:

- (1) Publicity of litigation leading to embarrassment and inconvenience: Re Wong Tung-kin [1989] 1 HKLR 93; Ex parte New Cross Building Society, at p 235F.*
- (2) Publicity leading to economic damage, even very severe economic damage: R v Dover Justices, Ex parte Dover District Council and Wells (1992) 156 JP 433.”*

88. The same point is made in *Zuckerman on Civil Procedure* (4th ed., Sweet & Maxwell) at 3.149 (my underlining):

“Thus, an order directing that certain matters discussed at trial should be withheld from the public cannot be made merely to protect a party’s privacy or in order to avoid embarrassment... It has been held that it is a misuse of the Contempt of Court Act 1981 s.11 for magistrates to prohibit the publication of a defendant’s address in order to protect him from possible harassment by his former wife. Even where publicity could cause a party serious economic loss, the court would not normally agree to deviate from the principle of publicity [citing R v Dover Justices Ex p. Dover District Council and Wells (1991) 156 J.P. 433].”

89. But it seems to me that a real risk of severe commercial or financial loss flowing from publication cannot just, and always, be ignored. It can be relevant and given substantial weight where the risk is sufficiently established and cannot be said and shown to have been reasonably expected and the predictable result of the conduct of the proceedings in public and in the ordinary course, and where such harm would result in injustice to the relevant party.
90. As the Plaintiff pointed out, as I have noted above, Lord Reed in his judgment in *BBC* (quoted above) said that the risk that a party or witness may suffer commercial ruin if his identity became known was capable of raising issues which could warrant a qualification of the principle of open justice. Lord Reed was considering, in the context of an application for anonymity, the reference to commercial ruin as a relevant category of harm in the judgment of the Lord President (Lord Gill) in the court below (the Inner House of the Court of Session). Lord Reed said this (my underlining):

“38. As I have explained, it has long been recognised that the courts have the power to permit the identity of a party or a witness to be withheld from public disclosure where that is necessary in the interests of justice. The Lord President was plainly right to approach the matter on the basis that the interests of justice are not confined to the court’s reaching a just decision on the issue in dispute between the parties. It is necessary in the first place to recognise that the administration of justice is a continuing process: see, for example, Attorney General v Butterworth [1963] 1 QB 696, 725, per Donovan LJ. The court can therefore take steps in current proceedings in order to ensure that the interests of justice will not be defeated in the future. For example, the High Court of Justiciary has permitted undercover police officers to give evidence while screened from the sight of the general public, and without public disclosure of their identities, in order to avoid jeopardising their effectiveness in future investigations.

39. *Other cases may raise different considerations. In some cases, for example, anonymity may be necessary in view of risks to the safety of a party or a witness...*

40. Some of these examples may arguably go beyond the categories envisaged in some of the older authorities. As Earl Loreburn observed however in *Scott v Scott* [1913] AC 417, 446, it would be impossible to enumerate or anticipate all possible contingencies. Furthermore, in this area as in others the common law is capable of development. The application of the principle of open justice may change in response to changes in society and in the administration of justice...
41. The examples given by the Lord President of a party or witness whose safety may be endangered or who may suffer commercial ruin if his identity becomes known, or that of the female pursuer where the decision turns on intimate medical evidence, are all capable of raising issues which could warrant a qualification of the principle of open justice, applying the approach which I have explained. In relation to the last example, which was the subject of particular criticism by counsel for the BBC, I agree with the Lord President that it would be in the interests of justice to protect a party to proceedings from the painful and humiliating disclosure of personal information about her where there was no public interest in its being publicised...

91. The Lord President Gill in his judgment in the Inner House had said this (my underlining):

“38. But in my opinion the inherent jurisdiction is wider than that. It lies at the heart of the court's constitutional function as a court of justice. In fulfilling its duty to do justice by all men, the court must have regard not only to the justice of its decision, but also to the justice of the procedures by which it gives it. It therefore has the inherent power, in my opinion, to withhold the identity of a party where, regardless of the outcome of the case, the disclosure of that party's identity would constitute an injustice to him; for example, where disclosure would endanger his safety, or would be commercially ruinous (*Scottish Lion Insurance Co Ltd v Goodrich Corp and ors*). Quite apart from the Convention-related aspects of the problem, I would regard it as the court's duty to withhold the identity of, say, a female pursuer where the decision turned on intimate medical evidence. Moreover, I consider that the court's inherent jurisdiction may be extended to the protection of third parties whose rights and interests may be affected in similar ways.”

92. The Lord President had cited, as can be seen, another decision of the Inner House of the Court of Session in *The Scottish Lion Insurance Company Limited v Goodrich Corporation and Others* 2011 S.C. 534. But that case did not consider or discuss the meaning of commercial or financial ruin in this context. It involved a contested scheme of arrangement in which certain creditors opposed sanction of the scheme and resisted the discovery and production of certain documents on the grounds that those documents were privileged. Creditors had been allowed to vote on the scheme without disclosing

their identities and were instead referred to by numbers. When the court came to give judgment on the privilege dispute and the sanction application those creditors asked the court to maintain their anonymity and not to publish their names in the judgment. The court was prepared to do so because of the earlier orders that had been made protecting the anonymity of creditors in the scheme process. It was held that disclosing their names at this late stage in the proceedings would be inconsistent with and undermine the orders for anonymity that had previously been made and undermine the whole basis on which the procedure for creditor participation in the scheme had been based.

93. I do not doubt that a real risk of severe commercial or financial harm resulting from the publication of the identity or personal details of a party to proceedings may justify an order delaying or prohibiting publication of such matters in appropriate circumstances. But where such a risk is said to result from publication of findings and comments in a judgment prepared after a public trial, the party concerned must adduce convincing (clear and compelling) evidence to show that, even after the correction of the trial court's errors on appeal and the publication of the appellate court's judgment, there is a real risk of serious and irreparable harm *and* that allowing the trial judgment to be published before the conclusion of the appeal would result in unfairness and injustice because the party concerned could not reasonably have expected that the matters complained of would be covered by the trial judgment. That will not normally be permissible or possible. The case law makes it clear that where a party complains of findings of fact (or of law) made by the trial judge (even findings based on egregious or fundamental errors) that party's recourse is by way of an appeal and there is no injustice if the trial court's judgment is made public before the conclusion of the appeal because, if the trial court was in error, then the appellate court will allow the appeal, point out the errors in its public judgment and that judgment will correct the public record and vindicate the appellant. As Lord Woolf said in his judgment in *Kaim Todner* (my underlining):

“In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule.”

...

“If publicity did result from the substantive hearing then that publicity, so far as it was unfair, would be mitigated within a short time scale by the judgment of the court. If the judgment was adverse, then it is accepted on their behalf, that publicity could no longer be restrained since their alleged conduct should then be known. If the judgment was favourable, then the judgment would to a substantial extent provide the answer to any adverse publicity.”

The Plaintiff’s first ground - publication of the Trial Judgment on handing down should not be permitted and would be unjust because the risk of irreparable harm is real and the short term restraint on publication will only result in a minor interference with open justice

94. The Plaintiff argued that what would make publication of the Trial Judgment before the conclusion of the appeal unjust was that even if he was successful (as he expected and believed he was entitled to be) the harm he had identified would not be removed or reversed. He said that a judgment of the Court of Appeal overturning the Liability Judgment would not remedy or remove the damage to his (and the non-parties’) reputations and the financial damage that was anticipated to flow from that. The Plaintiff relied on Mr Justice Saini’s recognition in *Apollo XI* that it could be permissible to restrain publication of the Court’s written reasons pending an appeal when publication would disclose damaging material and there was a real risk that such damage would be irreversible.
95. The difficulty I have with the Plaintiff’s case on this point is that it seems to me that his evidence of the risk of irremediable harm is incomplete and ultimately insufficient to establish, to the high standard required, that it is necessary in the interests of justice to restrain publication pending the conclusion of the appeal. As I have said, the case law makes it clear that ordinarily (and I would add that there is a presumption that) the appeal process and the prospect of a public judgment from the appellate court overturning and correcting the lower court’s errors will be (and is treated as) sufficient to ensure that the appellant suffers no injustice and to protect the proper administration of justice. A party who wishes to show that the normal appeal process and such an appellate court judgment will result in injustice and be insufficient protection of their reasonable expectations as a litigant (or participant in public proceedings) needs to adduce cogent and compelling evidence both as to the risk of harm and the risk that such harm will be irreversible, and that it is unfair and unreasonable to expect them to rely on the appellate process as the remedy for any such harm ultimately suffered. The Plaintiff’s evidence of why any harm

of the kind he identifies is likely to be irremediable is in my view weak. It is generalised, unparticularised and incomplete.

96. I accept that the Plaintiff's evidence shows *in general terms* that (a) in view of the positions he holds and the business relationships to which he and his companies are parties, the fact that he and these companies have competitors and opponents and operate across a wide geographical range, the culture in which he and these companies operate and in which he lives and the wide public interest in the Abraaj collapse, and (b) the inferences that can reasonably and realistically be drawn from these matters as to how the parties he identifies could or might be expected to respond to the Court's findings and comments on his conduct, that there is a real risk that if the Liability Judgment is published it will be widely reported and questions will be raised as to his conduct of these proceedings and his relationship with Mr Naqvi and Abraaj. But he relies on generalities and inferences based on how such parties might be expected to act. The Court will obviously wish to be realistic about such matters but, in a case where a restraint on publication of a trial judgment is sought, assumptions and generalised inferences are weak and likely to be insufficient. I understand the Plaintiff's reluctance to provide more detail as to who is likely to react adversely and what action they might take, as well as details of which relationships are particularly vulnerable and how they could be damaged (for fear that particulars of his concerns identifying particular individuals and actions might at some point reach and become known to the parties or organisations concerned) but the absence of particulars materially weakens the weight to be given in the balancing process to the risk of serious harm. In my view, the Plaintiff could have given more details; perhaps in a separate confidential annex to Jafar 5. Justice Kawaley in *Maples* accepted as sufficient CIMA's generalised explanation of the steps they wished to take before the judgment was handed down to consult with other authorities but that was a different case. CIMA was concerned with highly sensitive governmental, national and diplomatic sensitivities which the Court will be reluctant to require to be disclosed and there was no challenge by other parties to the litigation to CIMA's application.
97. But of greater significance to my mind is the fact that the Plaintiff has failed to consider or discuss the likely impact of an announcement by him (immediately on publication of the Liability Judgment) that he rejects the findings and criticisms in the Liability Judgment and that he is vigorously challenging them by way of an appeal which he

expects to win and is in progress. This, in my view, leaves a large gap in the Plaintiff's evidence. He has made generalised assertions of unmanageable and irremediable harm and assumed that this damage cannot be substantially avoided or reduced to a manageable and remedial level by public statements as to his position (amounting to reasonable damage limitation measures).

98. The Plaintiff said, without providing particulars, that redactions were impracticable and would not work in this case because the removal or covering up of all passages in the Liability Judgment that set out, describe or refer to the adverse findings and critical commentary relating to the conduct of the Plaintiff and the non-parties would result in substantial parts of the judgment being unavailable to public readers such that readers would be unable to understand the Court's reasons and reasoning and make publication of no practical value. That may be right but I am not satisfied that the effectiveness and benefits to be derived from redactions in substantially avoiding or reducing the risk of the damage that the Plaintiff claims may occur can be so readily dismissed, without at least an attempt being made to produce a draft of the Liability Judgment with redactions and some additional wording to link passages and maintain coherence.
99. In making out the case for a restraint on publication, pending the determination of an appeal, the basis of and prospects of success of the appeal are also relevant factors (even where there is an appeal as of right). If it appears that the appeal is wholly without merit or has no realistic prospect of success it will be difficult for the party seeking to prevent publication of the trial judgment until after the appeal to justify such a restraint. In the present case, the time for the filing of the notice of appeal has not started to run and the Plaintiff has yet to set out his grounds of appeal. Accordingly, the Court does not have these available and so cannot make any assessment of the prospects of success of the appeal. Mr McGrath mentioned during the hearing that the grounds of appeal will be wide ranging and include appeals on points of law and not just fact.
100. While not having the full grounds of appeal, the Plaintiff has made clear his challenge to the findings and comments in the Trial Judgment relating to the Plaintiff, Mr Nerguizian and Mr Badr Jafar. This is not the forum in which to review these in depth, and ultimately it will be for the Court of Appeal to do so, but it is worth my noting, seeking to view the matter as objectively as I can and at least based on what has been said to date, that I found

the Fund Parties' responses (summarised above) to be powerful and persuasive. Because the Plaintiff has now and belatedly requested that the draft Liability Judgment be provided to Mr Nerguizian and Mr Badr Jafar before it is finalised and handed down, I also make some comments at the end of this judgment on the procedural unfairness complaints made by the Plaintiff in relation to the non-parties and Mr Badr Jafar in particular.

101. Accordingly, as I have said, in reliance on his first ground and for the purpose of identifying the harm to be weighed in the balancing exercise, the Plaintiff needs to establish cogent and compelling grounds that there is real risk of irreparable harm such that it would not be just for the Court to require or expect him to rely on the cleansing and remedial effect of vindication by a favourable appellate decision, which the Court generally considers to provide sufficient protection for those who disagree with and challenge the lower court's decision. In my view, the Plaintiff has not done so.
102. It seems to me that, on the evidence adduced to date, the Plaintiff has not made out his case to the requisite standard that there is a real risk of serious irreparable harm being suffered (by himself or the non-parties) if publication of the Liability Judgment is allowed while the appeal is pending.
103. In so far as the Plaintiff bases his application for the Delayed Publication Order on the ground that there is a real risk of such serious irreparable harm being suffered and that this outweighs the minor interference with open justice that would result from the limited and short term restraint on publication which the Plaintiff now seeks, I would dismiss it. For the reasons I have given, the Plaintiff's evidence as to the risk of irreparable harm is not compelling and is insufficient to overcome the high threshold needed to justify an exception being made to the open justice principle. The short term nature of the restraint is not of itself enough. If it were, as the Fund Parties pointed out, an appellant would only ever have to *assert* that publication of an adverse and critical judgment would cause him serious and irreparable harm and that he would be asking the Court of Appeal to prohibit publication during the appeal, in order to be able to obtain an order restraining publication. That cannot be right. In any event, the restraint proposed by the Plaintiff will be for at least six weeks. That is not *de minimis* and trivial and, in the context of the first ground on which the Plaintiff makes his application, it is a sufficient interference with

open justice which requires a compelling case of irreparable harm to outweigh it. The Plaintiff's case is not helped by the fact, as I explain further below, that there remains a good deal of uncertainty as to what applications the Plaintiff will be making to the Court of Appeal and when.

104. In light of the deficiencies I have identified with respect to the evidence adduced by the Plaintiff to establish and particularise the risk of harm being suffered and separately of such harm being incapable of being mitigated and significantly reduced by damage limitation measures (including robust announcements and statements made by him and on his behalf concerning his challenges to and vigorous appeal of the Trial Judgment), and of the absence of a serious attempt to produce a redacted version of the Trial Judgment it seems to me that the Plaintiff cannot show that it would be unjust for the normal principle to be applied, namely he must rely on the vindication that will come from a successful appeal to protect his position (and that of Mr Nerguizian and Mr Badr Jafar). The making of any exception to the open justice principle requires cogent and clear justification and, as I have said, restraining publication of a trial judgment prepared following an open trial, requires a similarly compelling justification and, where such justifications are not made out, it would in my view be wrong to grant an application for an order restraining publication.

The Plaintiff's second ground – Mr McGrath's fallback jurisdiction

105. Mr McGrath, as I have noted, argued that the Court could also make the Delayed Publication Order pursuant to what he described as the fallback jurisdiction. This could be done even if the Plaintiff's application and evidence did not meet the high and demanding threshold required for an exception to the open justice principle based on the risk of irreparable harm.
106. As I understood Mr McGrath's argument, his case was that there was also jurisdiction to make the Delayed Publication Order without the need to assess and take any view on the Plaintiff's case as to irreparable harm flowing from publication pending appeal.
107. I took Mr McGrath to have argued that an appeal with an application for a stay was not necessary when reliance was placed on the fallback jurisdiction. The argument was, as I

understood it, that this Court had the power in the exercise of its inherent (case management) jurisdiction to prohibit publication of the Trial Judgment because the Plaintiff was in the process of appealing that judgment and would be seeking case management orders from the Court of Appeal in connection with the case management of the appeal, including in relation to publicity of the decision under appeal. The requirements of the open justice principle would be engaged but the Court's focus would be primarily on ensuring that the appeal could be properly case managed and that the Plaintiff was given a proper opportunity to appear before the Court of Appeal to seek orders in connection with the case management of the appeal. This jurisdiction was said to arise in connection with the Plaintiff's appeal of the Trial Judgment and the application he has said he will make to the Court of Appeal for orders to prevent aspects of the appeal being made public and to prohibit the publication of the decision under appeal.

108. The Fund Parties argued that the only or at least the proper course to be followed, if the Court was not satisfied that compelling grounds had been made out for an exception to be made to the open justice principle in a case involving a pending appeal of a trial judgment given after a public trial, was for the Plaintiff to adopt the appeal approach. He needed to follow the procedure adopted in *Maples*. He had to file an application for permission to appeal the Court's dismissal of his application and then ask the Court to order that publication of the Trial Judgment be delayed, either pending the hearing of that appeal, if permission were granted, or pending the hearing of an application to the Court of Appeal for permission to appeal, if permission were refused.
109. In my view, Mr McGrath is right that, where there is or is to be an appeal of the Court's main judgment and the appellant has made or intends to make an application to the Court of Appeal in that appeal for case management orders that include orders regulating the publicity to be given to the lower Court's decision and the publication of that Court's judgment, there is jurisdiction and this Court has the power in an appropriate case in the exercise of its inherent jurisdiction to make an order restraining and delaying publication of its judgment where that is necessary to allow the appellant to have his application heard by the Court of Appeal.

110. It seems to me that the basis on which the confidentiality application is to be made and the terms of the relief to be sought from the Court of Appeal pursuant to it will be relevant and need to be considered. As with any application by an appellant for a stay of an order at first instance pending appeal, the appellant will need to demonstrate that the relief he is seeking has a reasonable chance of success and that refusing the stay before the Court of Appeal can deal with the application appeal would cause irreparable harm or render the appeal pointless. The open justice principle will still apply to the exercise of the Court's discretion here and require that the appellant establishes these matters by clear and compelling evidence, and that strict and stringent limits be imposed on the timetable for making the application and on the period during which publication is to be prohibited. If it appears that the application is wholly without merit or has no reasonable and realistic prospect of success, it will not be possible to justify any restraint on publication.
111. I can see that, if the only order that an appellant intends to seek from the Court of Appeal is an order that the judgment under appeal not be published for the duration of the appeal, then the Court of Appeal might well say that it would only adjudicate on that issue after this Court had been asked to make an embargo order and if the matter came before the Court of Appeal by way of an appeal from that order. But where the Court of Appeal is to be asked to make orders regarding the publicity to be given to the appeal it seems to me that a prior application to this Court for that relief is neither required nor appropriate as the relief sought concerning the case management of the appeal would properly be a matter for the Court of Appeal (and that an order relating to the publication of this Court's judgment would be part of what would need to be covered when considering how to maintain the confidentiality of the overall appeal process and the extent to which the appeal will be conducted in public or private).
112. In the present case the Plaintiff, at least until I pressed Mr McGrath for an explanation at the hearing, had not explained the jurisdictional basis for the application which the Plaintiff intended to make to the Court of Appeal, or the full terms of the relief he intended to seek. He had certainly not provided a draft or outline of the proposed application. At the hearing I said that I assumed, and as I understand it Mr McGrath confirmed, that the Plaintiff would be inviting the Court of Appeal to exercise its case management powers, once the notice of appeal had been filed and the Court of Appeal was seized of the appeal, with respect to the appeal and to make an order prohibiting

publication of the Trial or just the Liability Judgment for the duration of the appeal. But the scope of that proposed application remains unclear. Presumably in order to make the non-publication of the Liability Judgment effective the Plaintiff will also need to avoid there being any publicity during the hearing of the appeal as to the findings and comments in the Liability Judgment to which he objects. Therefore, he presumably will need to ask the Court of Appeal to sit in private or impose reporting restrictions with respect to such matters. It will obviously be a matter for the Court of Appeal as to whether to grant the relief that the Plaintiff ultimately seeks but such wide ranging restrictions are unusual and only rarely granted.

113. But in the absence of full particulars of the relief to be sought from the Court of Appeal, it is difficult for this Court to assess whether the Plaintiff has a realistic or reasonable chance of succeeding before the Court of Appeal, or whether the issue of the permissibility of a further restraint on publication of the Trial Judgment should be substantively addressed first by this Court and on appeal in the Court of Appeal (by dealing with the first ground of the Plaintiff's application I have in fact addressed many of the substantive issues that arise). Furthermore, for the reasons I have already given, the Plaintiff has not been able to establish to the requisite standard that publication of the Trial Judgment will cause him serious and irreparable harm or that requiring him to rely on the appeal process and a vindicating judgment from the Court of Appeal will be unjust. It seems to me that in the circumstances the delay in publication of the Trial Judgment that the Plaintiff seeks (in the Delayed Publication Order) is not justifiable and that it would be wrong at this stage to grant the Plaintiff's application on this alternative ground.

The appeal route

114. It seems to me that the proper approach to be adopted in this case is for the Plaintiff to make his case before the Court of Appeal by way of an appeal from the dismissal of this application. In the circumstances, I consider that it will be appropriate to grant him permission to appeal. It seems to me that the issue raised by the Plaintiff's application raises an important issue which should be considered by the Court of Appeal. I appreciate that I am dealing with this before an application for permission to appeal has been made but it seems, to me, to be in the interests of all parties and in the administration of justice that the process for getting the Plaintiff's application before the Court of Appeal needs

to be expedited and conducted without unnecessary additional expense, and that the period before the first hearing before the Court of Appeal be kept to an absolute minimum so as to minimise the period of the prohibition on publication of the Trial Judgment.

115. As I have noted above, the length and period of the prohibition on publication needs to be as short as possible having regard to the requirements of procedural fairness and the practicalities of arranging a hearing before the Court of Appeal. Ideally, in a case involving a judgment after a public trial, the prohibition would be for no more than fourteen days from the date on which this judgment is handed down. But the Plaintiff needs a proper period in which to prepare his appeal and the Court of Appeal needs to be given a proper period in which to make arrangements for a hearing (or if appropriate an interim decision on the papers) particularly with the summer vacation almost upon us. It is necessary to be practical and bear these points in mind. I note Justice Kawaley's comment in *Maples* at [16] that "*it is important to be practical and to take into account how much inconvenience will be occasioned not just [to CIMA] but [also to] the Court of Appeal.*" Accordingly, a period as short as fourteen days is not appropriate in the present case.
116. It seems to me that it would be wrong to limit the Plaintiff's time in which to file his notice of appeal (even assuming this Court has jurisdiction to do so and in the absence of hearing from the Plaintiff on the point). Therefore, the notice of appeal should be filed within fourteen days of the handing down of this judgment. I am prepared to extend the prohibition on publication beyond that for a further twenty one days after the filing of the notice of appeal to allow the Plaintiff to make an urgent application to the Court of Appeal at least for the extension of the twenty one day period or for such other relief as he considers appropriate. I did consider a shorter period of fourteen days but consider that will be too tight for the Court of Appeal. The result is a prohibition on publication of 35 days (which I appreciate is not much shorter than the period sought by the Plaintiff in the Summons but it is granted on a different basis in circumstances where, much as I would wish to impose a shorter period, doing so would produce unfairness or impose inappropriate burdens on the Court of Appeal). It seems to me that the Plaintiff should file an application for permission to appeal the dismissal of his application with a draft order granting permission for sealing by 4pm Cayman time next Thursday, 24 July 2025. The draft order granting permission to appeal will need to include an order prohibiting

publication of the Trial Judgment (and this judgment, the Summons, the evidence filed in respect of it and of these proceedings) for the period discussed above and deal with or refer to the arrangements for providing the Trial Judgment to the individuals from the Fund Parties who need to see it, subject to the terms of a confidentiality club and to confidentiality undertakings being agreed. I assume that the Trial Judgment will be ready to, and will, be handed down on 25 July 2025 and that the Dismissal Order can and will be made on the same day.

117. As I have said, the Plaintiff will need urgently to apply to the Court of Appeal and seek that Court's guidance as to when and how it will hear whatever application the Plaintiff intends to make regarding continuing the embargo. I can see that the Plaintiff may ask the Court of Appeal on an interim basis to continue the embargo for a further short period if that is necessary to enable the Court of Appeal to hear whatever application the Plaintiff intends to make.
118. Following this route will permit this Court to minimise the period of the further embargo on the publication of the Trial Judgment.
119. The Court clearly has jurisdiction to order that the Trial Judgment not be published where there is an appeal of the Court's decision to dismiss the embargo application. This was the procedural path adopted in *Maples*. On this approach, as I have noted, an application for permission to appeal and for an order prohibiting publication of the Trial Judgment for a period to allow the Plaintiff to seek relief from the Court of Appeal on an expedited basis are needed.
120. In *Maples*, Justice Kawaley considered that CIMA's right to seek to persuade the Court of Appeal to grant the relief he had refused needed to be preserved by delaying publication of his main judgment for a very short period to allow CIMA to seek permission to appeal his decision refusing to permit any delay. CIMA had sought permission to appeal Justice Kawaley's decision dismissing its application for a delay of publication of his main judgment. In addition CIMA sought, even if permission were refused, a stay on enforcement of the main judgment, pending the outcome of its application to the Court of Appeal for permission to appeal. To preserve CIMA's right of appeal, Justice Kawaley granted a stay of seven days. It is unclear from the judgment

how it was envisaged that this would give CIMA sufficient time to obtain relief from the Court of Appeal, but Justice Kawaley was clearly concerned that any longer stay would be unjustifiable in the circumstances.

121. I can see that it might be said that in the present case this procedural route will be of limited assistance to the Plaintiff. If a stay of this Court's order to dismiss the Plaintiff's embargo application (to delay publication of the Trial Judgment) is needed and granted in order to give the Plaintiff a short opportunity to apply to the Court of Appeal to appeal or to ask for permission to appeal, by the time the Court of Appeal hears the application it is likely that much of the period covered by the Delayed Publication Order (thirty days after filing of the notice of appeal) will have expired. So asking the Court of Appeal to overturn this Court's decision and make the Delayed Publication Order will be of little or no assistance and of no practical relevance or significance.
122. However, I do not see why the Plaintiff, if necessary with permission from this Court, cannot appeal this decision to dismiss his application and ask the Court of Appeal on the appeal, and if it allows the appeal, to make an order in different terms from the Delayed Publication Order (which would impose an embargo on publication for a period which fitted with the timetable for dealing with the Plaintiff's application for a full term embargo and was considered suitable by the Court of Appeal). The Plaintiff will appeal this Court's refusal to make an order prohibiting publication of the Trial Judgment and seek an order from the Court of Appeal imposing such a prohibition for such period as the Court of Appeal considers to be appropriate.
123. It seems to me that, as a general matter, the Court of Appeal will clearly be in a much better position to form a view on whether any restriction on publication is justified and whether to apply an exception to the open justice principle. It will have before it the grounds of appeal and a full confidentiality application. It will be able to see exactly what the Plaintiff seeks regarding the conduct and publicity of the appeal. The Court of Appeal will be able to see the full picture. The Court of Appeal will also be able to form its own preliminary view on the challenges to this Court's findings and comments.

Making provision for the Trial Judgment to be provided to individuals nominated by the Fund Parties

124. As I have said, I accept the Fund Parties' submission that a further restraint on publication of the Trial Judgment must be subject to arrangements being so that they and their legal advisers are able to consult with and obtain instructions from key decision makers regarding the further steps in these proceedings. The parties should liaise as to who such individuals are and the arrangements that need to be put in place so as to allow the Trial Judgment to be provided and for any related matters to be discussed with such individuals, subject to suitable confidentiality undertakings.

Permitting the Fund Parties to tell their investors about the dismissal of the Plaintiff's claims

125. The Dismissal Order will not be subject to an embargo so that at least from 25 July 2025 (I discuss further below whether the time for the making of that order needs to be brought forward) the Fund Parties will be able to inform their investors of the result at first instance. The parties should agree or, alternatively, the Court's order should stipulate what can be said publicly regarding the Plaintiff's appeal or intention to appeal in the period before any further order from the Court of Appeal.
126. The Fund Parties have mentioned the difficulties that their investors will suffer and have submitted that, as parties with a substantial economic interest in the outcome of these proceedings, it is unfair if the investors are prevented from seeing the Court's reasons and being able to read the full Trial Judgment. It has not been suggested that after the Dismissal Order has been made public that the investors will be in breach of any rules, regulations or agreements governing their reporting obligations, if they are unable to report on or disclose matters beyond the result of the Plaintiff's proceedings which further details are only contained in the Trial Judgment. In the circumstances, it seems to me that the position of these investors is adequately protected because they will shortly know and be able to report the Court's ruling on the Plaintiff's claims and of the status of these proceedings (that is, that the Plaintiff is in the process of appealing the Trial Judgment to the Court of Appeal and that, pending further orders of the Court of Appeal, the Trial Judgment is not to be made public).

The GHF Parties' claim that the application was brought for a collateral purpose and that the Dismissal Order should be made immediately

127. I have carefully reviewed the evidence adduced by the GHF Parties together with the Plaintiff's responsive evidence. I do not consider that the GHF Parties have adduced sufficient evidence which would justify the inference or permit the Court to conclude that the Plaintiff has made his application for the Delayed Publication Order for reasons connected with the Sharjah criminal investigation to which the GHF Parties refer or for reasons other than those to do with the risk of irreparable harm which he relied on in his evidence.
128. The evidence as to what type of criminal investigation is being conducted by the Sharjah authorities, what matters and potential offences are being investigated and who is under investigation in respect of which matters is sketchy and unclear. The Plaintiff's role in relation to and involvement with such investigation is also wholly unclear. The Plaintiff has explained and given sound reasons why he has had to be very careful about, and is very limited in, what he can say regarding any such investigation, because of the strict duties of confidentiality and the tipping-off offence imposed and established under applicable local law. Indeed his proposal, based on local legal advice, to approach the Sharjah authorities to seek their permission to make disclosures to the GHF Parties appears to be precisely the right and responsible course to adopt.
129. The GHF Parties have their suspicions as to the Plaintiff's involvement in the Sharjah Criminal Complaint and suggest that it is unfair and improper for him to seek to prevent publication of the Trial Judgment and delay publication of the Dismissal Order when he knows that this will harm and adversely affect the position of the individuals under investigation and who are being detained. But their claim is based on speculation. They have not been able to show that publication of the Trial Judgment or the Dismissal Order will have any, let alone a material, impact on the position of those individuals, or that the Plaintiff's application for the Delayed Publication Order has any connection with the Sharjah Criminal Complaint. They have been unable to ascertain what is being investigated and so cannot show that the matters under investigation and possible offences being reviewed relate in any way to the subject matter of these proceedings.

130. The GHF Parties have therefore not been able to show that making and publishing the Dismissal Order now, one week in advance of the date on which it is projected to be made and published, will make any difference to the position of the individuals affected by the travel ban. As I said at the hearing, to hear that foreign individuals have been detained and prevented from travelling home to their families, is obviously a matter of concern and this Court would wish to assist such parties if it could and was properly able to do so. But there is no evidence that their detention is impermissible under local or international law, or that the conduct of the Sharjah authorities is anything other than a matter for them or of any concern of this Court.
131. The right course appears to be for the GHF Parties to take up the Plaintiff's offer to obtain clearance from, and the permission of, the Sharjah authorities to permit some disclosure and discussions to take place, to see whether the Sharjah authorities and the individuals concerned would genuinely and materially be assisted by further details of the basis on which the Plaintiff's claims were dismissed and, if it transpires that there are proper and reasonable grounds for believing that further defined and specific disclosures would be helpful, then a further application for a variation of the publication embargo could be applied for.

Mr Nerguizian and Mr Badr Jafar – should they be given or have been given an opportunity to comment on the findings and comments made about them before the Liability Judgment is handed down?

132. As I have already noted, I have found persuasive the Fund Parties' submissions as to why the Plaintiff's complaints about the findings and comments made in the Liability Judgment in relation to Mr Nerguizian and Mr Badr Jafar are unjustified and exaggerated.
133. As I have also already noted, one of the Plaintiff's grounds of complaint in respect of Mr Nerguizian and Mr Badr Jafar was that they had not seen the draft Liability Judgment and therefore could neither respond to the Court's findings, commentary or criticisms before the judgment was finalised and handed down, or prepare themselves to deal with the consequences and after-effects of publication.

134. During the hearing I asked Mr McGrath to clarify the Plaintiff's position. I noted that the Plaintiff had had the draft Liability Judgment for well over two months and had, as far as I was aware, not requested permission to show the draft judgment, or applied for an order that the draft judgment be shown, to Mr Nerguizian and Mr Badr Jafar and that they be allowed to provide their comments for the Court to review before the judgment was finalised and to prepare for publication. I said that this was the obvious response to the concerns that were now being expressed regarding procedural fairness and, it seemed to me, that the Plaintiff had, but failed to take the opportunity to, resolve the concerns by seeking such permission or making such an application as soon as he and his advisers had had an opportunity to read and digest the draft Liability Judgment. I noted that even now, although this would now be difficult in view of the further lapse of time, the Plaintiff had not asked the Court to direct or taken the position that the Court should direct that Mr Nerguizian and Mr Badr Jafar be allowed to see and comment on the relevant parts of the draft Liability Judgment before it is finalised and handed down. I said that I was concerned that the Plaintiff was artificially adopting a tactical position to allow him to maintain the procedural unfairness complaint when he could have resolved it by raising the issue with the Court immediately after the draft Liability Judgment was distributed.
135. Mr McGrath initially submitted that it was entirely a matter for the Court to decide what steps were needed to ensure that the requirements of procedural fairness were observed as regards Mr Nerguizian and Mr Badr Jafar, and whether to direct that they see and be given the opportunity to comment on the relevant parts of the Liability Judgment (subject to giving suitable confidentiality undertakings) before it was finalised and handed down. However, after having taken instructions, he said that the Plaintiff's position now was that such a direction should now be made.
136. In my view, it is unfortunate that the Plaintiff did not raise this issue immediately after he and his advisers had read the draft Liability Judgment. I accept that it will have taken them some time to read through and digest the detail in the very long judgment but the concern on such a serious point could and should have been raised promptly with the Court (and the other parties). I also do not accept that it was necessary to give Mr Nerguizian and Mr Badr Jafar such an opportunity. This was why I did not give directions that they be permitted to see the draft Liability Judgment when it was first distributed. But, if this was a serious concern of the Plaintiff, it should have been raised and it would

have been helpful had it been raised with the Court at an early stage, so the Court could consider the points raised by the Plaintiff and what, if anything further, should be done. It should have been possible, fairly rapidly, to see whether Mr Nerguizian and Mr Badr Jafar wanted to take up such an opportunity (they could have been given, say, three weeks to take advice and express their view and provide the necessary confidentiality undertakings) and, if they had wished to provide comments, for them to be given time to do so (say, another three weeks). The Court could then have considered their comments and circulated any amendments to the draft Liability Judgment, if it considered that to be necessary. This would have delayed the handing down process somewhat but not by much.

137. It seems to me that it is now too late to start the process of approaching Mr Nerguizian and Mr Badr Jafar to see whether they wish to see and give their comments on the relevant parts of the draft Liability Judgment. The interests of all parties and the interests of justice require that there be no further delay in the handing down of the Liability Judgment and the commencement of the Plaintiff's appeal process. To allow time now for Mr Nerguizian and Mr Badr Jafar to be approached and asked whether they wish to see and give their comments on the relevant parts of the draft Liability Judgment would result in further delays of probably six to eight weeks, which seems to me to be unacceptable where the Fund Parties are very anxious for the Court's decision to be finalised and made public, where the draft Liability Judgment was distributed over two months ago, and where there has already been a very long delay (resulting from the very long time it took me to prepare and distribute the draft Liability Judgment) in the Trial Judgment being produced.
138. It seems to me that it is worth noting briefly, although, ultimately, this will be a matter for the Court of Appeal on the appeal, why it seems to me that, as the Fund Parties said, the Plaintiff's complaints about the references to Mr Nerguizian and Mr Badr Jafar are exaggerated and without proper foundation.
139. Mr Nerguizian was a willing witness and key player in the relevant events who gave evidence on, and was asked and closely cross-examined about, all the issues that are discussed in the Liability Judgment. The truth of his account and his credibility were clearly challenged by the Fund Parties and it was necessary, in making findings on the

factual issues in dispute, to address in detail and form a view on what Mr Nerguizian had done and knew. Mr Nerguizian had been given a full and ample opportunity in his cross-examination to answer the challenges to his evidence and credibility and to explain the significance and inferences to be drawn from the documents in evidence which he created, saw or referred to him. There was no need for him to be given a further bite of the cherry by being given the opportunity to respond to the findings and comments in the draft Liability Judgment. The case law, as I have said, makes it clear that witnesses, like parties, have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation.

140. Mr Badr Jafar also played a key role in the relevant events and it was, once again, necessary, in making findings on the factual issues in dispute, to address in detail and form a view on what he had done and knew. The fact that his conduct and knowledge would be a central issue in the trial and in determining the outcome of the Plaintiff's claims was clear from the pleadings, the multiple interlocutory applications, many of which concerned and related directly to Mr Badr Jafar, the Fund Parties' written submissions at trial and the cross examination of the Plaintiff and Mr Nerguizian. There was plenty of evidence that Mr Badr Jafar was fully aware of the fact that his role, conduct and knowledge were central to the case and of the claims being made about his conduct (misconduct) by the Fund Parties. He was asked to give evidence and participate in the proceedings but refused to do so. I made it clear in the Liability Judgment that it was entirely a matter for the Plaintiff to determine who to call as a witness and that Mr Badr Jafar could, if he wished, refuse to give evidence but, if the Plaintiff chose not to call him and he declined to give evidence in these circumstances, the Court would be required to consider what inferences to draw and to form a view on what Mr Badr Jafar had done and knew where this was necessary in order to form a view on and in deciding the factual issues in dispute (and Mr Badr Jafar was closely involved in many of these).

141. So Mr Badr Jafar's knowledge, role and conduct were central to the case and trial and it was crystal clear that the Court would need to deal in detail with these matters and the documentary evidence as to Mr Badr Jafar's role, in its judgment. At no time did the Plaintiff object or indicate that, in his view, the Court should give Mr Badr Jafar an opportunity to comment or take his own advice on any findings that the Court might reach in its judgment before the judgment was handed down. In fact, it was clear from

the Plaintiff's explicit evidence that, with full knowledge of these proceedings, Mr Badr Jafar wanted to have nothing to do with them and had rejected the invitation and opportunity to participate and give evidence and put forward his own account and evidence of what had happened.

142. It is also worth noting that the pleadings dealt clearly and explicitly with Mr Badr Jafar's conduct, knowledge and role. The following paragraphs in the RRASOC by way of example make this clear:

“7.6 The Plaintiff's son Badr Jafar was appointed a director of AH in March 2013 and remained in that position at all material times. In that capacity, Mr Badr Jafar, among other things, attended a number of meetings and received a number of updates addressing the financial position of the Abraaj Group and the misappropriation of funds from Fund IV. Despite his position as a director of AH, Badr Jafar was heavily involved in the negotiation of the First and Second Loans (as agent for the Plaintiff 1), acted as a principal in respect of at least the Third Loan (as detailed below, alternatively Badr Jafar acted as the Plaintiff's agent in respect of the Third Loan), and was heavily involved in the subsequent negotiations as regards security and restructuring of the Loans. GP8 fully reserves its and Fund IV's rights as regards Badr Jafar.

7.8 Mr Jafar is Chairman and Mr Badr Jafar is CEO of Crescent Enterprises (a subsidiary of the Crescent Group). Crescent Enterprises, as a founding shareholder and limited partner in the Abraaj Group, provided strategic guidance to the Abraaj Group.

7.9 It is to be inferred and is averred that the Plaintiff was aware (including by reason of his involvement in the management of and/or as an investor and/or limited partner in entities in the Abraaj Group and/or through Mr Badr Jafar and/or through reports provided or made to the Plaintiff, Crescent Investments LLC or other entities through which the Plaintiff retained a shareholding in AH or held investments in other Abraaj Group entities in its capacity as shareholders, investors and advisers to the Abraaj Group) prior to making each of the Loans (i) that investors' funds should be segregated and not commingled, and (ii) of the way in which the Abraaj Group was managed and its business conducted (in particular that funds were not segregated and were misappropriated from entities within the Abraaj Group and that entities within the Abraaj Group suffered financial difficulties) and (iii) that window dressing transactions should not take place and are indicative of poor corporate governance and financial health.”

143. These facts and matters make it clear that the circumstances of this case are, as the Fund Parties submitted, fundamentally different from this with which Mrs Justice Joanna Smith dealt in *Popely*.



The Hon. Mr Justice Segal

Judge of the Grand Court, Cayman Islands

25 July 2025