Case No.: R/O 104/20

IN THE CROWN COURT AT SOUTHWARK

1 English Grounds, London, SE1 2HU

24 March 2021

BEFORE HIS HONOUR JUDGE BAUMGARTNER

IN THE MATTER OF A RESTRAINT ORDER GRANTED ON 12 NOVEMBER 2020 BY HIS HONOUR JUDGE GRIEVE QC

BETWEEN:

(1) GIANLUIGI TORZI
(2) VITA HEALTHY LIMITED

Applicants

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

RULING

Mr Stuart Biggs (instructed by Janes Solicitors) for the Applicants
Mr Timothy Hannam QC (instructed by the Pre-Enforcement Unit, CPS Proceeds of Crime Division, Crown Prosecution Service) for the Respondent

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I direct that pursuant to Crim PR r 5.5(1)(a) no official shorthand note shall be taken of this Ruling and that copies of this version as handed down may be treated as authentic.

HIS HONOUR JUDGE BAUMGARTNER:

1. In handing down judgment in private in this matter on 10 March 2021, I reserved answering the short question of whether judgment should be delivered in public. This was to allow the parties sufficient time to make any further submissions on the point. I have since received written submissions from Mr Biggs, dated 17 March, and from Mr Hannam QC, dated 19 March, in addition to the ones they each served on and dated 9 March.

2. While the question is short one, the answer is not. It requires an analysis of the principle of open justice in English law and the distillation of the correct approach to delivering a judgment in public in proceedings such as these when the Court has sat in private, taking into account the applicable procedural rules, before scrutinising the parties' submissions against that framework.

3. I turn first to consider the overarching principle of open justice and its application in these proceedings through the relevant procedural rules.

Open justice

4. The principle of open justice is central to the rule of law in this country. The Judicial College's guide to *Reporting Restrictions in the Criminal Courts*, published April 2015 (revised May 2016) (the **"Guide"**), summarises the principle as follows:[1]

> "The general rule is that the administration of justice must be done in public, the public and the media have a right to attend all court hearings and the media is able to report those proceedings fully and contemporaneously. The public has the right to know what takes place in the criminal courts and the media in court acts as the eyes and ears of the public, enabling it to follow court proceedings and to be better informed about criminal justice issues."

The principle that justice is conducted, and judgments are given, in public is "*a sound and very sacred part of the constitution of the country and the administration of justice*": *Scott v Scott* [1913] AC 417, per Lord Shaw, at 473. Any restriction on the rule will be exceptional, and must be based on necessity in order to secure the proper administration of justice: *Scott v Scott*, per Lord Loreburn, at 445-446, *A-G v Leveller Magazine Ltd* [1979] AC 440, per Lord Diplock, at 450; and see further, the Guide, at pp 7-8.

Which procedural rules apply?

5. As I mention in the judgment, the hearing on 26 February was held in private, pursuant to Crim PR r 33.35, and the judgment when delivered was marked accordingly. The default position in criminal proceedings in the Crown Court is that they take place in public in accordance with the principle of open justice. This requirement is set out in Crim PR r 6.2, which makes general rules about reporting and public access restrictions.

6. Restraint proceedings under the 2002 Act are not, however, criminal proceedings. The Criminal Procedure Rules 2020 apply only to criminal cases: Crim PR r.2.1(1)(a). In *Re S (Restraint Order: Release of Assets)* [2005] 1 WLR 1338, delivering the judgment of the Court of Appeal Scott Baker LJ said that "*it is impossible to conceptualise restraint proceedings as criminal*".[2]

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[1] See the Guide, p 7.

[2] At [53]. In so holding, the Court applied the analysis adopted by the House of Lords in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787 when considering the classification of proceedings for an anti-social behaviour order under the Crime and Disorder Act 1998 as civil in nature.

7. Restraint proceedings, however, can be ancillary to, and in some cases consequent upon,[3] a criminal charge being made against a defendant. They are a creature of statute, akin to proceedings in civil courts. Like civil proceedings, they are not subject to the rules of evidence which apply in criminal proceedings.[4] Before the relevant provisions of the 2002 Act came into force, restraint proceedings were brought in the High Court, a court of general jurisdiction,[5] under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994. The Crown Court, on the other hand, is not a court of general jurisdiction. It has exclusive jurisdiction in trial on indictment,[6] and "*all such … other jurisdiction as is conferred on it by or under this or any other Act*",[7] including the jurisdiction conferred upon it by the 2002 Act to hear and determine restraint proceedings. The Crown Court's jurisdiction to make restraint orders is analogous to the High Court's inherent jurisdiction to make freezing orders,[8] with a number of important distinctions.[9] Unlike the High Court's inherent jurisdiction, the Crown Court's jurisdiction stems from the 2002 Act (and, for external requests, the 2005 Order) itself.

8. Even though, as *Re S* determined, restraint proceedings are not criminal proceedings, the Criminal Procedure Rules (through r 33) make specific provision for the practice and procedure to be adopted in restraint proceedings.[10] There are important features which differ to criminal proceedings. The general rule is that applications in restraint proceedings are to be dealt with without a hearing unless the Court orders otherwise.[11] Provision is expressly made for restraint proceedings to be dealt with in chambers (that is, in private), excluding the public.[12] Although the Criminal Procedure Rules outside of r 33 are not of direct application in restraint proceedings, they provide useful guidance as to how the Court should proceed when considering the principle of open justice, and other procedural matters. Crim PR r 6.2 and Crim PD 6B recognise the importance of dealing with criminal cases in public, and allowing a public hearing to be reported to the public. This largely reflects the equivalent rule in the Civil Procedure Rules 1998, in CPR r 39.2, and in PD 39A. Alongside a number of other factors, emphasis is placed by CPR r 39.2 upon the court being satisfied of the necessity to sit in private to secure the proper administration of justice before a court does so. The fundamental, constitutional principle set out by the House of Lords in *Scott v Scott*, however, remains the touchstone for open justice, whatever the classification of the proceedings.

9. Crim PR r 6.3 provides that the Court must not impose a restriction on public access or reporting unless each party and "*any other person directly affected*" has had the opportunity to make representations. The words "*any other person directly affected*" are of particular relevance to the media. If the media are unable or unwilling to make representations when the court is considering any such restriction, the obligation to ensure that restrictions are only made when justified remains on the court: see *R v Sarker* [2018] EWCA Crim 1341, where the Court of Appeal, Criminal Division considered and quashed a reporting restriction order imposed by

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[3] See, for example, s 40(3)(a) of the 2002 Act.
[4] See, for example, the 2002 Act, s 46 regarding the admissibility of hearsay evidence (and its corresponding provision in the 2005 Order, art 13); and, also, Crim PR r 33.37 (witness evidence to be in writing) and r 33.40 (disclosure and inspection of documents), which apply evidential procedures common to civil proceedings, and r 33.39, by which s 2(1) of the Civil Evidence Act 1995 disapplies in restraint proceedings.
[5] Senior Courts Act 1981, s 19.
[6] Courts Act 1971, s 6.
[7] Senior Courts Act 1981, s 45.
[8] Senior Courts Act 1981, s 37(3).
[9] See, for example, those set out in Sutherland Williams, M, et al, *Millington and Sutherland Williams on The Proceeds of Crime* (5th ed, Oxford University Press, 2018), pp 15-16.
[10] Section 69(3) of the Courts Act 2003 contemplates such an accommodation within the Criminal Procedure Rules "*for different cases or different areas*".
[11] Crim PR r 33.34.
[12] Crim PR r 33.35.

the Crown Court at Worcester under s 4(2) of the Contempt of Court Act 1981 (the **"1981 Act"**) in a criminal trial.

The correct approach

10. In *Sarker* the Court was referred to a long line of authority (including *Scott v Scott* and *A-G v Leveller Magazine Ltd*) making paramount the principle of open justice and the role of the media in reporting what takes place in court. Although the Court was concerned with an application for statutory reporting restrictions under the 1981 Act, Lord Burnett CJ (delivering the judgment of the Court) set out at [29] the rationale for the principle and the importance of media reports of legal proceedings:

> "(iii) Full contemporaneous reporting of criminal trials (and other legal proceedings) promotes public confidence in the administration of justice and the rule of law: *In re S* at [30].
>
> (iv) On a practical level, the public nature of court hearings (and media reports of them) fulfils several objectives: (1) it enables the public to know that justice is being administered impartially; (2) it can lead to evidence becoming available which would not have been forthcoming if reports are not published until after the trial has completed or not at all; (3) it reduces the likelihood of uninformed or inaccurate comment about the proceedings; and (4) it deters inappropriate behaviour on the part of the court (and we would add others participating in the proceedings): *ex parte Kaim Todner* at 977E-G per Lord Woolf MR.
>
> (v) On the rare occasions when a court is justified in sitting in private, both the public and media are prevented from accessing the proceedings altogether. Reporting restrictions are different. The proceedings are there to be seen and heard by those who attend court, but they cannot be reported. Reporting restriction orders, albeit not as great a departure from open justice as the court sitting in private, are nevertheless 'direct press censorship': *Khuja* at [16] per Lord Sumption."

11. These principles are of equal application in deciding whether a hearing should be conducted, or a judgment should be delivered, in private or in public. Cloaking a judgment by sitting in private leads to the same result as a general prohibition on reporting because it results in the same "*direct press censorship*" Lord Burnett CJ cautions against, and the public would not know about the court's decision.

12. The decision in *Sarker* was framed by s 4(2) of the 1981 Act, which provides for the postponement of reporting where a contemporaneous report would give rise to "*a substantial risk of prejudice to the administration of justice*" in the proceedings, or in any other proceedings pending or imminent. At [30], the Court approved what Longmore LJ had said in *R v Sherwood (ex parte Telegraph Group)* [2001] 1 WLR 1983 to be the proper approach to considering reporting restrictions in this context,[13] which I adapt for the purposes of this ruling and summarise as a three stage approach:

    (1) Would delivering the judgment in public (and any reporting that might consequently follow) give rise to a substantial risk of prejudice to the administration of justice in any proceedings pending or imminent? If not, that will be the end of the matter.

[13] At [22], in turn approved by the Privy Council in *Independent Publishing Co Ltd v A-G of Trinidad and Tobago* [2005] 1 WLR 190, at [69].

(2) If such a risk is perceived to exist, would a reporting restriction eliminate it? If not, there is no need to impose reporting restrictions. If so, could some other, less restrictive, means overcome the risk? In that event, again, there is no need to impose reporting restrictions.

(3) If there is no other way of eliminating the perceived risk of prejudice, the need for reporting restrictions still does not follow. The degree of risk contemplated should be regarded as tolerable in the sense of being "the lesser of two evils". Value judgments may have to be made about the priority between the competing public interests: fair trial, and freedom of expression/open justice.

13. The requirement in s 4(2) of the 1981 Act is that there must be a "substantial risk of prejudice". These words do not mean "weighty", but rather "not insubstantial" or "not minimal". The focus should be on the prejudice it is said would follow by not keeping the judgment private. The risk of prejudice in this jurisdiction is more real than otherwise might be the case where the tribunal of fact is comprised of professional judges, as a lay jury of twelve may not be able to properly discount any irresponsible, unfair, or inaccurate media reporting about the matter.

14. Having set out that three stage approach, I turn next to consider the parties' submissions.

Submissions

The Applicants

15. The Applicants submit the judgment should be made public. Mr Biggs's submissions focus on whether the material before the Court was already in the public domain, and whether such material could prejudice Mr Torzi (or any of his alleged co-conspirators, who are not party to these proceedings) in any criminal proceedings extant or ones that might follow. In short, he submits that the only consideration that militates against a public judgment is whether material not already publicly available may go into the public domain which may be prejudicial to a forthcoming trial.

16. Although Mr Biggs submits there is no evidence before the Court as to the likely format or timescale of any trial, he anticipated any trial would be before a professional tribunal. Given Mr Torzi's written defence to the charges is filed with the Tribunale dello Stato della Città del Vaticano (the Tribunal of the Vatican City State), that must be right.

17. In any event, Mr Biggs submits (and I accept, as it was common ground) that the investigation into the Secretariat's dealings surrounding the Chelsea Property has had significant coverage in the Catholic press, the Italian media, the media in this country, and worldwide. Proceedings here in the High Court are now afoot, brought by Mr Mincione against the Secretariat. Mr Biggs submits that, while no comparative exercise has been undertaken to determine what gaps, if any, remain between that extensive process coverage and the facts and matters referred to in the judgment, a great deal of information is already in the public domain, and there is no basis for concluding that there will be a significant impact by any particular further disclosure.

The Respondent

18. The Respondent opposes publication of the judgment. Mr Hannam QC submits, first, that the circumstances of this case are such that publication of the judgment risks prejudicing not only Mr Torzi's trial, but, secondly, also ongoing criminal investigations into and proceedings against others, including those named in the restraint proceedings. He submits the media interest in the investigation is such that the judgment, if made public, will be reported widely in the Vatican, in Italy, and in the Catholic press. Mr Hannam QC submits this may have an effect on the fairness of the proceedings against Mr Torzi, and against others identified in the

judgment, in particular Monsignor Perlasca, Mr Tirabassi, Mr Crasso and Monsignor Carlino, the latter three about whom Mr Torzi has made what Mr Hannam QC describes as "scandalous" accusations, and which may also be unfairly damaging to the reputations of those who can be identified as their alleged victims.

19. Mr Hannam QC placed particular focus on prejudice to the OPJ's ongoing investigations, both in the Vatican and abroad, and in relation to others apart from Mr Torzi, who might be tipped off should the judgment be made public. He relied upon three letters from Prof Avv Diddi, dated 16, 17 and 20 March 2021, the second of which refers to the confidentiality of those investigations and set outs out the Vatican law which prohibits the publication of documents or parts or summaries thereof used in investigations and prosecutions in that jurisdiction unless referred to in court or until proceedings are concluded. I refer to this letter further below.

Discussion and analysis

20. I have carefully considered the parties' submissions against the approach that I have adapted from *Sarker*, bearing in mind the burden lies on the party seeking to persuade the Court to depart from the open justice principle that it is necessary to do so on the basis of clear and cogent evidence. I remind myself that the obligation to ensure that restrictions are only made when justified falls upon the Court where the media are unable or unwilling to make representations. There has been no media presence throughout these proceedings.

21. The first question to consider is whether delivering the judgment in public (and any media reports that might consequently follow) would give rise to a substantial risk of prejudice to the administration of justice in any proceedings pending or imminent. In addressing this question, I take Mr Hannam QC's two points in turn.

22. Mr Hannam QC's first point is the fear about prejudice to Mr Torzi in any trial he might face in the Vatican. In so far as the facts and matters set out in the judgment are concerned, I do not see how that can be so. They are drawn from Mr Torzi's own detailed written defences provided to the OPJ (dated 12 June 2020) and to the Tribunal (dated 11 January 2021). It is not disputed that the Tribunal is a court comprised of professional judges as the judges of fact, in contrast to the lay jury of twelve as the sole judges of fact in this country. The Tribunal will already be seized of what Mr Torzi has said. Mr Torzi is represented by Italian lawyers in the criminal proceedings before the Tribunal. Neither Mr Torzi nor his lawyers have, through Mr Biggs, raised any such concern. To the extent that sections of the media report the published judgment, there is nothing in it which Mr Torzi does not reply upon in his defence to the charges levied against him by the OPJ. To the extent there is any unfair or inaccurate domestic or international media reports about the matter, I hold little doubt that the Tribunal will be able to put such things out of its mind, knowing what Mr Torzi has said in his defence. I do not consider Mr Hannam QC's first point about the potential prejudicial effect, if any, upon Mr Torzi's potential trial in the Vatican is made out.

23. Mr Hannam QC's second point flows from his first but, instead of Mr Torzi, focusses on the prejudicial effect publication might have upon Monsignor Perlasca, Mr Tirabassi, Mr Crasso, and Monsignor Carlino's position. Each of them is named by the OPJ in the Letter of Request as Mr Torzi's co-conspirators: in Count (a), embezzlement (Perlasca and Tirabassi); in Count (b), embezzlement (Perlasca, Tirabassi, and Crasso); and, in Count (d), extortion (Tirabassi, Crasso, and Carlino). I have not received evidence about the status of criminal investigations or proceedings against these four men, or whether they would be jointly tried with Mr Torzi if proceedings against them were to be commenced. The OPJ's position insofar as Monsignor Perlasca's culpability at times appears to have shifted, as I identified at [69]-[70] of the judgment. The four men are a key feature of the OPJ's case against Mr Torzi, and in Mr Torzi's written defence, and may well in due course feature in any criminal proceedings against Mr Torzi. In any event, the same observations I made about any potential prejudice to a trial of

Mr Torzi apply equally here. I have little doubt that a professional tribunal of fact would discount any media reports about the judgment that had no direct bearing upon Mr Torzi's alleged co-conspirators, as it would any irresponsible, unfair, or inaccurate media reporting about the matter.

24. The OPJ has not provided the Court with any information as to the status of any criminal investigation into or proceedings against these four men or any of them, whether actual or pending, or any investigation into others that may be afoot or contemplated. Three further letters from Prof Avv Diddi dated 16, 17 and 20 March 2021 have been produced by the DPP to support the submission that disclosure of the judgment and the materials referred to during the hearing and quoted in the judgment would prejudice the ongoing investigations of the OPJ, both in the Vatican and abroad, and in relation to suspects other than Mr Torzi, who may be tipped off should they be published. Prof Avv Diddi relies upon the secrecy of the investigation under Vatican law, and in his letter of 17 March, says this:

> "Regarding why would the investigations/trials be prejudiced and why would disclosure have repercussions for the cooperation of other foreign Country we integrate as follows:
>
> Torzi case is connected to other subjects involved in the criminal proceedings, it has been amply demonstrated in the 'Witness Statement' of the undersigned Promoter of Justice forward [sic] to CPS. Both Torzi and others [sic] individuals are subject to investigation in other foreign jurisdictions. In some cases, these investigations are delegated on behalf of the Promoter's Office with an MLA request, in other cases the investigations starts [sic] thanks to the information that this Office has provided. To corroborate the charges against Torzi, in the UK Judgement under discussion, information and evidences were communicated (supported by documents and other material such as chat) that can probably have consequences in those foreign jurisdictions. This would happen because some information is not known to the parties involved. This means that the other individual involved in the investigation, being informed of the Sentence, could acquire in their favor the advantage of becoming aware of the progress of the investigations of the promoter of justice."

25. No particular examples or instances of potentially offending matter in the judgment are given, or of who else is under investigation and named in the judgment, or of who or how others might be tipped off, or of how the judgment might prejudice any pending or ongoing investigation into them; the position adopted by the OPJ through Prof Avv Diddi, it seems, is that the judgment simply should not be made public because of the risk that others allegedly involved might be tipped off. Given what the parties agree as the substantial media coverage of the case, I cannot see how anyone said to be connected with the Chelsea Property transaction would not already be aware of the OPJ's interest in the matter and the investigations already underway. The DPP did not draw to the Court's attention any matter referred to in the judgment that was not already in the public domain.

26. As to any Vatican law that prohibits the publication of documents or any summary or part thereof unless referred to in court or until proceedings conclude, that, respectfully, is a matter for anyone subject to Vatican law. The fact that an investigation is confidential in another jurisdiction does weigh in my mind and, to the extent the courts in this country can, is something that should be considered on the basis of international judicial comity and reciprocity, at least as between courts, but to my mind such a blanket claim does not sit well with the principle of open justice. In the same way that investigations here in this country might remain confidential to the authorities, the authorities are aware that they are, nonetheless, subject to disclosure obligations (for example, under the Criminal Procedure and Investigations Act 1996) and, in any event, once proceedings before a court begin, subject to the principle of open justice to the extent any material is deployed before a court.

27. Part of Mr Hannam QC's second point extends to the potential for unfairness to Mr Tirabassi and Mr Crasso that Mr Torzi's accusations might cause, not only in so far as any criminal investigation or proceedings against them is concerned, but also to their reputations and to the reputations of those who can be identified as their alleged victims. While this may be so, that does not form part of the approach that I have to take in applying the principles adapted from *Sarker*. I do not consider that publication of these matters would lead to significant risk of prejudice to the administration of justice in any proceedings pending or imminent. Equally, I do not consider that Mr Torzi has sought to abuse the process of this Court in making these allegations, and nor is that asserted by the Respondent. The allegations made by Mr Torzi form a part of his written defence given to both the OPJ and the Tribunal, and must be seen and fairly reported within that context.

28. In sum, on the basis of the material relied upon by the Respondent, at the first stage I am not satisfied on the basis of clear and cogent evidence that any such prejudice would result. Although that is the end of the matter, I had considered whether, even if there was a significant risk, whether some other reporting restriction might eliminate it. It may, for example, be that something in the judgment which might give rise to a significant risk of prejudice could be redacted, or parties' names anonymised. I am not in a position to consider this any further, however, because (outside the Mr Torzi's accusations against Messrs Tirabassi and Crasso) the DPP has not advanced any particular areas of concern.

29. Having answered "no" to the first stage of the approach adapted from *Sarker*, I do not need to go on to consider the second and third stages. The result is that the judgment will be delivered in public, and I do so by having had this matter listed in public today and by appending a copy of the judgment to this ruling. To readers of the judgment, I draw attention to the task this Court faced in determining the Discharge Application. In considering whether a restraint order should be re-imposed or made, I did not make any findings of fact let alone any findings of guilt or innocence. I sought only to evaluate the evidence put before me in determining whether there was reasonable cause to believe Mr Torzi had benefited from criminal conduct. In doing so, I read the documents and contracts in evidence and referred to in the judgment *de bene esse*, without determining their true construction, meaning and effect. The matters raised by Mr Torzi in his defence as summarised in the judgment should be read with all that in mind.

30. I will hear the parties as to the need, if any, for any consequential orders.

Case No.: R/O 104/20

IN THE CROWN COURT AT SOUTHWARK

1 English Grounds, London, SE1 2HU

24 March 2021

BEFORE HIS HONOUR JUDGE BAUMGARTNER

IN THE MATTER OF A RESTRAINT ORDER GRANTED ON 12 NOVEMBER 2020 BY HIS HONOUR JUDGE GRIEVE QC

BETWEEN:

(1) GIANLUIGI TORZI
(2) VITA HEALTHY LIMITED

Applicants

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

APPENDIX TO RULING

Case No.: R/O 104/20

IN THE CROWN COURT AT SOUTHWARK

1 English Grounds, London, SE1 2HU

10 March 2021

BEFORE HIS HONOUR JUDGE BAUMGARTNER

SITTING IN PRIVATE

IN THE MATTER OF A RESTRAINT ORDER GRANTED ON 12 NOVEMBER 2020 BY HIS HONOUR JUDGE GRIEVE QC

BETWEEN:

(1) GIANLUIGI TORZI
(2) VITA HEALTHY LIMITED

Applicants

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

APPROVED JUDGMENT

Mr Stuart Biggs (instructed by Janes Solicitors) for the Applicants
Mr Timothy Hannam QC (instructed by the Pre-Enforcement Unit, CPS Proceeds of Crime Division, Crown Prosecution Service) for the Respondent

Hearing date: 26 February 2021

I direct that pursuant to Crim PR r 5.5(1)(a) no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HIS HONOUR JUDGE BAUMGARTNER:

Introduction

1. This is an application to discharge a restraint order made by His Honour Judge Grieve QC in this Court sitting at Southwark on 12 November 2020 (the **"Restraint Order"**) exercising the Court's jurisdiction under art 8(4) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (the **"2005 Order"**). The Restraint Order was made on the papers and, because of its urgency, without notice to the order's respondents, Mr Gianluigi Torzi and Vita Healthy Ltd, who are the Applicants in the proceedings before me.

2. By this application, the Applicants challenge the Restraint Order and seek its discharge on the grounds of material non-disclosure and/or misrepresentation. In considering the papers, it became evident to me that, since the application was made on 23 December 2020, the scope of the application (as well as the grounds for it) had narrowed, and so, exercising the Court's case management powers under Crim PR r 1.1(2)(e), I directed the parties agree a list of issues for the Court to consider upon the application. Accordingly, besides costs, the parties agreed the Court should determine the following issues:

   (1) Was there non-disclosure and/or misrepresentation in the application for restraint?

   (2) If so, was such non-disclosure and/or misrepresentation material?

   (3) Should the order be discharged?

   (4) If so, is the test for a new order met on the material now before the Court?

   (5) If so, what should be the terms of any such order?

3. Having considered the application on the material placed before the Court together with the parties' written and oral submissions, I agree that those issues are the issues that properly fall to me for determination. Before I turn to consider them, however, it is necessary for me to set out in some detail the background facts and matters asserted by the Director of Public Prosecutions (the **"DPP"**) in his without notice application for the Restraint Order, given the Applicants' position that there was non-disclosure and/or misrepresentation in the grounds advanced by the DPP. It will become evident that the facts and matters to which these proceedings give rise are lengthy and complex (and frequently disputed or the subject of partisan interpretation), and for that reason I shall deal only with those which I consider are immediately relevant to the disposition of the application before me.

The Restraint Application

4. The Restraint Order was made upon the application of the DPP, acting through the Crown Prosecution Service (the **"CPS"**), dated 12 November 2020 (the **"Restraint Application"**), pursuant to art 9(1) of the 2005 Order.

5. The Restraint Application followed receipt by the Secretary of State for the Home Department (the **"Home Secretary"**), acting through the UK Central Authority, of a letter rogatory (or letter of request) from the Ufficio del Promotore di Giustizia (the Office of the Promoter of Justice (the **"OPJ"**)) of the Tribunale (the **"Tribunal"**) of the Stato della Città del Vaticano (the Vatican City State (the **"Vatican"**)) dated 11 November 2020 (the **"Letter of Request"**), signed by the Promoter of Justice Adjoint Professore Avvocato Alessandro Diddi, for an order restraining three bank accounts held by the Second Applicant, Vita Healthy Ltd (**"Vita"**) (formerly known as Sunset Enterprise Ltd (**"Sunset"**)), with HSBC Bank Plc which, at the date of the Letter of Request, stood in credit in the following amounts:

Account no. ending 8123:	GBP 84,717.54
Account no. ending 6546:	GBP 0.11
Account no. ending 2051:	EUR 655,828.33

(together, the **"HSBC bank accounts"**).

Grounds for the application

6. The grounds for the Restraint Application were set out in the first witness statement of Ms Manjula Nayee, a CPS Specialist Prosecutor authorised by the DPP to make the Restraint Application on his behalf, dated 12 November 2020. In her first witness statement Ms Nayee disclaimed any personal knowledge of the facts set out in it, relying instead upon the contents of the Letter of Request (which she exhibited in its English translation as Exhibit "MN/1")[1] and certain information provided to her by Ms Sally Cullen, a CPS International Liaison Magistrate in Rome who was involved with "the Vatican authorities" (as Ms Nayee describes them, which I take to mean the OPJ) in the preparation of the Letter of Request, and from documents obtained from Companies House.

7. Ms Nayee set out in paragraphs 18 to 46 of her first witness statement the background to the OPJ's investigation of Mr Torzi who, as the Letter of Request avers, had been charged by the OPJ with various criminal offences following complaints from the Holy See's Institute for Works of Religion (commonly known as the Vatican Bank) (in July 2019) and the Office of the Auditor General (an institution which appears to have oversight of bodies in both the Vatican and the Holy See) (in August 2019).

8. The Letter of Request states Mr Torzi faces six counts in all:

   Count (a): embezzlement, between 20 June 2014 and 3 December 2018;

   Count (b): embezzlement, on 23 November 2018;

   Count (c): fraud, between 3 December 2018 and 1 May 2019;

   Count (d): extortion, between 5 December 2019 and 1 May 2019;

   Count (e): money laundering, between 5 December 2019 and 1 May 2019; and

   Count (f): fraud, on 13 March 2019.

9. The facts alleged giving rise to these charges are rehearsed by the Letter of Request in some detail and summarised by Ms Nayee in her first witness statement. In short, amongst other things it is said that Mr Torzi conspired with others to defraud the Holy See's Secretariat of State (a department of the Holy See performing its political and diplomatic functions (the **"Secretariat"**)) in dealings surrounding the Secretariat's acquisition of a property at 60, Sloane Avenue, Chelsea, London (the **"Chelsea Property"**) in 2018 through an offshore structure of funds and companies.

10. My use of the descriptor "the Holy See" here in referring to the Secretariat is distinct to that of the Vatican City State[2] which, through the OPJ, brings the charges against Mr Torzi. "The Holy See" describes an organ of the Catholic Church in Rome distinctly separate to the Vatican, which (like the Vatican) is itself a body possessed of separate, individual legal

[1] Hearing bundle, pp. 42-50.
[2] Which I have abbreviated to "the Vatican" elsewhere.

personality in international law, as recognised by the Lateran Treaty.[3] In his written skeleton argument dated 10 February 2021, Mr Stuart Biggs, who appears for the Applicant, submitted that the investigation into Mr Torzi was by a requesting state that has no established history of conducting criminal investigations, and certainly none in cases of this nature. No direct evidence was adduced by the Applicants before me on this point, and it was not developed further by Mr Biggs in oral argument. I do not take that submission into account. Mr Biggs' written skeleton also asserted the requesting state is, in effect, prosecuting in its own cause as both complainant and investigator/prosecutor but, again, no evidence was offered in support. Mr Biggs said that this context might properly encourage this Court to apply particularly keen scrutiny to any assertions made by the Vatican as to the appropriate interpretation of events and/or documents. In applications of this nature, I would do so in any event.

11. I do not, however, consider Mr Bigg's submission that the Vatican is prosecuting its own cause to be made out on the evidence. On the papers before me, although at times the parties conflate the words "the Vatican" and "the Holy See", I make the following distinction: the Vatican Bank and the Office of the Auditor General are the complainants; the alleged victim is the Secretariat; and the OPJ, headed by the Promoter of Justice, is both the investigator and prosecutor, working within the framework of a domestic criminal code (as is evident in the Letter of Request, and common to many other jurisdictions), investigating offences said to have been committed within the territory of the Vatican and elsewhere (again, evident from the Letter of Request). The role of the OPJ in this context is no different to that of the examining magistrate in other civil law systems. It fulfils the role of public prosecutor as well as investigator. Should Mr Torzi face trial in the Vatican, there is nothing before me to suggest that it will be otherwise than before a criminal tribunal comprised of independent judges unconnected with the complainants, the alleged victim, or the OPJ. In any event, no point is taken by Mr Torzi in his written defence to the charges filed with the Tribunal[4] as to the division or otherwise between the OPJ as investigator and prosecutor on the one hand, and the complainants and/or the alleged victim on the other.

12. The dealings alleged by the OPJ as set out in the Letter of Request can be summarised as follows:

    (1) Time and Life SA (**"TL"**), a company controlled by Mr Raffaele Mincione, purchased the Chelsea Property on 18 December 2012 for GBP 129,000,000 through a separate holding company.

    (2) Mr Mincione promoted and controlled a fund called the Athena Capital Global Opportunities Fund (the **"GOF"**), managed by an investment fund called Athena Capital Fund SICAV[5] (the **"ACF"**).

    (3) In or about 2014, the Secretariat, acting through Mr Fabrizio Tirabassi (the head of its Administrative Office) and Monsignor Alberto Perlasca, transferred USD 200,500,000 to the GOF using lines of credit granted by Credit Suisse and Banca Svizzera Italiana secured on the Secretariat's assets worth at least EUR 454,000,000. The money was used to purchase an interest in the Chelsea Property through a chain of corporate vehicles which is not fully described by Ms Nayee or the Letter of Request.

[3] A treaty between the Holy See and Italy made in 1929 which recognized Vatican city as an independent state under the sovereignty of the Holy See (see Lateran Treaty, Art 3). See further Crawford, J, "The Creation of States in International Law" (2nd ed, Clarendon Press, 2006), pp 221-233, and Crawford, J, "Brownlie's Principles of Public International Law" (9th ed, Oxford University Press, 2019), p 114.
[4] Hearing bundle, pp 765-822.
[5] Société d'investissement à Capital Variable, an investment fund structure used in Luxembourg. See Recital (B) of the Framework Agreement dated 22 November 2018, hearing bundle, pp 386-387.

(4) The following transactions, however, appear relevant to the charges:

(i) a deposit of USD 38,000,000 into bank accounts connected to Mr Mincione and the GOF;

(ii) a USD 16,000,000 subscription to a bond issued by TL;

(iii) a EUR 3,900,000 subscription to a bond issued by Sierra One SPV Srl (**"Sierra One"**), a company with connections to Sunset (a company said to be controlled by Mr Torzi) and Mr Torzi, which undertook to pay a EUR 4,000,000 commission to Sunset (the **"Sierra One investment"**).

These dealings are said to give rise to the offence in Count (a).

(5) When the Secretariat subsequently decided to purchase the whole of the interest in the Chelsea Property in 2018, it did so by entering into a framework agreement and share purchase agreement with Gutt SA (**"Gutt"**), a company controlled by Mr Torzi, and another vehicle called Athena Real Estate & Special Fund 1, by which EUR 40,000,000 was paid to ACF to acquire the entities and ultimately 60 SA-2 Ltd, the company then immediately holding the freehold of the Chelsea Property. In addition, the Secretariat paid the sum of GBP 125,000,000 to discharge a debt secured on the property. The OPJ avers the outlays incurred by the Secretariat for the purchase totalled over EUR 350,000,000 by 2018. This was a significant amount over and above the GBP 129,00,000 paid for the property six years earlier at the end of 2012.

These dealings are said to give rise to the offence in Count (b).

(6) The OPJ alleges Mr Torzi "dishonestly and secretly" decided to issue himself controlling shares in Gutt to prevent the Secretariat from acquiring the whole of the interest in the Chelsea Property until the Secretariat agreed to pay him a further EUR 15,000,000.

These dealings are said to give rise to the offence in Count (c).

(7) As a result, the OPJ says that Mr Torzi blackmailed the Secretariat into paying him EUR 15,000,000 to complete the transfer.

(8) Following payment, Mr Torzi permitted the transfer of the shares in 60 SA-2 Ltd (the company which held the freehold of the Chelsea Property) to a company controlled by the Secretariat.

These dealings are said to give rise to the offence in Count (d).

(9) The EUR 15,000,000 payment was made in two tranches: one to Sunset in the sum of EUR 5,000,000 on 29 April 2019, the other to Lighthouse Group Investments Unlimited (later known as Lighthouse Group Investments Limited) (**"Lighthouse"**), another company controlled by Mr Torzi, for EUR 10,000,000 on 1 May 2019.[6]

[6] It is common ground that Mr Torzi was a director of Vita between 16 May 2018 and 8 June 2020. Between 30 March 2017 and 11 May 2020, Vita was known as Sunset Enterprise Ltd. Companies House records disclose that Lighthouse has held significant control of Vita since 20 November 2017. Mr Torzi was a director of Lighthouse at the same time he was a director of Vita but, in any event, has significant control of Lighthouse by "ownership of shares – 75% or more with control over the trustees of a trust".

(10) The OPJ avers the true origin of the sums comprising the EUR 15,000,000 payment was concealed or disguised by Mr Torzi as the proceeds of his criminal conduct (that is, the blackmail in Count (d)).

These dealings as said to give rise to the offence in Count (e).

(11) Finally, the OPJ alleges Mr Torzi conspired to defraud Gutt (which controlled 60 SA Ltd, a company which at some stage appears to have owned the freehold to the Chelsea Property) of GBP 224,620 by causing 60 SA Ltd (a company holding the shares in 60 SA-2 Ltd) to transfer that sum to a lawyer called Nicola Squillace in return for services said to be but not rendered to 60 SA Ltd but in fact rendered to Mr Torzi.

These dealings as said to give rise to the offence in Count (f).

13. By the time the proceedings came before me on 26 February, the DPP had abandoned his claims on behalf of the Vatican (at least insofar as the Applicants were concerned) in respect of much of what was alleged in Count (a), and noted that the payment in Count (f) was not relevant to the EUR 15,000,000 calculation of Mr Torzi's benefit from criminal conduct, leaving only the facts and matters asserted in Counts (b), (c), (d) and (e) as live in this application. Insofar as Count (a) was concerned, the DPP maintained the wider time frame of the conspiracy alleged in respect of the Chelsea Property (which is the subject of Count (b)). I return to this further below.

Legal framework

14. Arts 8 and 9 of the 2005 Order provide that the Court may make, on the application of the DPP ex parte (or without notice) to a judge in chambers, a restraint order prohibiting any specified person from dealing with relevant property which is identified in an "external request" and specified in the order.

15. Section 447 of the Proceeds of Crime Act 2002 (the **"2002 Act"**) relevantly provides:

(1) an external request is a request by an "overseas authority" to prohibit dealing with relevant property which is identified in the request (s 447(1)); and

(2) an overseas authority is an authority which has responsibility in a country or territory outside the United Kingdom (a) for making a request to an authority in another country or territory (including the United Kingdom) to prohibit dealing with relevant property, (b) for carrying out an investigation into whether property has been obtained as a result of or in connection with criminal conduct, or (c) for carrying out an investigation into whether a money laundering offence has been committed (s 447(11)).

That the Letter of Request from the Vatican is an "external request" from an "overseas authority" is now not disputed by the Applicants, nor is its referral to the DPP by the Home Secretary for processing under art 6(1)(b) of the 2005 Order.

16. Art 46(2) provides that, where an "external order"[7] has not been made (as was the case here in the Restraint Application), in exercising its power to make a restraint order, the Court must exercise its powers with a view to the value for the time being of "realisable property"[8] being

[7] That is, the external equivalent of a confiscation order made under the 2002 Act: see 2005 Order, art 2, and 2002 Act, s 447(2).
[8] "Realisable property" includes any free property held by the defendant: 2005 Order, art 135(1). Property is "free" unless there is an order in force in relation to it as specified in s 280 of the 2002 Act: 2005 Order,

made available for satisfying an external order that may be made against the defendant (art 46(2)(a)), and with a view to securing that there is no diminution in the value of the property identified in the external request (art 46(2)(b)). These provisions are allied to the further requirement of a real risk of dissipation (see below).

17. Art 8 of the 2005 Order provides that the Court may make a restraint order if either of the two conditions in art 7 is satisfied.

The second condition: art 7(3)

18. At paragraph 10 of her first witness statement, Ms Nayee set out her belief that the second condition, set out in art 7(3), had been met, in that:

    (a) the Letter of Request identified "relevant property" in this jurisdiction;

    (b) proceedings for offences had been started in the Vatican and not been concluded; and

    (c) there was reasonable cause to believe that the defendant named in the Letter of Request had benefited from his "criminal conduct".

    Initially the Applicants disputed (b), although the parties subsequently agreed to proceed on the basis that, for the purposes of this application, proceedings in the Vatican had been started and not been concluded, triggering a higher test for the DPP to satisfy than in the first condition[9] ("reasonable cause to believe", as opposed to "reasonable cause to suspect" in the first condition where only a criminal investigation had been started).

Relevant property

19. The concepts of "relevant property" and "criminal conduct" are defined by s 447 of the 2002 Act: "property" is "relevant property" if there are "reasonable grounds to believe" that it may be needed to satisfy an external order (such as a confiscation order) which has been or which may be made (s 447(7)); "criminal conduct" is defined to mean conduct which (a) constituted an offence in any part of the United Kingdom, or (b) would constitute an offence in any part of the United Kingdom if it occurred there (s 447(8)).

20. "Property" is widely defined by the 2002 Act and includes things in action such as the debt owed by a bank to its customer upon the deposit of money (s 447(4)(c)). It includes the HSBC bank accounts identified in the Letter of Request.

21. At paragraph 42 of her first witness statement, Ms Nayee said that the facts separately giving rise to the offences in Counts (a) to (f) would have constituted an offence in this jurisdiction had it occurred here: Counts (a) and (b) would equate to conspiracies to defraud or to commit fraud in an abuse of position; Count (c), fraud; Count (d), blackmail; Count (e), money laundering, and Count (f), fraud. Apart from the assertion in paragraph 10 of Ms Nayee's first witness statement (and, consequently, the Court's findings upon making the Restraint Order) that art 7(3)(c) of the 2005 Order had been met, in that there was reasonable cause to believe that the defendant named in the Letter of Request had benefited from his "criminal conduct", the Applicants do not contest Ms Nayee's assertions or the Court's findings that the Letter of Request identified "property" in this jurisdiction, though they raise an issue as to whether the property is "relevant property".

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art 135(2). It is not disputed that the HSBC bank accounts are realisable property within the meaning of the 2005 Order.

[9] As amended by the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015, art 6.

Proceedings started and not concluded

22. Ms Nayee also said that Mr Torzi had been arrested by authorities in the Vatican following an interview which took place on 5 June 2020, and released from custody "under payment of caution" on 15 June 2020. In a separate note accompanying the Restraint Application, Ms Nayee submitted that proceedings had been started and not been concluded (which, as I mentioned, the Applicants dispute but agreed to proceed on the basis they had for the purposes of these proceedings), and, given the facts alleged, there was reasonable cause to believe that Mr Torzi has benefited from the criminal conduct set out in the Letter of Request.

Reasonable cause to believe defendant benefited from criminal conduct

23. There is much authority on the meaning of "reasonable cause to believe". The test in the second condition previously aligned with the test set out in the first condition at art 7(2) (whose 2002 Act equivalent is s 40(2)(b)), but the test in the first condition was substituted with the lower test of "reasonable cause to suspect" by the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2015, art 6. The Explanatory Notes to the Serious Crime Act 2015 (which amended s 40(2)(b) of the 2002 Act) said this:

> "Section 40 of [the 2002 Act] [the primary legislation's equivalent to art 7 of the 2005 Order] sets out a number of alternative conditions for making a restraint order. The intention is that a restraint order should be available at any time after a criminal investigation has started to minimise the risk of the accused being able to dissipate his or her assets beyond the reach of law enforcement agencies. Section 40(2) of POCA sets out the test in the first condition in the following terms –
>
> (a) a criminal investigation has been started in England and Wales with regard to an offence, and
>
> (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.
>
> The phrase 'reasonable cause to believe' in this context is taken to mean that the court thinks that, on the available evidence, it is more likely than not that the defendant has benefited from criminal conduct. This contrasts with the test for the arrest of a person, namely that there is 'reasonable grounds for suspecting' that the person is guilty of an offence that had been or is being committed (see s 24 of the Police and Criminal Evidence Act 1984). The term 'suspicion' denotes a degree of satisfaction, not amounting to belief, but at least extending beyond speculation. A test based on suspicion can therefore be more easily satisfied than one based on belief" (my emphasis).

24. Thus, the Explanatory Notes suggest the words "reasonable cause to believe" require the Court to apply the civil burden of proof (that is, the balance of probabilities) in evaluating the evidence to decide whether a defendant has benefited from criminal conduct. This approach differs markedly to the one taken by Lang J in *National Crime Agency v Baker* [2020] EWHC 822 (Admin), at [24] et seq, where the court considered a similar test under s 362B(2)(a) of the 2002 Act ("reasonable cause to believe that… the respondent holds the property"). Lang J began with the distinction between belief and suspicion, before going on to adopt the reasoning set out by Lord Hughes in *Re Assets Recovery Agency (Jamaica)* (2015) 85 WIR 440, which disclaimed the need for any evidential standard of proof:

> "24. … i) 'Belief and suspicion are not the same, though both are less than knowledge. Belief is a state of mind by which the person thinks that X is the case. Suspicion is a state of mind by which the person in question thinks that X may be the case.'

(per Laws LJ in *A and Others v Secretary of State for the Home Department* [2004] EWCA Civ 1123 at [229]).

ii) Belief is 'a more positive frame of mind than suspicion.' (*R (Errington) v Metropolitan Police Authority* [2006] EWHC 1155 Admin., per Collins J at [27]).

25. A test of 'reasonable cause to believe' is not the same as discharging a burden of proof, whether to the civil or criminal standard. But it does require objectively reasonable grounds for the stated belief. As Lord Hughes explained in *Re Assets Recovery Agency (Jamaica)* (2015) 85 WIR 440, at [19]:

> 'Reasonable grounds for believing a primary fact, such as that the person under investigation has benefited from his criminal conduct, or has committed a money laundering offence, do not involve proving that he has done such a thing, whether to the criminal or civil standard of proof. The test is concerned not with proof but the existence of grounds (reasons) for believing (thinking) something, and with the reasonableness of those grounds. Debate about the standard of proof required, such as was to some extend conducted in the courts below, is inappropriate because the test does not ask for the primary fact to be proved. It only asks for the Applicant to show that it is believed to exist, and that there are objectively reasonable grounds for that belief.'

26. It is ultimately for the Court, not the NCA [the National Crime Agency, the applicant before Lang J], to determine whether there is 'reasonable cause to believe'."

25. I respectfully adopt the approach set out in the reasoning of Lang J and Lord Hughes, which, if I may say so, must be correct because the Court at this stage is not concerned with the proof of primary facts as it is in a trial of issue. It is, to the contrary, concerned with establishing whether reasonable grounds exist to believe something. So, shortly put, reasonable cause to believe a respondent has benefited from criminal conduct does not involve the finding of a fact to an evidential standard, but rather the existence of grounds for believing something, and the reasonableness of those grounds.

26. It is the Court itself that must be satisfied that the test has been made out, and in doing so it is entitled to consider evidence which might otherwise be excluded as hearsay. Art 13 of the 2005 Order provides that evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree), and that ss 2 to 4 of the Civil Evidence Act 1995 apply in relation to restraint proceedings as those sections apply to civil proceedings.[10] Importantly, the Court must consider the weight (if any) to be given to hearsay evidence, and in doing so have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence. Regard may be had, amongst other things, to whether the evidence involves multiple hearsay; whether any person involved had any motive to conceal or misrepresent matters; whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose; and whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight. Mere assertion, as opposed to direct or hearsay evidence, has no value. The fact that an applicant has concluded there is reasonable cause is not enough: there must be sufficient evidence for the Court to reach its own conclusion to this effect (see *Ashford v Southampton City Council* [2014] EWCA Crim 1244).

[10] Crim PR r 33.39 provides that s 2(1) of the Civil Evidence Act 1995 (duty to give notice of intention to rely on hearsay evidence) does not apply to evidence in restraint proceedings.

27. Paragraphs 47 and 48 of Ms Nayee's first witness statement set out in summary form her understanding of the position as follows:

> "47. In short, it is said by the overseas authority that Vatican funds were appropriated by the conspirators, in abuse of their position of trust, to fund their own business and investment interests, and that Mr TORZI, through the companies he controlled, benefitted directly in the sum of at least €19,000,000 (ie €4,000,000 plus €15,000,000).
>
> 48. It is thus my understanding that, based upon the information provided to me, there is reasonable cause to believe that Mr TORZI and VITA HEALTHY LTD have benefitted from criminal conduct."

Real risk of dissipation

28. An applicant for a restraint order must also satisfy the Court that there is a real risk of assets being dissipated in order to be entitled to relief. If there is no such risk, or the risk is merely fanciful, a restraint order ought not to be made, since, on the assumptions made, it would not be necessary for the achievement of its only proper purpose.[11] In many cases, the risk of dissipation will speak for itself. In *Re AJ* (unreported, 9 December 1992, Court of Appeal Civil Division), Glidewell LJ said:

> "…I accept that in many and perhaps in the substantial majority of cases, where offences involving a gain exceeding £10,000 are concerned, the circumstances of the alleged offences themselves will lead to a reasonable apprehension that, without a restraint or a charging order, realisable assets are likely to be dissipated.
>
> In drug trafficking offences, this is likely to be so in almost every case. Thus the onus on the prosecution will often not be difficult to satisfy."

In *Jennings*, Longmore LJ (at 199) adopted a similar approach in cases where there is an allegation of dishonesty:

> "Fear of dissipation of assets is the reason for seeking a restraint order. Such fear must, in fact, exist before an order should be applied for. But in a case where dishonesty is charged, there will usually be reason to fear that assets will be dissipated. I do not therefore consider it necessary for the prosecutor to state in terms that he fears assets will be dissipated merely because he or she thinks there is a good arguable case of dishonesty. As [Laws LJ] has said, the risk of dissipation will generally speak for itself. Nevertheless prosecutors must be alive to the possibility that there may be no risk in fact. If no asset dissipation has occurred over a long period, particularly after a defendant has been charged, the prosecutor should explain why asset dissipation is now feared at the date of application for the order when it was not feared before."

29. In *R v B* [2008] EWCA Crim 1374, a case where a defendant applied to discharge a restraint order on the grounds that there was no evidence to show that he would dissipate assets, Moses LJ (giving the judgment of the Court of Appeal (Criminal Division)) said (at [19]):

> "Of course in many cases a Crown Court Judge will have a better opportunity than this court to evaluate evidence, but it should be noted that in a case such as this the only proper safeguard of the rights of one whose property is to be interfered with by a restraint

[11] *Re AJ* (unreported, 9 December 1992, Court of Appeal Civil Division), per Glidewell LJ at p 23C of the transcript, cited with approval by Laws LJ and Longmore LJ (with both of whom Lloyd LJ agreed) in *Jennings v CPS* [2006] 1 WLR 182.

> order is careful scrutiny by the judge both on the ex parte hearing and on any application to vary or discharge not only of the issue as to whether there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct, but whether there is a real risk that the assets will be dissipated. It should be noted that in the case on which the prosecution founded its argument, *Jennings*, the application was made after the subject of the restraint order had been prosecuted and indeed during the trial. Here, where a citizen has not even been charged and still has not been charged, it is particularly important to see that there is a proper basis for such a serious order."

30. In her first witness statement, Ms Nayee said (at paragraph 52) that, given the fraudulent and dishonest nature of the crimes alleged, there is "a risk" that the relevant property may be dissipated. She put it no higher than that, and did not seek to qualify the risk as either fanciful or real. She continued:

> "I am informed that the HSBC Bank has frozen the relevant account as a result of its own internal concerns about potential money laundering and has chosen to end its relationship with Mr TORZI and VITA HEALTHY LTD. I am further informed that it intends to release the funds back to VITA HEALTHY LIMITED so that they may be remitted to another institution willing to provide banking services to it shortly after 13th November 2020."

Delay

31. Delay in making an application for a restraint order may make it difficult for a prosecutor to establish there is a risk of assets being dissipated, and impose a greater duty upon it to justify the necessity for a restraint order.

32. In *R v B*, there was a period of six months between the defendant's arrest on suspicion of concealing or disguising criminal property under s 327 of the 2002 Act and an application for a restraint order under the Act. In the interim, he was admitted to bail and reinterviewed by officers on four occasions, during which he made no attempt to dissipate assets. Even after the prosecution's application for a restraint order he made no attempt to dissipate assets. In addressing delay, Moses LJ said (at [18]):

> "Furthermore, in the light of the facts that we have identified of this appellant not taking the opportunity with which he was presented to dissipate his assets, it was incumbent both on the prosecution and the judge by way of reasoning to explain how it could be said that there was a real risk that he would dissipate the assets in the future when he had had every opportunity to do so in the past. In our view no such explanation has ever been forthcoming; no reasoning has been advanced upon which such a conclusion could be based."

33. The issue of delay is not raised by Ms Nayee in her first or second witness statements.

<u>Outcome</u>

34. In the event, the Restraint Application was made (a) without notice to the Applicants or any third party, and (b) on the papers filed by the DPP, and the Restraint Order was made prohibiting Mr Torzi and Vita from removing from this jurisdiction, or in any way disposing of, dealing with, or diminishing the value of, the sums in the HSBC bank accounts held by Vita, subject to the terms of the order.

The Discharge Application

35. The application to discharge the Restraint Order (the **"Discharge Application"**) is brought by the Applicants under art 9(2)(b) of the 2005 Order. In their written application dated 23 December 2020, the Applicants set out the grounds for their application.

Grounds for the application

36. Those grounds have, as I said, narrowed since the Discharge Application was made, and I consider only the grounds that were pursued by the Applicants in oral argument before me.

37. The alleged material non-disclosures and/or misrepresentations relied upon by the Applicants for discharging the Restrain Order, as set out by Mr Biggs in his skeleton argument, are ninefold:

    (1) that Mr Torzi conspired with others to defraud the Secretariat, by agreeing Mr Mincione should appropriate the Secretariat's USD 200,500,000 invested in the ACF in 2014, money used by the fund to purchase an interest in the Chelsea Property. The Applicants say Mr Torzi was not involved in these dealings, and in fact did not become involved with the purchase of the Chelsea Property until 2018;

    (2) the USD 4,000,000 commission paid by Sierra One to Sunset related to the EUR 3,900,000 invested by the GOF. The Applicants say that payment was, in fact, a commission payment on the Sierra One investment, and did not relate specifically or uniquely to the GOF. In any event, say the Applicants, it would be extraordinary for a commission payment to be greater than the amount invested;

    (3) the contention that the Secretariat was caused to pay EUR 350,000,000 for the Chelsea Property. The Applicants say this is not a fair or proper summary of the purchase because it fails to distinguish between the costs of investment in the GOF in 2014 and the costs of purchasing the Chelsea Property and exiting the fund in 2018;

    (4) that the conspirators knew the Chelsea Property to be worth only GBP 129,000,000, that is, the price paid for it in 2012. The Applicants say that, in doing so, the Secretariat failed to disclose the existence of later valuations and planning permission relating to the property;

    (5) the mischaracterisation of the 31,000 share allocation in Gutt as "secretive and dishonest". The Applicants say the evidence demonstrates the share allocation was transparent and, categorically, that the allegation is incorrect;

    (6) that Mr Torzi agreed to sell his 1,000 shares for one euro, when in fact the one euro price referred to the sale of the 30,000 shares;

    (7) that the GBP 224,640 payment to Avv Squillace was dishonest. The Applicants say no explanation was given as to how it is said that Avv Squillace's services were for Mr Torzi' personal benefit, rather than being work on the deal for the benefit of the parties to the deal;

    (8) that, in interview, Mr Torzi had said simply that he was entitled to the money he had received. That, say the Applicants, is a material misrepresentation of what in fact had transpired, and left the Court with the impression that Mr Torzi had made a mere blanket claim of entitlement to the funds, whereas in fact Mr Torzi had responded to the allegations made against him in a written statement made with great specificity and supporting documentation. Moreover, the Letter or Request failed to convey the extent

of communication between the Holy See and Mr Torzi during the relevant period, including a meeting with Pope Francis and regular contact with Archbishop Edgar Peña Parra, the Substitute for the Secretariat. The Applicants say this is inconsistent with the Vatican's case and, tellingly, omitted from it; and

(9) firstly, failing to explain that the Swiss restraint order was to the value of EUR 10,000,000, which was relevant to the extent to which further restraint was required, and, secondly, the fact that there was no Italian order in place, and so the information that one was in place was inaccurate and wrongly gave the impression that the Italian court had been satisfied that restraint was justified. The Applicants say this misrepresentation is particularly a material one because the Court had to consider whether the restraint already in place was sufficient.

The Applicants say that, whether individually or taken together, these non-disclosures and/or misrepresentations are material.

Legal framework

Non-disclosure and/or misrepresentation of material fact

38. It is axiomatic that, in restraint applications made without notice to a respondent, the applicant must give full and frank disclosure of all material facts. A material fact is one which might affect the decision whether or not to grant the order and, if so, on what terms: see *Jennings v Crown Prosecution Service* [2006] 1 WLR 182, at 198 per Laws LJ; and *Director of the Serious Fraud Office v A* [2007] EWCA Crim 1927, at [6] per Hughes LJ (as he then was).

39. In *A*, Hughes LJ said this:

> "4. A restraint order is a far-reaching order. Although it takes away no property or assets from the person under investigation, and is by definition temporary in application, it prevents him from using the frozen property in any way until the criminal investigation and any ensuing prosecution is over. That may restrict him considerably in what he can do by way of business or private activity. If it turns out that the person is not shown to be guilty of crime, he may in the meantime have lost a good deal because of the restrictions put upon him by the order. His ability to recover any losses from those who asked for the order is in a domestic case strictly limited by section 72 to cases in which there has been serious default by an investigator of a kind which caused the investigation to continue when otherwise it would not have done; even that limited right to compensation appears not to apply in the case of a restraint order made upon an external request … . The restriction of a restraint order may sometimes last for a long time, though it can be reviewed if it is persisting unfairly. The order has been called draconian, and so it may (deliberately) be.
>
> 5. An application for a restraint order, whether domestic or foreign in origin, is usually made in the first place without notice to the Defendant. This is necessary because if notice were given, most applications could be frustrated by the Defendant moving the assets, or converting them into something else, before any order could be made. But a person against whom such an order is made can readily apply to discharge it on the grounds that it ought not to stand. By this means, he achieves a full hearing on the merits.
>
> 6. Because the initial application is commonly made without notice, the court will not at that stage hear argument on both sides. For this reason, as with other without notice applications, the court insists on full and complete disclosure by the

> applicant of everything which might affect the decision whether or not to grant the order. There is a high obligation upon such an applicant to put everything relevant before the Judge, whether it may help or hinder his cause."

40. Importantly, materiality is decided by the court, not by the applicant. The principle to give full and frank disclosure of all material facts requires an applicant to disclose any weakness in its case of which it is aware, and information that might be favourable to the respondent, and any innocent explanation that the respondent may have advanced when being interviewed.

41. The burden of proving a material non-disclosure and/or misrepresentation falls on the Applicants, and the required standard is the balance of probabilities.

42. It is important to draw the distinction between the non-disclosure of a material fact and the misrepresentation of one. As it suggests, non-disclosure is the failure to disclose a material fact. Misrepresentation, on the other hand, is the failure to properly represent a material fact. It is possible to fail to disclose a material fact, and to misrepresent it at the same time. It is also necessary to distinguish between a statement of fact and statement of opinion, although the expression of an opinion may well give rise to an implied statement of fact.

43. In the event of material non-disclosure and/or misrepresentation, usually the order will be discharged. Whether or not the order will be discharged is a matter of the court's discretion; if the non-disclosure or misrepresentation is minor, the court in its discretion may direct the order continue or discharge it and make a new order on the same or different terms: see *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350, at 1356, per Ralph Gibson LJ; at 1358 per Balcombe LJ; and at 1359, per Slade LJ; see also *Re Stanford International Bank (In Receivership)* [2011] Ch 33, at 109 per Hughes LJ.

Public interest

44. Restraint applications require a further consideration of the public interest. As Longmore LJ said in *Jennings* (at 200):

> "The fact that the Crown acts in the public interest does, in my view, militate against the sanction of discharging an order if, after consideration of all the evidence, the court thinks that an order is appropriate. That is not to say that there could never be a case where the Crown's failure might be so appalling that the ultimate sanction of discharge would be justified."

This has to be balanced against the importance of requiring the Crown to comply strictly with the rules. In *Jennings*, Laws LJ said (at 198):

> "It seems to me that there are two factors which might point towards a different approach being taken to without notice applications for restraint orders in comparison to applications in ordinary litigation for freezing orders; but they pull in opposite directions. First, the application is necessarily brought (assuming of course that it is brought in good faith) in the public interest. The public interest in question is the efficacy of s 71 of [the Criminal Justice Act 1988, a precursor to s 6 of the 2002 Act]. Here is the first factor: the court should be more concerned to fulfil this public interest, if that is what on the facts the restraint order would do, than to discipline the applicant – the Crown – for delay or failure of disclosure. But secondly, precisely because the applicant is the Crown, the court must be alert to see that its jurisdiction is not being conscripted to the service of any arbitrary or unfair action by the State, and so should particularly insist on strict compliance with its rules and standards, not least the duty of disclosure."

45. Having set out the Applicants' grounds for discharging the Restraint Order and the applicable legal framework, I turn to consider the issues identified by the parties.

46. In argument before me focus was placed upon the facts relied upon by the DPP in the Restraint Application as set out in Ms Nayee's first witness statement. Given the contents of her witness statement, I am satisfied that Ms Nayee was acutely aware of the duty to the Court to give full and frank disclosure of all material facts, and to make a balanced application by disclosing anything which might assist Mr Torzi and Vita. I bear in mind, however, that in her first witness statement Ms Nayee said that did not have personal knowledge of those facts, and so my focus shall be on the facts and matters set out in the Letter of Request from which Ms Nayee summarised the position (in fact, Ms Nayee urged the Court to resort to the Letter of Request for its full terms and effect). There is no suggestion by either party that the facts rehearsed by Ms Nayee are not a fair summary of the ones set out in the Letter of Request. The question is whether there was any material non-disclosure and/or misrepresentation by the DPP, applying for the order at the Vatican's behest as the requesting state, based on the information made available to him as outlined in Ms Nayee's first witness statement and, more fully, in the Letter of Request.

(1) Was there non-disclosure and/or misrepresentation in the application for restraint?

47. Mr Timothy Hannam QC, who appears for the DPP, conceded that a number of the facts and matters identified by the Applicants in their grounds were not disclosed or properly represented by the DPP in the Restraint Application, but submitted any such failure, whether taken individually or collectively, did not amount to a material non-disclosure and/or misrepresentation sufficient to discharge the Restraint Order.

48. I should say it matters not whether the DPP or the overseas authority qua requesting state is at fault. What matters is whether there was non-disclosure and/or misrepresentation of a fact, and whether any such non-disclosure and/or misrepresentation was material. I confine myself to those questions.

Ground 1

49. The Letter of Request makes plain in Count (a) the OPJ's assertion that, between 20 June 2014 and 3 December 2018, Mr Torzi conspired with others, including Mr Tirabassi, Monsignor Perlasca and Mr Mincione, to defraud the Secretariat, by agreeing Mr Mincione should appropriate USD 200,500,000 invested in the GOF by the Secretariat in 2014. The allegations in Count (a) involve a number of alleged transactions that go beyond the Chelsea Property, which is the focus of the allegations by the OPJ against Mr Torzi and, in particular, the EUR 15,000,000 payment he received. The one direct allegation against Mr Torzi in Count (a) is limited to a commission payment said to have been received by him via Sunset in relation to the Sierra One transaction on 23 May 2018 (as to which, see Ground 2 below).

50. Mr Hannam QC submitted that, at least in this country, a party can join and leave a criminal conspiracy at any time, and so Mr Torzi involvement from 2018 onwards, as the OPJ's case became, properly forms part of the allegations in Count (a). Mr Hannam QC's submission focussed closely upon Mr Torzi's dealing with Mr Mincione from January 2018, from when he says they were closely and commercially associated. He submitted the OPJ's case was that the plan to fraudulently sell the Chelsea Property to the Secretariat began to take shape that this time.

51. But that is not what the particulars in Count (a) allege. They portray Mr Torzi's involvement in a long-standing conspiracy stretching back to 2014, and suggest a culpability on Mr Torzi's part which is not borne out upon examination. In my judgment, Count (a) ought to have made plain the nature and extent of Mr Torzi's alleged involvement in the conspiracy. It did not.

Count (a) positively avers that Mr Torzi's involvement in the conspiracy dates back to at least four years before 2018, to transactions that suggest much wider offending, suggesting entrenched criminality on Mr Torzi's part. I find this to be a misrepresentation of the position subsequently adopted before me by the DPP, reflected in Mr Hannam QC's concession on the DPP's behalf that he no longer pursued Count (a) (at least insofar as the particularised transactions are concerned) as a basis for the Restraint Order, even though he maintained the wider time frame of the conspiracy alleged in respect of the Chelsea Property which is the subject of Count (b).

Ground 2

52. This ground is confined to the USD 4,000,000 commission paid by Sierra One to Sunset in connection with the EUR 3,900,000 invested by the GOF. In the event, for the purposes of the proceedings before me Mr Hannam QC abandoned any reliance on the suggestion that the commission payment was a criminal act. This was because of the ambiguous explanation behind it, given by the OPJ following questioning by the CPS upon scrutiny by the Applicants. In any event Mr Hannam QC said it was not in and of itself a failure to make proper disclosure.

53. With respect, I do not agree. To my mind it is a clear misrepresentation of what might otherwise be a perfectly legitimate transaction, and it begs the question as to why it was included by the OPJ in the Letter of Request. When pressed, the OPJ was not able to properly justify or explain the basis for doing so. Mr Biggs submitted the suggestion that a USD 4,000,000 commission should be paid on a transaction valued at EUR 3,900,000 does not make sense. I agree. In the absence of proper explanation, the suggestion implied by the OPJ in making this allegation is that the commission payment was part of a wider scheme of criminal wrongdoing by Mr Torzi and his co-conspirators. I return to this below.

Ground 3

54. In Count (b) the OPJ contends the Secretariat was caused to pay "over EUR 350,000,000" for the Chelsea Property, and contrasts that figure with the GBP 129,000,000 purchase price paid by TL, a company controlled by Mr Mincione, in 2012. Mr Hannam QC submitted that the OPJ's case was that the price paid for the Chelsea Property was one significantly over its value, but he did not go further to say what the amount overpaid was, nor did the Respondent adduce any evidence about overvaluation. The Applicants submit that Count (b) fails to distinguish between the costs of investment in the GOF in 2014 and the costs of purchasing the Chelsea Property and exiting the fund in 2018 and, as such, it is not a fair or proper summary of the purchase.

55. Taken by itself, Count (b) gives the impression that the Secretariat's injection of USD 200,500,000 into the GOF relates solely to the purchase of the Chelsea Property. When read, however, with Count (a), it is clear that some of those funds were directed towards other investments. There is nothing in the Letter of Request which reveals the performance or value of those investments, though ultimately the Secretariat decided to withdraw from the GOF, apparently at a total loss other than the GOF's investment in the Chelsea Property through the purchase of the TL bond of USD 16,000,000. No particulars of the rights or obligations which attached to that bond are given.

56. There is, in addition, the alleged added cost of EUR 40,000,000, but the Applicants say that this sum relates to the Secretariat's cost of exiting the GOF in 2018. This sum is referred to in the Framework Agreement dated 22 November 2018 between Gutt as Purchaser, ACF as Seller, and the Secretariat (the **"Framework Agreement"**), at pp 386-396 of the hearing bundle. The Framework Agreement is governed by English law. It sets out at length in the recitals the basis for the transaction to purchase the Chelsea Property, the way in which the purchase was to take effect through Gutt, and the consideration to be paid by Gutt (which amounted to

EUR 40,000,000) to ACF for the transfer. It is signed as a deed on behalf of the Secretariat by Monsignor Perlasca, who is alleged by the OPJ to be one of Mr Torzi's co-conspirators, and said to witnessed by a Mr Antonio Di Iorio.

57. The Framework Agreement is mentioned only in passing by the OPJ in Count (b) in the Letter of Request, together with a share purchase agreement which I consider later. When the Applicants referred the OPJ to the Framework Agreement after the Restraint Order had been obtained, Prof Avv Diddi replied in a letter emailed on 25 February 2021 (but (I think) mistakenly dated 2 February 2021) that Mr Di Iorio denied all knowledge to witnessing Monsignor Perlasca's signature. The OPJ's case is that Monsignor Perlasca, although delegate of the Substitute and with apparent authority to bind the Secretariat, was in fact defrauding the Secretariat, although no particulars are given as to how he is said to have benefited if at all. None of the arrangements put in place by Monsignor Perlasca on behalf of the Secretariat in the Framework Agreement, or the detailed substance to that transaction, was set out by the OPJ in the Letter of Request. It is common ground that the Secretariat was represented by Avv Squillace of the Milanese lawyers Libonati-Jaeger throughout the transaction (and, later, by Mishcon de Reya), while Mr Torzi and Gutt were represented by Bird & Bird LLP (and, from 24 April 2019, Eversheds LLP) and ACF by Herbert Smith Freehills LLP, all well-known and highly reputed London law firms. Apart from Avv Squillace, there is no suggestion by the OPJ that any of them were part of the conspiracy, or otherwise approached the Framework Agreement and the surrounding transactions as arm's length, commercial transactions.

58. In the premises, I find that the OPJ's assertion that the Secretariat was caused to pay EUR 350,000,000 for the Chelsea Property to misrepresent the position, but on the papers before me I am unable to say what the true cost of the Chelsea Property to the Secretariat was. I am able to find, however, that not all of the USD 200,500,000 paid by the Secretariat into the GOF in 2014 was used to buy the Chelsea Property, and that the particulars given by the OPJ in Count (b) of the Letter of Request mispresent the position.

Ground 4

59. Count (b) goes on to allege that the conspirators knew the Chelsea Property to be worth only GBP 129,000,000, which was the price paid for it in 2012 by TL. The Applicants submit that contemporaneous valuations for the Chelsea Property put its value at GBP 275,000,000. Mr Biggs pointed to Prof Avv Diddi's letter to Ms Nayee dated 20 January 2021, part of Exhibit MN/4 to Ms Nayee's second witness statement dated 21 January 2021, at pp 178-179 of the hearing bundle, in which Prof Avv Diddi answers the Chelsea Property was valued at GBP 275,000,000 on 31 December 2017 (that is, 12 months before the Framework Agreement) by the well-known property consultants Strutt & Parker, who in valuing the property considered amongst other things the planning permission obtained for the development of the property. There is some gap between the GBP 129,000,000 value attributed to the Chelsea Property and the 31 December 2017 valuation by Strutt & Parker. It is more than double the amount paid by TL five years before, no doubt due to the planning permission obtained in the interim.

60. The OPJ says nothing of the Strutt & Parker valuation in the Letter of Request. There is instead a bold implied assertion that the Secretariat was defrauded by the difference between what it is said to have outlaid – over EUR 350,000,000 – and the purchase price paid by TL in 2012 – GBP 129,000,000. I find that to be a misrepresentation in light of the Strutt & Parker valuation. In addition, the OPJ's failure to mention (a) the obtaining of planning permission, and (b) the Stutt & Parker report is, in itself, non-disclosure.

Ground 5

61. This ground concerns what the Applicants say is the mischaracterisation of the 31,000 share allocation in Gutt as "secretive and dishonest" in Count (c). It necessarily calls for an

examination of whether Mr Torzi's dealings with the Secretariat regarding the shares in Gutt and their allocation were "secretive and dishonest" within the context of the transaction as a whole, which does not appear to have directly involved Mr Torzi before 2018.

62. Counts (b) and (c) of the Letter of Request say that "the Secretariat" determined to withdraw from the GOF. No rationale for the decision is given. No explanation of the decision making process is given, nor is the decision maker identified. The Letter of Request does not indicate to whom Monsignor Perlasca as delegate of the Substitute reported or briefed, or who (apart from Archbishop Peña Parra) fulfilled the office of Substitute at the times material to those Counts. In fact, the Letter of Request is conspicuously silent about Archbishop Peña Parra's involvement throughout, a matter I find of some surprise given it emerged after the Restraint Order had been made that he is said to be the subject of the blackmail alleged in Count (d) and, apparently, is the immediate superior of Monsignor Perlasca. Nor, indeed, is there any account about Monsignor Mauro Carlino, who was secretary to the Archbishop Peña Parra and an alleged co-conspirator, and his dealings from his immediate superior, the Archbishop. I return to this aspect further on. Without any such account, it is difficult for the Court to assess whether Monsignor Perlasca was acting without authority and outside the knowledge of the Secretariat.

63. A closer examination of the Framework Agreement and the allied transactions is required to put the OPJ's assertions in context. What is clear from that is the details of the transaction with Gutt, which are set out in the recitals to the Framework Agreement. Recital (A) provided that Gutt is instructed and funded by the Secretariat in connection with the acquisition from ACF of shares in 60 SA 2 Ltd, the owner of the shares in 60 SA 1 Ltd, which in turn owned the shares in 60 SA Ltd, which in turn owned the freehold of the Chelsea Property. Recital (H) refers to the grant of planning permission for the Chelsea Property on 30 December 2016. The purchase was to be funded by a payment of cash and the transfer to ACF of the GOF shares beneficially owned by the Secretariat but held by Credit Suisse London Nominees Ltd (part of the Credit Suisse bank group (**"Credit Suisse"**)).

64. Recital (K) provides that the Secretariat:

> "currently intends, given the positive progress and developments having occurred in respect of the management of the GOF by [WRM Capital Asset Management Sarl, a company said to be controlled by Mr Mincione] including, for example, the value creation arising from the Planning Permission, to consummate [the purchase of the shares in 60 SA 2 Ltd], which will enable [the Secretariat] to take control of the [Chelsea Property] through ownership of [60 SA 2 Ltd, 60 SA 1 Ltd and 60 SA Ltd]. The [Chelsea Property] has become a strategic asset for [the Secretariat] and retains significant upside potential. As a result, [the Secretariat] wished to exercise greater oversight of the [Chelsea Property] through [Gutt] as its agent whom it is anticipated will carry out future strategic decisions relating to the development of the [Chelsea Property]. [The Secretariat] has determined that [Gutt] is suitably experienced and qualified for this purpose."

65. Recital (M) continues:

> "Each of [Gutt] and [the Secretariat] is aware that the [Chelsea Property] is subject to security interest in connection with a loan granted to [60 SA Ltd] pursuant to a loan agreement and that such loan agreement is subject to early prepayment upon the current investment advisor ceasing to be investment advisor."

66. Clause 4.1 of the Framework Agreement provides in relevant part:

> "… [the Secretariat] further represents, acknowledges, confirms and agrees to [ACF]:

a) it has had the opportunity to carry out all relevant assessments and assumptions in respect of the [purchase of the shares in 60 SA 2 Ltd] and/or [the shares in 60 SA 2 Ltd] and/or [60 SA 2 Ltd, 60 SA 1 Ltd and 60 SA Ltd] and/or the [Chelsea Property];

b) it shall notify [Credit Suisse] of the existence of this Framework Agreement and procure that [Credit Suisse] obtain all necessary approvals and execution of documents in order to consummate the [purchase of the shares in 60 SA 2 Ltd] and execute the Final Agreements (to the extent pertaining to [Credit Suisse]);

c) it has engaged [Gutt] to perform the role as purchaser in connection with the purchase of [the shares in 60 SA 2 Ltd] …".

67. Mr Hannam QC observed that nowhere in the Framework Agreement is reference made to the division of shares in Gutt. The Share Purchase Agreement is dated 22 November 2018, and between Mr Torzi and the Secretariat (the **"SPA"**), signed by Monsignor Perlasca on behalf of the Secretariat. A copy is at pp 398 to 400 of the hearing bundle. The recitals to the SPA relevantly provide:

"A) [Gutt] has a corporate capital set at thirty-one thousand Euro (EUR 31,000.-) represented by thirty-one thousand (31,000) shares equally divided into one thousand (1,000) share [sic] with voting rights and thirty thousand (30,000) shares without voting rights. …

B) [Mr Torzi] is the owner of thirty-one thousand (31,000) shares of [Gutt]. The owned shares constitute 100% of the share capital of [Gutt].

C) [Mr Torzi] desires to sell thirty thousand (30,000) shares without voting rights of [Gutt] (the Shares) and [the Secretariat] desires to purchase from [Mr Torzi] the Shares on terms and conditions hereinafter set forth as follows. …"

Clause 2.1 provides that the purchase price for the 30,000 shares "without votes" was EUR 1.00. By Clause 5 the Secretariat warranted that it had all power and authority to enter into the SPA, and that it would cover all of the costs of transferring the shares. The SPA is governed by Luxembourg law.

68. Those documents speak for themselves. From them it is clear to me that the Secretariat, acting through Monsignor Perlasca, was purchasing shares which gave the Secretariat the overall majority shareholding of Gutt, but without any voting rights. It is difficult to see how this share allocation is "secretive and dishonest", as the OPJ alleges. The Statuts Coordonnes (Coordinated Statues) of Gutt are at pp 334-345 of the hearing bundle, and dated 22 November 2018; no English translation is provided, but it appears to cover voting rights and governance of the company.

69. The OPJ's position regarding Monsignor Perlasca appears to have shifted at times. In Count (a) he is alleged to be a co-conspirator from 2014. But the answer provided by Prof Avv Diddi in his letter of 20 January 2021 at p 182 of the hearing bundle suggests that Monsignor Perlasca was not a co-conspirator at the time he signed the Framework Agreement or the SPA, and that he (Monsignor Perlasca) had been kept in the dark by Mr Enrico Crasso (a financial manager with the Secretariat) and Mr Tirabassi about the true nature of the transactions. And, further still, in his witness statement at p 257 of the hearing bundle, Prof Avv Diddi finishes with this conclusion:

"… it can be said with certainty that the mismanagement and the omitted statement of which Msgr. Alberto Perlasca was directly responsible as Head of the Administrative

Office created the conditions that allowed fraud and extortion to damage the finances of [the Secretariat]."

70. I find the suggestion that Monsignor Perlasca was kept in the dark about the way in which the transactions was to be structured difficult to accept, given the Secretariat was advised throughout by London solicitors and he was executing documents on the Secretariat's behalf. Prof Avv Diddi says Monsignor Perlasca was incapable and inept. Even if that may be so, acting as a dishonest conspirator is another thing. No evidence is adduced by the DPP to support the OPJ's assertion that Monsignor Perlasca was acting dishonestly as the directing mind of the Secretariat when he signed the Framework Agreement and the SPA on its behalf. Those involved with the transaction appear to have been offered a "proxy" or power of attorney, signed by Archbishop Peña Parra, the Substitute for the Secretariat, dated 22 November 2018 (the same date as the Framework Agreement and the SPA), a copy of which is at pp 411-412 of the hearing bundle, which gave Monsignor Perlasca full authority to enter into the Framework Agreement and the SPA on behalf of the Secretariat. The proxy in its English version says this:

> "I, the undersigned: S.E. MONS. EDGAR ROBINSON PEÑA PARRA
>
> In its capacity as: Substitute for General Affairs of the Secretariat of State – General Affairs of the Secretariat of State – Vatican City
>
> delegate: MONS. ALBERTO PERLASCA in its capacity as: Head of Administrative Office of the First Section for General Affairs of: the Secretariat of State – Vatican City
>
> [signature of Monsignor Perlasca]
>
> who will sign:
>
> to subscribe, with single signature:
>
> 1. [the Framework Agreement], to be signed today with [Gutt], [ACF], and [the Secretariat], for the purchase of no. 45,500,000 shares in 60 S.A 2 LIMITED, Jersey-based company, Channel Island [sic], registration number 111353 (for the purchase, through subsidiaries of the latter, of ownership of the property located at 60 Sloane Avenue, SW3 3XB, London);
>
> 2. [the SPA] from today concerning the purchase of n. 30,000 shares of [Gutt], with Mr. Gianluigi Torzi, born in Termoli on 16.01.1979;
>
> 3. the 'COMFORT LETTER', addressed to [ACF], relating to the above transaction;
>
> Conferring to the same Prosecutor any wider power relative to what will be provided for in the aforesaid acts, with promise to ratify and validate.
>
> [signature and seal of 'Edgar Peña, Sostituto, Segreteria di Stato, Sezione Affari Generali']"

71. I find it difficult to accept any suggestion that Archbishop Peña Parra would have signed such a document without familiarising himself with the documents he authorised Monsignor Perlasca to execute, given the apparent significance of the transaction and the substantial sums of money involved. No suggestion is made by Prof Avv Diddi that Archbishop Peña Parra was part of the conspiracy, or even incapable and negligent in the way he alleges Monsignor Perlasca was.

72. The comfort letter referred to by Archbishop Peña Parra in his proxy to Monsignor Perlasca was signed by Monsignor Perlasca and dated 23 November 2018. It is addressed to a fund of ACF, and says this:

> "We write in connection with the Framework Agreement executed on 22 November 2018 between [the Secretariat], [ACF] and [Gutt] in respect to the potential acquisition of the entire share capital of 60 SA-2 Limited (the **"Transaction"**) .
>
> We hereby further confirm that (a) [Gutt] is instructed and has full authority to pursue the Transaction as purchaser on behalf of [the Secretariat] and (b) [Gutt] will be fully funded via equity by [the Secretariat] in order to pursue the Transaction.
>
> Yours Sincerely,
>
> [signature and seal of 'Mons. Alberto Perlasca, Capo Ufficio Amministrativo, Segreteria di Stato']"

73. It is a fair inference to draw from the proxy that it was signed on the day it was dated – 22 November 2018 – which is the date of the Framework Agreement and the SPA. The transfer in the Secretariat's shares in the GOF (the **"GOF shares"**) did not follow until the document at pp 420-449 of the hearing bundle – the Transfer Agreement between the Secretariat and ACF dated 3 December 2018 (the **"GOF Transfer Agreement"**) – was signed by the parties on that date. (The final version was dated 30 November, but that date was redacted by hand and 3 December inserted and initialled "HSF". I gather those initials are a reference to Herbert Smith Freehills LLP, the solicitors who acted for ACF in the transaction.) No copy of the share purchase agreement between ACF and Gutt for the shares is 60 SA-2 Ltd (the **"60 SA-2 Transfer Agreement"**) is in the papers before me, but recital (C) to the GOF Transfer Agreement refers to it as follows:

> "On or around the date of [the GOF Transfer Agreement], [ACF] (as seller) and [Gutt] (as buyer) have entered into a share purchase agreement in relation to the purchase of all the shares in 60 SA-2 Limited [the "**Purchased Shares"**] …".

This suggests the 60 SA-2 Transfer Agreement was signed on or about 3 December 2018. Recital (D) notes that, as part consideration for the Purchased Shares. it was agreed in the 60 SA-2 Transfer Agreement that the Secretariat will transfer the GOF shares to ACF. Recital (B) specifically notes the date of the Framework Agreement as 22 November 2018.

74. Pages 413-414 of the hearing bundle set out in English a draft of the proxy, underneath which appears to be a memorandum from Mr Tirabassi to Cardinal Pietro Parolin, prepared by him on 26 November 2018 (as the metadata in the Italian original at p 416 suggests). In the memorandum, Mr Tirabassi says this:

> "Superiors are informed that in order to not to bind the conclusion of the transaction in question to the assignment of the asset management to the Company indicated by Mr. Torzi, even if provided for in the aforementioned 'Framework Agreement', this Office has verbally committed to pay it, alternatively (i.e. a maximum of 3% of the value of the property which as of 31.12.2017 approximately GBP 275 million (Stutt & Parker report), for the introduction, facilitation and technical-legal support-administration provided for its conclusion, conditional on the repurchase by the Holy See of the property and full control of the property in question.
>
> Authorization to proceed in the sense proposed above is requested, in case of failure to entrust Mr. Torzi or the Company indicated by him of the management mandate relating to the property London, 60 Sloane Avenue."

Three percent of GBP 275,000,000 is GBP 8,250,000, or equivalent to about EUR 9,150,000 at the date the Framework Agreement was signed.

75. In his witness statement, Prof Avv Diddi refers to a note at the bottom of the memorandum by Cardinal Parolin, the Secretariat himself, but does not produce it as an exhibit or as a document in any of the papers provided to the DPP. Prof Avv Diddi sets out what Cardinal Parolin is said to have said in his note (see p 251 of the hearing bundle):

> "After reading this Memorandum, also in light of the explanations provided last night by Msgr Perlasca and Dr Tirabassi, having had assurances on the validity of the operation (which would bring advantages to the Holy See), its transparency and the absence of reputational risks (which, indeed, would exceed those related to the management of the GOF Fund) are favourable to the conclusion of the contract. Thank you. P Parolin 25/11/2018."

76. In my judgment, the date of Cardinal Parolin's internal approval is irrelevant to the way in which the Secretariat was presenting itself (or allowing itself to be presented) to external actors, such as Mr Torzi. So far as Mr Torzi was aware, he was dealing with Monsignor Perlasca, who had the express authority and imprimatur of Archbishop Peña Parra's proxy dated 22 November 2018. In his witness statement, Prof Avv Diddi suggests the proxy was in fact signed only on 27 November 2018, and relies upon WhatsApp exchanges between Mr Tirabassi and Monsignor Perlasca to demonstrate this. Those exchanges are not produced by Prof Avv Diddi or the OPJ. Prof Avv Diddi says this (at p 251):

> "From elements acquired during the investigation, a conversation took place via WhatsApp from 22 to 27 November 2018 between Msgr. Alberto PERLASCA and Fabrizio TIRABASSI is highlighted. The exchanges between the two confirm that the special power of attorney, in reality, was signed by the Substitute Edgar PEÑA PARRA only on November 27, 2018 and that, in all likelihood, the SUBSTITUTE himself and the SECRETARY OF STATE Cardinal Petro PAROLIN had been informed officially only on 25 November 2018 following a MEMORANDUM drawn up on 23 November 2018 by Avv Nicola SQUILLACE, who forwarded it by e-mail on the same date to Fabrizio TIRABASSI, Msgr. Alberto PERLASCA and Emanuele INTENDENTE and faithfully reused by Fabrizio TIRABASSI himself to report to the Superiors Authorities on the events in London of 20, 21 and 22 November 2018."

At pp 251-252, he continues:

> "From these elements, it can be said with all certainty that Msgr Alberto PERLASCA with the complicity of Fabrizio TIRABASSI, signed the contracts without the prior and necessary authorisations from the Higher Authorities.
>
> In this regard, we refer to the content of an exchange of messages via WhatsApp of 20 November 2018, in which Msgr. Alberto PERLASCA communicates to Fabrizio TIRABASSI of the possible difficulties that the SUBSTITUTE understood their work, '*I do not think that the Substitute will take the weight of the things. We will use our special faculties*' and also '*We try to get the best result without asking anyone anything*'."

77. Putting to one side of the moment the multiple hearsay evidence relied upon by Prof Avv Diddi in his witness statement and the weight this Court should give it, the exchanges to which he refers are open to interpretation. Contrary to his assertion, I do not think it can be fairly said that they are conclusive evidence that Monsignor Perlasca and Mr Tirabassi are acting outside the scope of their authority, bearing in mind the proxy signed by Archbishop Peña Parra two days after this exchange expressly refers to the Framework Agreement and the SPA. As I have already observed, I doubt that the Substitute would not have directly enquired about the nature

of the transaction, given the sums apparently involved. No direct evidence from either Monsignor Perlasca, Archbishop Peña Parra, or Cardinal Parolin is relied upon by the OPJ or the DPP, nor is any summary of what they might have told the OPJ produced in either the Letter of Request or in any of the letters from or the witness statement of Prof Avv Diddi.

78. Having conducted that examination, I return to the Applicants' complaint that the 31,000 share allocation in Gutt is mischaracterised by the OPJ as "secretive and dishonest". Viewed in the context of the transaction as a whole, looking at the documents, and closely examining the assertions made by the OPJ and Prof Avv Diddi, I find that the share allocation is improperly characterised as secretive and dishonest in the Letter of Request, and that, for the reasons I have set out, is a misrepresentation of the position.

Ground 6

79. The Applicants' next ground is that the Letter of Request misstated the position regarding the sale of the 1,000 shares in Gutt to the Secretariat for one euro, when in fact the one euro price referred to the sale of the 30,000 shares. As it happens, that position was not adopted by the OPJ in the Letter of Request but only in Prof Avv Diddi's letter of 20 January 2021 sent after the Restraint Order was made. Mr Hannam QC properly corrected the error made by Prof Avv Diddi very shortly thereafter.

80. Given Prof Avv Diddi's assertion was made only after the Restraint Order was made, it does not fall for further consideration as it cannot be said to have been material.

Ground 7

81. In this ground, the Applicants complain that the OPJ's assertion in the Letter of the Request that the GBP 224,640 payment to Avv Squillace was dishonest is a misrepresentation, in that no explanation is given as to how it is said that his services were for the personal benefit of Mr Torzi rather than being work on the deal for the benefit of the parties to the deal. They say the Letter of Request fails to mention that Avv Squillace had been retained by the Secretariat to act on its behalf, something which Prof Avv Diddi appears to concede in his witness statement. In any event, Mr Hannam QC noted the payment to Avv Squillace alleged in Count (f) was not relevant to the EUR 15,000,000 calculation of Mr Torzi's benefit from criminal conduct. It begs the question why it was included in the Letter of Request in the first place, given any sum obtained by Avv Squillace is not benefit from criminal conduct obtained by Mr Torzi (as Mr Hannam QC concedes in his written submissions).

82. I find the assertion that, without more, mention of the GBP 224,640 payment to Avv Squillace was a misrepresentation. It leads the reader to believe the payment was in some way nefarious, when there may have been good reason for it, given Avv Squillace's apparent retainer from the Secretariat as Prof Avv Diddi appear to acknowledge.

Ground 8

83. This ground makes complaint about the bald assertion set out at paragraph 44 in Ms Nayee's first witness statement (at paragraph 44) that, in interview, Mr Torzi had said simply that he was entitled to the money he had received. That, say the Applicants, is a material misrepresentation of what in fact had transpired, and left the Court with the impression that Mr Torzi had made a mere blanket denial, whereas in fact Mr Torzi had responded to the allegations made against him with great specificity and supporting documentation. They produced in support a copy of the 45 page statement (in Italian) provided by Mr Torzi to the OPJ on 12 June 2020 – five months before the Restraint Application was made. It provides a detailed narrative by Mr Torzi, covering a number of topics, including:

(a) his first contact with the Secretariat on 13 and 14 November 2018;

(b) his knowledge of the previous dealings relating to the Chelsea Property;

(c) his involvement in the negotiations between 16 November and 19 November 2018;

(d) the negotiations between 20 and 21 November 2018;

(e) the conclusion of the Framework Agreement and the SPA on 22 November 2018;

(f) the closing of the transaction between 23 November and 3 December 2018;

(g) his involvement post-closing; and

(h) the negotiations concerning his fees (which itself runs for nine pages (in its English form)).

Mr Torzi's written account also provides a narrative of a meeting with Pope Francis at times material to the blackmail allegation, arranged by Archbishop Peña Parra, with whom by that stage Mr Torzi was in frequent contact and with whom he was negotiating his fees. None of this was disclosed in the Letter of Request or, indeed, in Ms Nayee's first witness statement.

84. That Mr Torzi had in fact provided a comprehensive and detailed written account accompanied by documents which supported his account was something which was not disclosed by the OPJ in its Letter of Request or by Ms Nayee in her first witness statement. I can only gather Mr Torzi's detailed written account was not something that Ms Nayee was made aware of; she made it plain in her first witness statement that she was aware of her duty to the Court to make a balanced application, and I do not think that the contents of her paragraph 44 can be properly reconciled with that assertion in light of what in fact took place. Mr Torzi's account is more than a simply blanket denial. It provides a lengthy and comprehensive response to the allegations made against him. I find that the contents of paragraph 44 of Ms Nayee's first witness statement misrepresented the true position, and (as did the Letter of Request) failed to disclose that Mr Torzi had in fact provided the comprehensive and detailed written account set out in his statement to the OPJ.

Ground 9

85. The Applicants' final ground of alleged non-disclosure and/or misrepresentation relates to foreign restraint orders referred to in the Letter of Request. They say, firstly, that the OPJ failed to explain that the Swiss restraint order was to the order of EUR 10,000,000, a figure which was relevant to the extent to which further restraint was required, and, secondly, that there was, in fact, no Italian order in place, and so the information that one was in place was inaccurate and wrongly gave the impression that an Italian court had been satisfied that restraint was justified. The fact that an Italian order had been obtained was repeated in paragraph 44 of Ms Nayee's first witness statement.

86. Before me Mr Hannam QC rightly conceded that, at the time the Restrain Order was made, there was no Italian order in place. I understand that to remain the case. In addition, neither the Letter of Request nor My Nayee's first witness statement revealed that the Swiss court had restrained EUR 10,000,000 against Mr Torzi in Switzerland. The amount of restraint – EUR 10,000,000 – was not disclosed. Ms Nayee said that the Swiss order had been made against Mr Torzi, when in fact it had been made against a company or companies associated with Mr Torzi.

87. Nor did the Letter of Request or Ms Nayee's witness statement disclose to the Court precisely when the Swiss order or the "Italian order" were obtained, or how long they had been extant, or the grounds for or the basis upon which the orders were made.

88. I find Ms Nayee's first witness statement and the Letter of Request misrepresented the true position so far as the Italian order was concerned. I addition, I find that neither Ms Nayee's witness statement nor the Letter of Request disclosed the extent of the restraint ordered in Switzerland or the entities against which restraint had been made. The position so far as the target of restraint in Switzerland was also misrepresented in Ms Nayee's witness statement.

Conclusion

89. For the reasons set out, I find that each of the Applicants' grounds of non-disclosure and/or misrepresentation to be made out to the required standard.

90. I turn next to consider whether or not those non-disclosures and/or misrepresentations were material, bearing in mind a material fact is one which might affect the decision whether or not to grant the order and, if so, on what terms.

(2) If so, was such non-disclosure and/or misrepresentation material?

91. In his oral submissions Mr Hannam QC sought to dissect individually the grounds for the Respondent's admitted non-disclosures and/or misrepresentations and submitted that, in any event, none of them met the test for materiality. I do not think it is helpful for the purposes of these proceedings to conduct any analysis of materiality in that way, even considering the additional non-disclosures and/or misrepresentations which I found. The way in which a judge approaches a restraint application on the papers is quite different to this "individual dissection" approach. Nor do I think the proper approach in judging materiality is to excise the non-disclosures and/or misrepresentations which I have found from the Restraint Application and to consider whether the Court would have made the order sought in that event.

92. In my judgment, the preferable approach to determining the materiality of the non-disclosures and/or misrepresentations that I have found is to consider them within the context of the Restraint Application as a whole, and to determine their cumulative effect. The reason for doing so is because the Letter of Request paints a very wide picture of ongoing criminality, rather than an isolated pocket of offending relying upon discrete facts, and two or more of the non-disclosures and/or misrepresentations that I have found together may weigh more heavily towards materiality than in and of themselves individually. The narrative set out in the Letter of Request covers offending alleged between 2014 and 2019, some five years, and covers a range of different offences. It is that which, to my mind, would influence the judge's approach to assessing the evidence as a whole in determining one of the primary issues before the Court, which in these proceedings is this: is there reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct? Nonetheless, I will consider the materiality of each of the non-disclosures and/or misrepresentations that I have found in case I am wrong in my preferred approach.

93. Looked at in the round, the OPJ's case advanced by the DPP was this: this was ongoing, orchestrated conspiracy operated by Mr Tirabassi, Monsignor Perlasca and Mr Mincione which, at some point, Mr Torzi joined (from the very outset in 2014, according to the Letter of Request), in which Mr Torzi played a significant part in causing the Secretariat to part with a sum significantly in excess of what it otherwise would have paid for the purchase of the Chelsea Property. Part of that conspiracy involved enticing the Secretariat to part with USD 200,500,000 up front, money which later was used to purchase the Chelsea Property. In fact, as I found in Ground 1, Mr Torzi did not become involved in the Secretariat's purchase of the Chelsea Property until 2018. I consider this misrepresentation to be material. It gave

credence to the OPJ's later assertion that Mr Torzi was able to extort money from the Secretariat by using the relationship with his co-conspirators to devise the Framework Agreement and the SPA to interpose Gutt and thereby give him a vehicle through which the Secretariat thought he could control the Secretariat's entitlement to freely enjoy the ownership of the Chelsea Property.

94. Part of Mr Torzi's enrichment at the expense of the Secretariat was said to be a EUR 4,000,000 commission payment in relation to a EUR 3,900,000 investment. But, as I found in Ground 2, this mispresented the true position because the commission payment to which Mr Torzi was entitled related to all of the payments into the Sierra One fund and did not relate specifically or uniquely to the GOF. I find it is material because it served to inflate the benefit alleged from Mr Torzi's criminal conduct by EUR 4,000,000 to EUR 19,000,000, rather than the EUR 15,000,000 Mr Hannam QC settled upon, and, in my judgment, could serve to convince the Court that Mr Torzi had taken advantage of not one but at least another transaction to defraud the Secretariat.

95. As I found in Ground 3, the figure relied upon by the OPJ in the Letter of Request of over EUR 350,000,000 for the Secretariat's total cost of purchasing the Chelsea Property misrepresented the position. I was unable to say what the true cost of the Chelsea Property to the Secretariat was, but it was, in any event, a significant sum relative to Mr Torzi's alleged criminal benefit. I do not consider that this misrepresentation was material in and of itself.

96. The fact that the Chelsea Property was valued by Strutt & Parker at the very end of 2017 for GBP 275,000,000 was not disclosed by the OPJ in the Letter of Request (Ground 4). I find this non-disclosure to be material because it left the Court with the impression that the position set out in the Letter of Request: that the Secretariat was defrauded the difference between what it is said to have outlaid (over EUR 350,000) and the purchase price paid in 2012 (GBP 129,000,000), itself a misrepresentation given the 2017 valuation. This non-disclosure and misrepresentation could have led the Court to believe the scale of the fraud extended not to just millions but to tens of millions of Euros.

97. As to Ground 5, I found that the Letter of Request's portrayal of Mr Torzi's acquisition of the 1,000 voting shares in Gutt as secretive and dishonest not to be made out on the evidence before me. It was a misrepresentation of the true position, because at least Monsignor Perlasca, who was acting with the express authority of and imprimatur of Archbishop Peña Parra, knew about the contents of the SPA because he was a signatory to it. The words "secretive and dishonest" are highly pejorative, and cloak Mr Torzi's dealings in relation to this aspect of the Gutt shares with an illegitimacy that could influence the Court's assessment of whether Mr Torzi had in fact engaged in criminal conduct. I find this misrepresentation to be material for that reason.

98. Ground 7 relates to the misrepresentation that the GBP 224,640 payment to Avv Squillace was dishonest as it was for the personal benefit of Mr Torzi. The Letter of Request failed to mention that Avv Squillace was advising the Secretariat (something which Prof Avv Diddi appears to acknowledge in his witness statement), which may have explained the payment made to Avv Squillace. In my judgment, this misrepresentation served to bolster the OPJ's case against Mr Torzi by seeking to implicate him further in the overall conspiracy against the Secretariat and in recruiting others to serve his cause. I find it material for that reason.

99. As to Ground 8, I found the summary of Mr Torzi's interview and account to misrepresent what had actually transpired. Mr Torzi's full written account was not disclosed, nor indeed was any proper or adequate summary of his account put forward by Ms Nayee in her first witness statement or by the OPJ in the Letter of Request. The meeting with Pope Francis and the regular contact with Archbishop Peña Parra could have caused the Court to question the account put forward in the Letter of Request. I find it is a material non-disclosure and

misrepresentation which could have left the Court to believe that, when confronted, Mr Torzi had no sufficient explanation other than that he was entitled to the payment he received. Had the true position been revealed to the Court then the Court may have taken a different position on the Restraint Application.

100. Ground 9 related to the misrepresentation of the position regarding the Italian order, and the non-disclosure of the extent of the restraint ordered in Switzerland and the entities against which restraint had been made. In my judgment, that itself could have affected the extent of restraint order here. The position so far as the target of restraint in Switzerland was also misrepresented in Ms Nayee's witness statement. I find that the nondisclosure and misrepresentations were material, at least in so far as to the terms of the order that could be made because the Court had to determine whether the existing restraint was sufficient.

101. In sum, then, I find that each of the individual non-disclosures and/or misrepresentation in Grounds 1, 2, 4, 5, 7, 8 and 9 to be material.

102. In taking my preferred approach, I also consider the combination of each of these grounds (apart from Grounds 3 and 6) to be material. The picture presented was this:

> Mr Torzi was involved in a long-standing conspiracy with Mr Tirabassi, Monsignor Perlasca and Mr Mincione, since at least 2014 (Ground 1). He used his influence with his co-conspirators to obtain not only the alleged EUR 15,000,000 bribe in relation to the Chelsea Property, but also in relation to an inexplicably disproportionate EUR 4,000,000 commission payment made in connection with a transaction wholly unrelated to the Chelsea Property transaction (Ground 2). The total cost of the Chelsea Property to the Secretariat was over EUR 350,000,000. In reality, it was only worth GBP 129,000,000 (Ground 4). Mr Torzi then manipulated his control of the companies holding the beneficial ownership of the Chelsea Property to his advantage by acquiring the 1,000 voting shares in Gutt in a way that was secretive and dishonest (Ground 5). Mr Torzi recruited Avv Squillace to further his cause and ensured he was paid GBP 224,640 when he was not otherwise entitled to any such payment (Ground 7). When confronted with the allegations, the only explanation Mr Torzi gave was that he was entitled to the payments that he had received (Ground 8). Other courts in Switzerland and Italy had acted to restrain Mr Torzi's assets there based to his wronging against the Secretariat as alleged by the OPJ, and clearly there was a gap between the value in the assets restrained there and the assets sought to be restrained here (Ground 9).

103. Taken together, I consider that, when placed alongside the other assertions made in the Restraint Application, that narrative could affect the Court's decision whether or not to grant the order and, if so, on what terms, and for that reason I find that the combined grounds would be material.

(3) Should the order be discharged?

104. Having made those findings, I must determine whether to exercise the Court's discretion to discharge the Restraint Order.

105. I do not consider the material non-disclosures and misrepresentations that I have found to be minor. They are, in some instances, egregious, or to use the words of Longmore LJ, "so appalling", and particularly so in relation to Grounds 2, 4, 5, 8 and 9. All of those matters could have been correctly stated had the OPJ taken greater care in the preparation of its Letter of Request and instruction of the CPS. I make it plain that I do not make any finding that the Restraint Application was brough in bad faith by the Vatican. I do not think, however, that, in exercising the Court's discretion, the interests of justice would be properly met by the Court not discharging a restraint application that is so badly faulted as this one. It would make a mockery

of the process otherwise, and provide ready encouragement to others who chose to adopt the same approach. I bear in mind everything said by Laws LJ and Longmore LJ in *Jennings* about the public interest but, as Laws LJ said, the Court must be alert to see that its jurisdiction is not conscripted to the service of any arbitrary or unfair action by the State. In my judgment, the Respondent's non-disclosures and misrepresentations are so appalling that the ultimate sanction of discharge is justified.

106. It is for all those reasons that I find the Restraint Order should be discharged.

(4) If so, is the test for a new order met on the material now before the Court?

107. In short, the answer is no. In so finding, I consider whether there is reasonable cause to believe Mr Torzi benefited from criminal conduct, whether there is a real risk of dissipation, and any delay on the OPJ's part.

Reasonable cause to believe Mr Torzi benefited from criminal conduct

108. Before me Mr Hannam QC focused the Respondent's case on the allegations that Mr Torzi kept secret the true position regarding his control of the Gutt, and his use of that position to extort EUR 15,000,000 from the Secretariat in exchange for control of the companies with beneficial ownership of the Chelsea Property. In the end, this was achieved through sale to the Secretariat of the remaining shares in Gutt belonging to Mr Torzi (at least in law). Reliance by the DPP and, thus, the OPJ upon Counts (a) and (f) (see [13] above) had been abandoned for the purposes of these proceedings, although the wider conspiracy in Court (a) was maintained. The remaining counts allege conspiracy to defraud to commit fraud in an abuse of position, on 23 November 2018 (Count (b)); fraud, between 3 December 2018 and 1 May 2019 (Count (c)); blackmail, between 5 December 2019 and 1 May 2019 (Count (d)); and money laundering, between 5 December 2019 and 1 May 2019 (Count (e)).

109. It is evident from the material relied upon by the DPP that the OPJ's case remains focused upon Mr Torzi being party to the conspiracy with others, including Monsignor Perlasca, and that, as a result, he benefited by receiving the EUR 15,000,000 payments made by the Secretariat. Having considered that material alongside the material relied upon by the Applicants, I do not think the OPJ's case, whether in this connection or otherwise in relation to the Counts maintained, is made out by the Respondent. In reaching that position, I have not sought to make any findings of fact, or to apply any standard of proof. I have instead considered whether grounds exist for believing that Mr Torzi benefited from criminal conduct, and the reasonableness of those grounds. In doing so, I have carefully considered the English versions of Mr Torzi's written statements at pp 635-667 and pp 765-821 of the hearing bundle.

Mr Torzi's account

110. In order to properly assess Mr Torzi's account in his written statement, it is useful to summarise its relevant parts in order to place it in context of the allegations made against him:

    (1) Mr Torzi says he first became involved with Mr Tirabassi following an introduction through Avv Intendente, a lawyer with Ernst & Young (who acted for the Secretariat), who had suggested Mr Torzi's connection with Mr Mincione might assist in negotiating the Secretariat's exit from the GOF (which, Mr Torzi was told, no longer met the Secretariat's needs) and the purchase of Chelsea Property. If that is right, then it is very late in the day for him to join the alleged conspiracy in Count (a), although, at least in English law, a party can of course join and leave a conspiracy at any time. (There was, apparently, a previous discussion between Mr Torzi and a Mr Luciano Capaldo, a long-term associate of Mr Torzi's, in May 2018, about an unrelated client's interest in purchasing the Chelsea Property, and Mr Capaldo had asked Mr Torzi to speak with Mr

Mincione about it, but those discussions fell through after it emerged the potential purchaser was unreliable. Mr Capaldo was also a director of the Second Applicant, Vita.) Mr Torzi was interested in establishing a relationship with Mr Tirabassi to promote his own financial products to the Secretariat. Nonetheless, his dealings with Mr Tirabassi during the period of his involvement were restricted to the Chelsea Property transaction.

(2) Mr Torzi's first meeting with Mr Tirabassi took place on 13 November 2018. The next day, 14 November, Mr Torzi was introduced by Mr Tirabassi to Mr Crasso, the Secretariat's financial manager, at a meeting in an hotel. The discussion on that occasion was limited to the promotion of Mr Torzi's financial products, including EUR 50,000,000 from customers other than the Secretariat.

(3) Discussions in earnest began on 16 November, and it became apparent to Mr Torzi that the Secretariat was keen to end its dealings with Mr Mincione. Mr Tirabassi told him the reason was threefold: the lack of clarity in the value of the Chelsea Property (in which the Secretariat held an interest through the GOF), the debt attached to the property, and the fact that the securities which the Secretariat held in the GOF were subject to a form of pledge[12] to the Secretariat's bankers, Credit Suisse, as security for the Secretariat's obligations to CS.

(4) During the course of that discussion, it was made clear to Mr Torzi that it was fundamentally important to the Secretariat to achieve a structure which enabled CS to have a stable asset to value as security, rather than one that was subject to fluctuation in valuation. In short, the Secretariat was seeking to rationalise its investment from soft assets to a hard one in the form of the Chelsea Property. Mr Tirabassi was in touch with a representative from CS during the meeting, and over the course of a three hour call with the representative, that it would suffice for CS's purposes that the hard asset could be held via an SPV (a special purpose vehicle, often a holding company), rather than via a fund such as the GOF which, by its nature, was subject to trend fluctuations in valuation given the spread of soft and hard assets which it held.

(5) As a result, Mr Torzi contacted Mr Mincione on 17 November to see whether the GOF was willing to cede the Chelsea Property to the Secretariat in return for the Secretariat's holdings in the fund. Mr Torzi remained in contact with Avv Intendente (who was acting for the Secretariat, and taking instructions from Mr Tirabassi), and asked him to begin preparing the framework for a deal to extricate the Secretariat from the GOF. After discussions with Mr Mincione, Mr Torzi suggested the Chelsea Property be purchased for GBP 290,000,000, and that Mr Torzi be given a mandate to manage the property with annual fees of 2% of revenues plus a percentage of any subsequent resale. In taking ownership of the property in this way, it could either be sold "as is", or developed according to the planning permission that had been obtained, which could lead to final sale values of over GBP 400,000,000. Either way, Mr Torzi would assist in managing the property to realise its potential. Although Mr Torzi had found Mr Mincione difficult, he felt that he had the right strategy to achieve a deal. Settlement figures between GBP20,000,000 and GBP 30,000,000 were discussed between Mr Torzi and Mr Tirabassi. Mr Torzi also explored the possibility of transferring the legal ownership of the Chelsea Property, together with the debt attached to it, to a fund which he managed, free of any other investment, which would achieve CS's desire to remove the risk of fluctuation in value by other non- or under-performing assets. That was more advantageous to Mr Torzi, since he would be entitled to a commission of between 1% and 3% for managing the fund (in reality, the Chelsea Property), plus any success fee. It

[12] Referred to by Mr Torzi as a "Credit Lombard"; also known as a "Lombard credit".

was for this reason that Gutt was purchased as the SPV through which the property would be managed by Mr Torzi, with the fund acquiring the beneficial ownership of the Chelsea Property for the Secretariat, rather than through a direct holding by the Secretariat.

(6) Representatives of the Secretariat travelled to London on 20 November to inspect the Chelsea Property. In the meantime, Avv Intendente told Mr Torzi that Mr Tirabassi and Mr Crasso remained keen to progress the deal and had asked him to investigate the debt attached to the property. Mr Torzi remained in touch with him over 18 and 19 November, and on 19 November provided Avv Intendente with a spreadsheet setting out his evaluation of the possible deals. They were forwarded to Mr Tirabassi for the purposes of briefing Monsignor Perlasca, the delegate of the Secretariat's Substitute. Mr Torzi continued negotiations with Mr Mincione. In a separate exchange with Avv Squillace on 20 November, Mr Torzi made clear his preference for the fund vehicle he had proposed, rather than the structures being put forward by Mr Tirabassi (which included beneficial ownership via an SPV). Mr Torzi believed the fund structure which he proposed – which would have resulted in Gutt managing the fund's sole asset, the Chelsea Property – best suited CS's relationship with the Secretariat because the voting shares in Gutt could be pledged to the bank by a Lombard credit to secure the Secretariat's ongoing obligations to it.

(7) Negotiations continued on 20 November. In the early hours of 21 November, Avv Intendente messaged Mr Torzi to say he was in discussions with Mr Tirabassi about commissions due to Mr Tirabassi upon concluding any deal. Later that morning, Mr Torzi had breakfast with Avv Intendente and Mr Tirabassi, and Mr Tirabassi asked Mr Torzi about ways in which he might be involved in managing the Chelsea Property, but Mr Torzi made it plain that the first priority was achieving the property's purchase by closing the deal with Mr Mincione.

(8) The three men then left to go to Mr Torzi's office. They were joined by Avv Squillace and Mr Crasso. They joined a conference call with a Dr Piccioli, the CS relationship manager for the Secretariat, and other representatives of the bank. Dr Piccioli made it clear that CS would not consider simply replacing the GOF with another fund, but that using an SPV with different management from the management of the property (as Mr Torzi has suggested) would be acceptable. The CS representatives requested that, once the deal had closed, the Gutt shares be pledged to the bank by way of security, as that would guarantee the bank an annual appraisal of the Chelsea Property's value, no doubt by which the bank could then form its own view about the extent of its exposure to the Secretariat, and not leave it exposed to the fluctuations that come with more volatile investments. It was for this reason that the shares in Gutt would be divided between voting and non-voting shares, with Mr Torzi retaining the voting shares.

(9) Mr Torzi left the meeting to visit Mr Mincione to continue negotiations. It was left with the Secretariat and the bank's representatives to resolve any remaining issues with the structure of any deal involving Gutt. Mr Mincione had settled on a figure of GBP 50,000,000 to conclude the deal. It was in Mr Torzi's own interest to conclude a deal, and so he added into the mix the forgiveness of other obligations Mr Mincione owed him which had some likelihood of not being honoured. Other aspects of the deal were discussed, including aspects unrelated to the Chelsea Property which would ease other financial dealings involving Mr Mincione.

(10) Mr Torzi himself felt sure that he could realise a profit for the Secretariat from the transaction, which in turn would put him in good standing with the Secretariat for involvement in any forthcoming financial investment transactions.

(11) On 21 November, the issue of commissions for Mr Tirabassi as well as Mr Crasso were raised. These, apparently, were predicated on the basis that between them they would fund part of the purchase to the value of GBP 50,000,000 themselves, aside from any money coming from the Secretariat. Mr Torzi was not prepared to discuss any such arrangement with them until their investment materialised. There was, it seems, also some interest expressed by Mr Crasso (on behalf of the Secretariat) in investing in the financial products discussed by Mr Torzi at their very first meeting on 14 November.

(12) The very same day, a lawyer retained by Monsignor Perlasca to undertake the transaction on the Secretariat's behalf found himself conflicted, and so in his stead Monsignor Perlasca and Mr Tirabassi appointed Avv Squillace.

(13) Mr Torzi had dinner with Avv Intendente and Mr Tirabassi that evening. Mr Tirabassi again raised the matter of commission. He gave Mr Torzi an account as to the way in which he managed certain of the Secretariat's funds, which, he said, gave him commission payments of EUR 20,000,000 per annum. It is fair to say that the account Mr Torzi gives of what Mr Tirabassi said to him and Avv Intendente left little doubt in Mr Torzi's mind that Mr Tirabassi was not a man who was unaccustomed to questionable and nefarious practices. Mr Tirabassi openly admitted blackmailing several prelates of the church, including Cardinal Angelo Beccui, who had been Substitute before Archbishop Peña Parra. None of this, however, seemed to deter Mr Torzi from pressing ahead with the deal.

(14) Work continued apace on the structure of the deal. On 22 November, the share capital in Gutt was increased to EUR 50,000,000, and 30,000 shares with non-voting rights were issued to the Secretariat under the SPA for the nominal value of EUR 1. This accorded with the CS requirement that allowed the Secretariat to maintain its credit facility with CS. The SPA was signed by Monsignor Perlasca. The draft version of the Framework Agreement was finalised with Monsignor Perlasca. Later that day, Mr Torzi said that Mr Tirabassi offered him the services of a prostitute as a gift to acknowledge the work he had done, but Mr Torzi declined the offer.

(15) Mr Torzi recounts how, the next day, Mr Crasso joined him and Avv Intendente on the Milan-Rome train. During the course of that journey, Mr Crasso revealed the workings of a fund called the "Centurion Fund", which Mr Crasso managed, and which Mr Crasso described as "*completely unregulated with respect to alternative investment polices*", and how the Centurion Fund might be used as a private equity vehicle. Mr Crasso asked Mr Torzi to introduce him to Mr Torzi's clients in order to "sell" them his contacts at CS. He explained to Mr Torzi how his "commissions" worked through the use of companies in Switzerland and Dubai, using bank accounts in the Dominican Republic. Mr Torzi made it clear that any commission to which Mr Crasso might be entitled could not be settled through a Dubai company as his compliance people would not allow it, and that any commission properly due to him must be paid transparently. Mr Torzi said his priority remained the Chelsea Property deal and their initial discussion regarding the prospects of the EUR 50,000,000 investment in Mr Torzi's financial products from customers other than the Secretariat. When they arrived in Rome, the party went to the Vatican to meet with Mr Tirabassi and Monsignor Perlasca, who thanked them for all the work they had done, and Avv Squillace in particular for the work he had done for the Secretariat.

(16) Matters progressed as the Framework Agreement envisaged. Avv Intendente was put in place as the Secretariat's nominee director of Gutt, together with Mr Tirabassi, whose appointments were expressly authorised by Monsignor Perlasca.

(17) Mr Torzi spoke with Monsignor Perlasca and Mr Tirabassi by video conference call in the afternoon of 25 November, during which Mr Torzi pointed out the management contract for the Chelsea Property had yet to be signed. During a meeting between Monsignor Perlasca and Avv Intendente the next day, Monsignor Perlasca told Avv Intendente that Mr Crasso would no longer be involved in the deal, and that there was to be no further relationship with Mr Mincione. Without the signed management agreement, Mr Torzi began to doubt whether the Secretariat would honour its commitments to him in the deal that he had devised and brokered with Mr Mincione.

(18) In the event, the transaction closed on 3 December and the Secretariat became the beneficial owner of the Chelsea Property through a series of shareholdings via Gutt. It is not clear to me whether the fund arrangement first envisaged by Mr Torzi was utilised.

(19) On 12 December Mr Torzi returned to London. In the days leading up to this it seems that Mr Crasso and Mr Tirabassi continued to pursue him for commission or other arrangements, and that this delayed the signing of the management agreement through which Mr Torzi was to be compensated for his role in facilitating the deal with Mr Mincione. He resolved to bring Mr Crasso and Mr Tirabassi's misbehaviour to the attention of Pope Francis.

(20) On 17 December Gutt's board of directors passed a resolution requiring unanimity "*for all extraordinary administration activities, including … the purchase or sale of assets, to provide guarantees, to take on and make loans and anything else.*" Mr Torzi said this demonstrated that the controls sought by Monsignor Perlasca were being put in place.

(21) On 18 December Mr Torzi met with Mr Crasso and Mr Tirabassi at the Bulgari Hotel in London, where they threatened "*you either give up the property and go away, or your life and that of your children is at risk*". He was told to sell the management of Gutt to the Centurion Fund. He told them that to date their promises had been empty ones, and that he did not believe what they were asking him to do was for the benefit of the Holy See.

(22) The next day Mr Torzi spoke with Avv Intendente to tell him what had happened. Mr Torzi's intention was that Avv Intendente would report that to Pope Francis, and await instructions from him about how to proceed. He also messaged Mr Tirabassi, who replied that they would find a solution. He engaged in further conversation with Mr Tirabassi and Mr Crasso on 20 December about selling the Chelsea Property to the Centurion Fund, in order to buy time. In the meantime, Avv Intendente had arrange to see the Pontiff on 22 December.

(23) On 21 December, however, Mr Tirabassi told Mr Torzi that, as a director of Gutt, he was going to suspend the board the following Monday and the shares would be transferred to the Centurion Fund. Upon hearing this, Mr Torzi revoked Mr Tirabassi's appointment as director. Later that day Mr Crasso sent an email to Mr Torzi with an agreement for the sale of Mr Torzi's shares in Gutt to the Centurion Fund.

(24) Avv Intendente met with Pope Francis on 22 December, and reported Mr Torzi's concerns and the fact that Mr Tirabassi had been removed as a director of Gutt by Mr Torzi. After the meeting, Avv Intendente told Mr Torzi that the Pope as not aware of the Centurion Fund and that he wanted Mr Crasso, Mr Tirabassi and Monsignor Perlasca removed from dealing with Mr Torzi, and that, moving forward, Mr Torzi was to deal only with Archbishop Peña Parra.

(25) Archbishop Peña Parra called a meeting with Avv Intendente, Mr Torzi, and Mr Tirabassi on 23 December at the Secretariat. Mr Torzi asked the Archbishop to instruct Mr Tirabassi to leave the meeting, given he had no interest in Gutt, which the

Archbishop did. Once Mr Tirabassi had left, Mr Torzi told the Archbishop everything that had happened. The Archbishop thanked Mr Torzi for all that he had done, and mentioned the possibility of transferring the remaining 1,000 shares to the Secretariat. The Archbishop arranged for Mr Torzi and his family to have a private meeting with the Pope, which they did on 26 December. At the end of the meeting the Archbishop approached Mr Torzi with some papers, but Mr Torzi asked the Archbishop to email them to him so that he could consider them in greater detail.

(26) On 27 December Archbishop Peña Parra wrote to Mr Torzi by email regarding the transfer to the 1,000 shares in Gutt directly to the Secretariat, and invited Mr Torzi to submit his proposal for payment for the work he had carried out to date. This was contrary to the Pope's previous indication to Avv Intendente, who had told him that Mr Torzi should carry out the management agreement.

(27) On 10 January 2019 Mr Torzi wrote to Archbishop Peña Parra to arrange a telephone call. The Archbishop's secretary, Monsignor Mauro Carlino, replied that the Archbishop would call Mr Torzi late that day. He did. The Archbishop told Mr Torzi that the Secretariat wished to press ahead with purchasing Mr Torzi's shares, but that he had appointed the London law firm Mishcon de Reya to act. He said that the previous draft he had forwarded no longer represented the way in which the purchase was to be structured, and that he now preferred to pass control of the Secretariat's interest in the Chelsea Property to a Luxembourg company controlled by the Secretariat. This was confirmed subsequently in writing by the Archbishop.

(28) Mr Torzi had already retained Bird & Bird to act on his behalf, and between 11 and 22 January discussions ensued between the two law firms. On 12 January Avv Intendente told Mr Torzi that the Pope had approved Mr Torzi's continued management of the property until he exited. On 16 January Mr Torzi sent Archbishop Peña Parra a detailed report which including different scenarios for the ongoing management of the Chelsea Property. He continued to have daily exchanges with the Archbishop regarding the management of the property. This continued into February. He urged the Archbishop to address the outstanding question of the property's refinancing.

(29) On 22 January Archbishop Peña Parra emailed Mr Torzi proposing he be paid EUR 5,500,000 as compensation for the work he had done. Mr Torzi did not think that a fair offer, given the expenses he had incurred and the loss of income from the management agreement that he was being asked to give up. He told the Archbishop of his concerns over the telephone the next day. The Archbishop said that a solution would be found, and asked Mr Torzi to continue work on refinancing the property, which he did.

(30) On 23 February, Archbishop Peña Parra put Mr Torzi's fee negotiations in the hands of Mr Luca Dal Fabbro. On 9 March, Mr Dal Fabbro and Mr Torzi agreed a fee of EUR 20,000,000, made up of the following components:

(a) one fixed annual fee of c. EUR 3,100,000, equal to 1% of the property's value, in forbearance of the five years to which Mr Torzi would have been entitled (about EUR 15,500,000);

(b) c. EUR 2,800,000, as a success fee on rentals over five years; and

(c) a sum equal to profit lost due to the possible sale of the property.

Negotiations between Mishcon de Reya and Bird & Bird continued, and the contracts to reflect the agreement reached were finalised towards the end of March.

(31) On 11 March, Monsignor Carlino contacted Mr Torzi forwarding a series of documents to compete the sale of the Gutt shares to the Secretariat. During Mr Torzi's discussions with Monsignor Carlino, Monsignor Carlino insisted the payment of Mr Torzi's fee should be in exchange for the 1,000 shares. Mr Torzi was concerned by the tax exposure such an apparent capital gain could give rise to; he insisted the payment should in fact reflect the work he had actually done and the income he had forgone, which was properly due to his companies. In the end, Monsignor Carlino agreed to this approach. Mr Torzi kept Avv Intendente appraised of what was happening during this time.

(32) Things appeared to stall towards the end of March, and in a discussion with Monsignor Carlino on 2 April it emerged this was because of AML concerns about the proposed payment within the Vatican's financial regulator, the Financial Intelligence Authority (Autorità di Informazione Finanziaria (the **"AIF"**)). Both Mishcon de Reya and Bird & Bird suspended closing until the AIF approved the proposed payment to Mr Torzi.

(33) Mr Torzi met with Monsignor Carlino on 15 April. Monsignor Carlino told Mr Torzi that "they" had stopped the payment via the AIF in order to force a reduction in the amount. Monsignor Carlino proposed a reduction in payment of EUR 5,000,000, which Mr Torzi felt he had no option but to accept. In subsequent exchanges, Monsignor Carlino told Mr Torzi that, to comply with AIF regulations, the invoices for services should be split as follows:

(a) an advisory fee for mediation with GOF for the transaction, equal to EUR 10,000,000; and

(b) an advisory fee for different matters as provided by them, equal to EUR 5,000,000.

(34) On 23 April, Bird & Bird told Mr Torzi they were no longer able to act. He appointed Eversheds the following day, and they took up with Mishcon where Bird & Bird had left off. There was some further delay in completing the deal due to Mr Torzi's ill health following surgery to his ankles. Monsignor Carlino unexpectedly appeared at his doorstep on 1 May with another man unknown to Mr Torzi, and made it plain to Mr Torzi that he should sign the agreement. Mr Torzi said he would do so the next day. Mr Torzi reported what had happened to Avv Intendente. The next day, he went wheelchair-bound to Mishcon de Reya's office and signed the necessary papers to close the deal.

(35) Mr Torzi had subsequent contact with Mr Mincione, who pressed him for payment of moneys that they had discussed in negotiating the Secretariat's exit from the GOF. Apart from a payment of USD 1,000,000 in relation to a real estate transaction in New York, no other monies were paid to Mr Mincione.

Discussion

111. Much of what Mr Torzi has to say in his written statement is hearsay, and I take that into account in assessing his explanation as to what took place in his dealings with Mr Mincione and the Secretariat. He has, however, provided documents in part, which go to support his account. During submissions I asked Mr Biggs if there was any documentation from CS which supported Mr Torzi's claims regarding their requirement for structuring of Gutt and the split in shares between the Secretariat and Mr Torzi. Mr Biggs told me that, as Mr Torzi was not CS's client, CS was not prepared to engage in any dialogue with him about the matter without authority from the Secretariat. None of what Mr Torzi said in this connection was contested by the OPJ, though it was addressed by Mr Hannam QC in his written submissions dated 19 February 2021 to the effect that there was no evidence to support it, and it did not justify Mr Torzi's ownership of the shares. It is, however, precisely the sort of information one would expect a prosecutor to follow up and enquire about. I do not seek to second-guess whether the

CS banking arrangements recounted by Mr Torzi would have worked in reality, or were practical or indeed lawful or sought to achieve the bank's purpose, but Mr Torzi's account raises serious questions which, so far as this Court is aware, remain unanswered by the OPJ, despite the passage of time since Mr Torzi's written statement was provided to the OPJ well over a year ago on 12 June 2020.

112. The crux of the OPJ's case against Mr Torzi rests on his alleged knowledge that Mr Crasso, Mr Tirabassi and Monsignor Perlasca were all acting outside their actual authority in order to defraud the Secretariat. Mr Torzi's introduction to that group, however, appears to have been facilitated by Avv Intendente, who does not appear to be subject to any allegation of wrongdoing in the Letter of Request. Mr Torzi was specifically sought out because Mr Mincione was known to him. There is nothing to suggest Mr Torzi had any dealings with the Secretariat before then, or that he should question the position of the Secretariat's officials or indeed their apparent authority. The transaction was expressly approved and authorised by Archbishop Peña Parra in his proxy to Monsignor Perlasca dated 22 November 2018. I have seen nothing to suggest that Mr Torzi knew or suspected Monsignor Perlasca was acting other than in accordance with what he was telling his superiors within the Secretariat including, ultimately, the Secretariat himself, Cardinal Parolin.

113. Criticism is made by Mr Hannam QC of Mr Torzi's continued involvement in the deal following the revelations made by Mr Tirabassi about how he controlled certain prelates – effectively through blackmail – and through his offer of an "escort" as a gift in recognition of Mr Torzi's efforts. Further criticism is made about Mr Torzi's response to the persistent calls from Mr Crasso and Mr Tirabassi for "commission" or payment in circumstances which would suggest they were not entitled to any. While those criticisms do give pause for thought, it seems to me that, by the stage those things had happened, the deal brokered with Mr Mincione had progressed significantly and Mr Torzi had invested significant time and effort in bringing things to a close. He also said he drew those matters to the attention not only of Archbishop Peña Parra, but also Pope Francis. The OPJ did not dispute Mr Torzi's account of these meetings, or what was said in them.

114. What raises concern in evaluating the grounds before me is the absence of any direct or indirect account from the man said to have taken charge of the transaction at a critical time: Archbishop Peña Parra. He is, in addition, said to be the victim of the blackmail alleged at Count (d). Criticism is made by the Applicants that the OPJ's account is incredible because no attempt was made by any alleged victim to report the matter to the authorities during the very lengthy period of time over which the extortion was said to have taken place, and despite the fact that the Secretariat was represented at this time by its London solicitors Mishcon de Reya. This allegation also does not sit well with contemporaneous paperwork, such as this email from Archbishop Peña Parra to Mr Torzi dated 22 January 2019, headed "60 SA 1/60 SA Ltd", which said this:

> "**WITHOUT PREJUDICE**
>
> Dear Mr Gianluigi Torzi,
>
> I refer to the latest exchange of emails between Federico Valle, Birds & Birds [sic] Italian branch (your lawyer), and Shantanu Sinha of Mishcon de Reya (our lawyer), on 21 January 2019.
>
> For ease of reference, I will use the same headings used by the lawyers:
>
> 1. Target Company – We have no reservations in being reassigned the full share capital of '60 SA 1 Limited' and 60 SA Limited, alongside the transfer to you of our shares in Gutt (at the same price agreed for the issued shares as act [sic] November 2018

i.e. € 1,00). I do not intend to enter into the tax reasoning stated as that would be dealt with by the appropriate professionals .

2. Due Diligence – As we have not received despite all reassurances and confirmation from Avv.to Nicola Squillace of any due diligence done proper to acquisition of the asset and all associated companies, our lawyers (for all the good reasons that I am sure that you understand) insist that such due diligences are produced and approved by them. To facilitate this passage, it would be beneficial to all parties if you were to put our lawyers in contact with the relevant parties (First Name Groups and others).

3. Purchase Price – You indicated that you would be willing to sell the shares in 60SA1 for £20 million. On this regards [sic] I would like to remind you that the feedback received from our 'mediators' equates to not more than 5.5 M (GBP). I am also of the opinion that this amount is adequate and congruous provided no issues are highlighted by the due diligences.

As we have already agreed, we want to finalize this issue in the shortest possible time, and I therefore rely fully on your cooperation.

Yours sincerely,

+ Edgar Peña"

115. It is evident from Archbishop Peña Parra's email that what was transpiring was a commercial negotiation between two arm's length parties. In his written statement, Mr Torzi gave an account as to what he was giving up in exiting the transaction, and the basis for the sums which he claimed. The deal set in place expressly contemplated that Gutt (through Mr Torzi) would "*carry out future strategic decisions relating to the development of the* [Chelsea Property]". Further, the Secretariat was represented by well-known and respected London solicitors. I do not know whether advice was sought from them about the Secretariat's position regarding its ownership and control of the Chelsea Property, but it seems to me from the papers I have seen and from Mr Torzi's account that the funding of the purchase of beneficial interest in the Chelsea Property was provided wholly by the Secretariat. Gutt was described as the Secretariat's agent in the Framework Agreement. The comfort letter dated 23 November 2018 makes clear that Gutt acted as purchaser "*on behalf of The Secretariat of State of the Holy See*" and "*GUTT will be fully funded via equity by The Secretariat of State of the Holy See in order to pursue the Transaction*". It may have been possible for the Secretariat to seek relief from the English courts to give effect those arrangements and thereby to force Mr Torzi to hand direct control of Gutt to it, or to pass over the beneficial ownership of the Chelsea Property to it. Mr Torzi may have met any such claim with a counterclaim for the losses he said he suffered that were the subject of negotiation with Archbishop Peña Parra. When invited to explain why no contemporaneous complaint was made to the authorities about Mr Torzi's alleged blackmail, the OPJ said that the Secretariat wished to avoid exposing itself to scandal. That may be so, but I do not find the explanation convincing for the reasons I have identified.

116. I am not told what changed the Secretariat's mind, or whether it was presented with a fait accompli after complaint was made to the OPJ by the Vatican Bank and the Office of the Auditor General. I am left with the impression that, whatever the position, the way in which the Secretariat acted through its representatives – Mr Crasso, Mr Tirabassi, Monsignor Perlasca and Archbishop Peña Parra – left little question that they had the authority to speak for and act on behalf of the Secretariat and, apart from the very questionable conduct of Mr Crasso and Mr Tirabassi alleged by Mr Torzi, Mr Torzi was left with the impression that the Secretariat was aware of and authorised what he was doing.

117. Mr Hannam QC pointed to the two invoices issued to the Secretariat by Mr Torzi's companies for payment of the EUR 15,000,000 as evidence of Mr Torzi's complicity in the alleged wrongdoing: one from Sunset in the sum of EUR 5,000,000, on 29 April 2019; the other from Lighthouse for EUR 10,000,000, on 1 May 2019. Mr Torzi gave an account as to why that was: he was directed to do so by Archbishop Peña Parra's secretary, Monsignor Carlino. While there may be tax avoidance or evasion implications to Mr Torzi for the way in which those payments were invoiced and the work he is said to have done, he is not charged with tax offences. It is evident that the payments were made, and indeed the documentary evidence shows that at least payment to Sunset of the EUR 5,000,000 invoice was expressly authorised by Archbishop Peña Parra (see pages 486 and 488 of the hearing bundle), after it is said the AIF had raised its concerns. If what the OPJ now says is blackmail, given the payments were made it may be that Archbishop Peña Parra and the Secretariat misled the AIF about the nature of the payments. I doubt they would have done so, which causes me to further question the OPJ's claims.

118. Mr Hannam QC also placed reliance upon a series of unsigned contracts and subsequent payments said to have been made by Mr Torzi to Mr Mincione as evidence of the conspiracy between them and demonstration that the relationship between them was not a genuine commercial one. I do not think any such payments go that far on the documents I have seen. Mr Torzi disclosed his previous dealing with Mr Mincione, and the subsequent payment of USD 1,000,000 in a real estate transaction in New York unconnected with the Chelsea Property.

119. In considering all these matters, I do not make any findings of fact. At this stage, the Court is not concerned with proof but with the existence of grounds for believing that Mr Torzi has benefited from criminal conduct, and with the reasonableness of those grounds. I have set out my assessment of the matters above to evaluate the reasonableness of the grounds advanced by the DPP, and in doing so I have considered any reliance upon hearsay and weighted it accordingly. I have discounted pure assertion unsupported by credible evidence. Having done so, and for the reasons I have set out, I do not consider there is reasonable cause to believe that Mr Torzi has benefited from criminal conduct as Mr Hannam QC sought to persuade me.

Real risk of dissipation

120. For the purposes of these proceedings, Mr Biggs confirmed that no issue was taken by Mr Torzi in piercing the corporate veil of Vita, and the funds in Vita's bank account could be treated as his in so far as any benefit of his alleged criminal conduct had found its way into Vita's bank account.

121. During the course of oral submissions before me, Mr Biggs submitted that HSBC's decision for withdrawing banking services was prompted by enquiries made by the OPJ. No evidence was placed before me to show the volume of transactions or the amounts being turned over in Vita's bank accounts at times material to the Restraint Application. I was told by Mr Biggs that the accounts were working accounts of Vita's business as a property consultant. In any event, Mr Biggs submitted Vita had held the monies now subject to restraint and had not sought to dissipate them in the very many months that followed the Swiss order (which appears to have been made on 12 December 2019: see, for example, p 583 of the hearing bundle), or indeed the many months after Mr Torzi's arrest and interview in June 2020.

122. The only explanation proffered by the DPP for the risk of dissipation is HSBC's apparent intention to close the accounts (see paragraph 52 of Ms Nayee's first witness statement). Ms Nayee states that, "*given the fraudulent and dishonest nature of the crimes alleged, there is a risk that the relevant property may be dissipated*". That, of course, is not the test. There must be a real risk of dissipation.

123. In my judgment, this is not case where the risk of dissipation speaks for itself. On the material before me, this is a case where no dissipation occurred over a long period, after Mr Torzi had been arrested, interviewed, and charged, and in circumstances where the Swiss order had been obtained nearly a year before the Restraint Application. Yet, beyond HSBC moving to close the accounts, no explanation was offered as to why dissipation is now feared when it was not feared before. It is not suggested that either Vita or Mr Torzi will do anything other than open banking facilities with another bank in order to conduct Vita's business. For all those reasons, I would have refused the Restraint Application on this ground alone in failing to find a real risk of dissipation.

Delay

124. Allied to a consideration of the risk of dissipation is any delay in bringing a restraint application. As I said, no explanation is given by the DPP as to the OPJ's delay in making the Letter of Request, but when it did the DPP acted promptly.

125. The restraint order sought is discretionary relief, as art 7(1) of the 2005 Order suggests. Inexplicable delay may well militate against the Court exercising its discretion to make an order. I have taken it into account in determining whether there is a real risk of dissipation.

(5) If so, what should be the terms of any such order?

126. In light of my answer to issue (4), this question does not arise.

The Respondent's approach to these proceedings

127. Before turning to the orders which must follow, I find it necessary to make a number of observations about Prof Avv Diddi's letters dated 9 January 2021, 20 January 2021, and (I assume) 25 February 2021, and his undated and unsigned witness statement at pp 225 et seq of the hearing bundle, and about the conduct of the DPP in preparing and making the Restraint Application.

128. While Prof Avv Diddi's first two letters are exhibited to witness statements made by Ms Nayee, which is signed with a statement of truth, the third letter in which he makes allegations about the forgery of a signature is not (although it was adduced lately by him in some haste in response to a witness statement served by the Applicants a day or so before I heard the Discharge Application). Prof Avv Diddi's third letter suggests the man who says his signature is a forgery (Mr Di Iorio) was interviewed a year ago on 13 February 2020, yet this allegation (which, on an objective view, ought to form a critical part of a case alleging fraud) does not form any part of the Letter of Request. Moreover, Prof Avv Diddi's witness statement, while bearing that title, is nothing of the sort. It is framed as a "report", and is perhaps more accurately described as a brief written to persuade a tribunal of fact, drafted in a manner more familiar with elaborate pleadings in civil law systems. This witness statement is not signed, nor does it contain a statement of truth.

129. I do not criticise Prof Avv Diddi for any of this, since he can only follow the guidance offered to him by the CPS which, as the solicitors on the record with the carriage of this matter for the DPP, must take the responsibility for complying with the Criminal Procedure Rules, especially so in complex urgent applications of this nature. That, as a point of fundamental principle, includes Crim PR r 33.7, which provides that in restraint proceedings a witness statement must be verified by a statement of truth contained in the witness statement, and signed by the person making the witness statement. This Court should not have remind parties about those rules, or to have to point them in that direction. It is a matter of professional obligation that they are complied with. Crim PR r 33.7 is a mandatory requirement. Crim PR r 33.7(4) expressly provides that if a person making a witness statement fails to verify the witness statement by a

statement of truth, the Court may direct that it shall not be admissible as evidence. Crim PR r 33.7 applies to proceedings under the 2005 Order as it does to proceedings under the 2002 Act: Crim PR r 33.12.

130. Further, it should not be for this Court to have to unpick submission from fact in witness statements relied upon by the DPP. Facts are for witness statements; submissions are for skeleton and oral arguments. At times Prof Avv Diddi's witness statement side-tracks into submission and, more often, sweeping assertion. In applications of this nature it is understandable that witness statements often rely upon hearsay to establish fact, and the Criminal Procedure Rules expressly contemplate this. But Prof Avv Diddi's witness statement often goes further. There are two critical examples which are helpful to cite, at p 251 of the hearing bundle, where Prof Avv Diddi says this:

> "… the special power of attorney, in reality, was signed by the Substitute Edgar PEÑA PARRA only on November 27, 2018, and that, in all likelihood, the SUBSTITUTE himself and the SECRETARY OF STATE Cardinal Pietro PAROLIN had been informed officially only on 25 November 2018 by Avv Nicola SQUILLACE, who forwarded it by e-mail on the same date to Fabrizio TIRABASSI, Msgr. Alberto PERLASCA and Emanuele INTENDENTE and faithfully reused by Fabrizio TIRABASSI himself to report the Superiors Authorities on the events in London of 20, 21 and 22 November 2018."

He continues:

> "The note at the bottom of the memorandum confirms that only on November 25, 2018, HE Cardinal Pietro PAROLIN acknowledges and approves the stipulation of the contracts of November 22, 2018 'After reading this Memorandum, also in light of the explanations provided last night by Msgr Perlasca and Dr Tirabassi, having had assurances on the validity of the operation (which would bring advantages to the Holy See), its transparency and the absence of reputational risks (which, indeed, would exceed those related to the management of the GOF Fund) are favourable to the conclusion of the contract. Thank you. P Parolin 25/11/2018.' And keeping silent, because both the cardinal and the SUBSTITUTE were not informed, about the purchase contract for the 30,000 shares of GUTT SA without voting rights. In fact, the TRANSFER AGREEMENT (DOCUMENTATION 10) was signed on 30 November 2018, then corrected on 3 December 2018, by Msgr Alberto PERLASCA for the SSDS, by GUTT SA and by the GOF and RESSF1 Sections of the ATHENA Fund, despite the original power of attorney issued by the SUBSTITUTE to Msgr Alberto PERLASCA, does not provide for this deed."

131. Central to the OPJ's case is Monsignor Perlasca's lack of authority to bind the Secretariat in the way in which he did in his dealings throughout with Mr Mincione. Both Monsignor Perlasca and Mr Mincione are alleged to be co-conspirators in the conspiracy to defraud the Secretariat very early only, from 2014. If the contents of Prof Avv Diddi's witness statement are to be accepted, the Secretariat's Substitute, Archbishop Peña Parra, and the Secretariat himself, Cardinal Parolin, must have had the wool pulled completely over their eyes by Monsignor Perlasca and Mr Tirabassi. Yet nowhere in the papers, let alone in Prof Avv Diddi's witness statement, is there any indication that Archbishop Peña Parra or Cardinal Parolin have provided the OPJ with a witness statement (or even a first-hand account) setting out their understanding of the state of affairs in so far as the Secretariat's exit from the GOF and the purchase of the Chelsea Property are concerned. There is no summary in Prof Avv Diddi's witness statement of what their position on those matters is. They are, in effect, the representatives of the alleged "loser", and yet Prof Avv Diddi refers to "*the astonishment of the Higher Authorities*" of the Secretariat (p 252) and "*the Superiors of the SDS* [the Secretariat] *and in particular the Substitute Edgar PEÑA PARRA*" without identifying just who (possibly apart from Archbishop

Peña Parra) is astonished, and why, or giving any direct account by Archbishop Peña Parra. Nor are any of the critical documents to which Prof Avv Diddi refers in this exchange produced by him. Conspicuously absent from the papers is the Cardinal's note of 25 November 2018.

132. Although the Criminal Procedure Rules expressly contemplate in rr 33.37 and 33.39 that facts may be proved by a witness's evidence in writing, and art 13 of the 2005 Order expressly provides that hearsay of whatever degree is admissible in restraint proceedings, the Court must be slow to rely upon or give significant weight to sweeping, unsubstantiated assertions or assertions which are based upon indirect accounts. It is precisely for this reason why the rule against hearsay became a doctrine of the English law of evidence, to guard against the possibility of invention or inaccuracy when assessing a party or a witness's account. I do not hesitate to add that I do not think that that has happened here, but any applicant for a restraint order to be made without notice and on the papers must appreciate that, when applying the second condition in art 7(3) of the 2005 Order, this Court must find reasonable grounds for believing that the defendant has benefited from his criminal conduct for the application to succeed. Over-reliance on hearsay evidence does not assist the Court in this task.

133. For that reason, an applicant to this Court for a restraint order relying on external requests (such as the DPP) should be careful in relying upon facts unverified or unsupported by direct evidence, and should not unhesitatingly rely upon assertions that are not properly established on the facts. Applications of this nature often are brought with haste because of the fear of the real risk of dissipation of assets, but the Restraint Application was not an application prompted by discoveries made in a new investigation, or even in an investigation that was unfolding. As I said, Mr Torzi was interviewed in June 2020, some five months before the Restraint Application was made. The OPJ must have properly marshalled the facts upon which it relied to interview him, and it is clear from Mr Torzi's written statement dated 12 June 2020 that the OPJ was provided with a significant number of documents upon which Mr Torzi relied in that statement to support his case.

134. There are other aspects not set out in the Letter of Request but upon which the DPP relied to obtain the Restraint Order, such as the alleged blanket claim by Mr Torzi in interview to entitlement to those funds and the failure to mention Mr Torzi's detailed explanations upon confrontation by the OPJ with these allegations. I do not know whether the DPP made enquiries with the OPJ about Mr Torzi's defence to the allegations; Ms Nayee's first witness statement suggests that he did not. There are other matters in Ms Nayee's witness statement that could have been easily and readily checked before the Restraint Application was made, such as a request for copies of the restraint orders said to have been obtained at the request of the OPJ in Switzerland and Italy. Such a request would have revealed (a) that there was, in fact, no Italian order, (b) the extent of restraint in the Swiss order, (c) when the Swiss order was made, and against whom. It may also have put the DPP on notice to enquire about any delay which may have emerged in the Vatican-requested foreign restraint orders, and the explanation for it. The documents produced by the Applicants in these proceedings suggest the Swiss order was made in December 2019, a year before this application. The responses received by the DPP may well have put the DPP on notice to make further enquiry about the facts and matters relied upon by the OPJ so as to ensure this Court was not misled in any material way. That is a fundamental duty of any applicant in applications of this nature. No applicant under the 2005 Order should approach the making of an application following an external request as a "tick box" exercise, or to simply regurgitate what it has been told by a requesting state without properly testing the case being put. No prosecutor in this country should fear taking that approach in apprehension of any actual or perceived lack of reciprocal comity by a foreign state in the future.

135. The cautionary and prescient words of Hughes LJ in *Re Stanford International Bank (In Receivership)* [2011] Ch 33 (at 109) bear rehearsing here in full as a reminder for any applicant contemplating such an application to this Court:

> "Whilst I respectfully agree with the view expressed by Slade LJ in *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350 that it can be all too easy for an objector to a freezing order to fall into the belief that almost any failure of disclosure is a passport to setting aside, it is essential that the duty of candour laid upon any applicant for an order without notice is fully understood and complied with. It is not limited to an obligation not to misrepresent. It consists in a duty to consider what any other interested person would, if present, wish to adduce by way of fact, or to say in answer to the application, and to place that material before the judge. That duty applies to an applicant for a restraint order under POCA in exactly the same way as to any other applicant for an order without notice. Even in relatively small value cases, the potential of a restraint order to disrupt other commercial or personal dealings is considerable. The prosecutor may believe that the defendant is a criminal, and he may turn out to be right, but that has yet to be proved. An application for a restraint order is emphatically not a routine matter of form, with the expectation that it will routinely be granted. The fact that the initial application is likely to be forced into a busy list, with very limited time for the judge to deal with it, is a yet further reason for the obligation of disclosure to be taken very seriously. In effect a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge. This application is a clear example of the duty either being ignored, or at least simply not being understood. This application came close to being treated as routine and to taking the court for granted. It may well not be the only example."

136. Finally, this. A number of foreign language documents were relied upon by the parties in these proceedings, many without any English translation or, where an English translation was provided, it was in the form of a free translation. The Court is mindful of the speed in which applications of this nature are often made, but it is not able to consider or properly evaluate documents that are not written in English. Good practice requires a professional translation of any foreign language document by an appropriately qualified translator, who must certify that the translation is accurate, if it is to be of any utility to the parties and the Court.

Disposal

137. For the reasons which I have given:

    (1) I grant the Applicants' application;

    (2) I discharge the restraint order granted on 12 November 2020 by His Honour Judge Grieve QC; and

    (3) I decline to re-impose or make a restraint order in the same terms as the one discharged.

138. The hearing of the Discharge Application took place in private, and this judgment is handed down in private. The judgment is marked to reflect that. The parties were aware that the application was heard in that way, and it was listed as such. When the matter was called on before me, there were no submissions as to whether the hearing should be in open court or in private. I exercised the Court's discretion to proceed in private, bearing in mind the default position in criminal proceedings in the Crown Court is that they take place in public. In doing so, I considered (a) Crim PR r 33.35, which provides that restraint proceedings may be heard in chambers, (b) the very serious nature of the allegations against Mr Torzi, (c) the disputed position as to the status of the criminal proceedings against Mr Torzi in the Vatican (that is, whether they had commenced), (d) whether the material before the Court was in the public domain, and (e) whether such material could prejudice Mr Torzi (or any of his alleged co-conspirators, who are not party to these proceedings) in any criminal proceedings extant or ones that might follow.

139. Before handing down judgment I invited written submissions from Mr Biggs and Mr Hannam QC as to whether it should be made public, and invited any further oral submissions from the parties today before determining the issue. It seems to me, however, that fairness to the parties and the interests of justice require that the parties should be allowed to consider the judgment fully before making final submissions on the point. In the circumstances, I direct that final submissions on the issue as to whether the judgment should be made public by 4pm on 17 March 2021. I will issue a written decision on the point thereafter.

140. I shall hear the parties as to any consequential orders and the form of the final order, and as to any order I should make as to costs, bearing in mind Crim PR rr 33.47 (in particular, r 33.47(3)(a)) and 33.48(5).