Neutral Citation Number: [2026] EWHC 2984 (BP)

Claim No: BL-2021 BHM-000065

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION IN BIRMINGHAM
BUSINESS LIST

Priory Courts
33 Bull Street
Birmingham, B4 6DS

Date: 17 November 2026

BEFORE:

HIS HONOUR JUDGE RICHARD WILLIAMS
(Sitting as a Judge of the High Court)

BETWEEN:

(1) MIDLAND PREMIER PROPERTIES LIMITED
(2) SANMAN PROPERTY MANAGEMENT LIMITED

Claimants

- and-

(1) RAKESH SINGH DOHAL
(2) 2020 LIVING LIMITED
(3) SAMUEL GINDA
(4) TAYLOR GRANGE 2 LIMITED
~~(5) TAYLOR GRANGE DM LIMITED~~
(6) TGDM ONE LIMITED

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Defendants

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Representation:

Jack Watson KC and **Daniel Lewis** (instructed by **Shakespeare Martineau LLP**) for the **Second Claimant**

Stephen Robins KC (instructed by **Hill Dickinson LLP**) for the **Second, Third, Fourth and Sixth Defendants**

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Hearing date: 16 October 2026

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JUDGMENT

Introduction and background

1. This is my judgment in relation to an application dated 7 August 2026 made by D2, D3, D4 and D6, which seeks the following orders:

    a. C2 to pay the sum of £2 million into the Court Funds Office by way of increased security for costs within 14 days failing which the claim be automatically struck out ("***the Security for Costs Application***"); and

    b. C2 to pay the sum of £21.5 million into the Court Funds Office by way of increased fortification of its cross-undertakings in damages pursuant to various Freezing Orders/Freezing Undertakings within 14 days failing which the Freezing Orders/Freezing Undertakings be automatically discharged ("***the Fortification Application***").

2. The claim was issued on 27 January 2021. In summary, C2 alleges that:

    a. It agreed to lend D2 the sum of £1.5 million to enable it to buy a property known as "The Square" situated in central Birmingham, which would be developed to provide residential accommodation and a hotel.

    b. The agreement entitled C2 to interest at the rate of 36% per annum and also a 50% share of the profits.

    c. To avoid having to account to C2 for its share of the profits, D2-D6 entered into a number of property transactions with the net effect that D2 made a loss on its acquisition and sale of The Square.

3. The following Freezing Orders/Undertakings were made/given:

    a. D3 - Freezing Order of 2 December 2021, and superseded by Freezing Undertaking of 19 January 2022.

    b. D4 and D5 - Freezing Undertakings of 3 December 2021, and superseded by Freezing Undertakings of 19 January 2022, although discharged against D5 on 24 December 2024.

    c. D6 - Freezing Undertaking of 21 September 2022, and superseded by Freezing Order of 18 October 2024.

    Each (i) is limited to a maximum sum of £8 million save in respect of D6 which is limited to a maximum sum of £10.8 million, (ii) permits dealings in the ordinary and proper course of business, and (iii) includes the usual cross-undertaking in

damages that C2 will comply with any order the Court may make (including to third parties).

4. By order dated 22 February 2023, costs budgeting was dispensed with and it was directed that there be a split trial as follows:

> "[11.1]. At the first hearing the Court will try the claim by the First Claimant against the First Defendant and the following issues in the claim by the Second Claimant against the Defendants: (i) whether the Defendants (or any of them) are (subject to any issues relating to proof of damage) liable in respect of the causes of action alleged against them; and if so (ii) what the appropriate counter-factual scenario for the purposes of assessing quantum is by reference to the counter-factual events pleaded at paragraph 20E of the Re-Re-Amended Particulars of Claim and such other scenarios as may be pleaded by way of Defence herein.
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> [11.2] If the Second Claimant succeeds on those issues at the first hearing, the Court will direct a second hearing to assess the quantum of the Second Claimant's damages, and give directions for any further disclosure, evidence (including expert evidence) if and as required."

5. On 24 July 2023, D2 – D6 applied for security for costs and D4 applied for an order that C2 fortify its cross-undertaking in damages (the "***First Application***").

6. The First Application was compromised by a consent order dated 9 November 2023 whereby the First Application was dismissed upon C2 undertaking to pay the sum of £1,250,000 into the designated client account of Rainer Hughes Solicitors. By order dated 23 February 2026, the £1,250,000 originally held by Rainer Hughes Solicitors was transferred to the Court Funds Office.

7. By order dated 13 September 2024, HHJ Rawlings struck out the defences of D2 – D6, who were debarred from defending ("***the Debarring Order***").

8. The first trial took place on 15 and 16 October 2024 with HHJ Rawlings giving judgment on 24 December 2024. Although HHJ Rawlings dismissed C2's claim against D5, he held that:

    a. C2 was entitled to receive 50% of such profits as D2 made from The Square arising from the development of the Square;

    b. there was an implied term of the agreement between C2 and D2 that D2 would not seek to structure any on-sale of the Square such that its profits were artificially eliminated and/or reduced so as to prejudice C2's ability to realise a 50% profit share;

    c. D2 breached that term, and D3, D4 and D6 induced that breach;

    d. D2, D3, D4 and D6 were also guilty of unlawful means conspiracy; and

    e. C2 had proved that it had suffered loss, but he declined to determine as part of the first trial which counterfactual scenario should be used for valuing C's loss in relation to the Hotel site. He directed that the choice of the correct counter-factual scenario should be determined at the second (quantification) trial with the benefit of expert opinion ("***the Quantification Direction***").

9. D2 – D6 appealed against the Debarring Order.

10. D2 - D4 and D6 appealed against the Quantification Direction.

11. There was no appeal against the dismissal of the claim against D5.

12. On 17 February 2026, the Court of Appeal allowed the appeal and directed that

> "5. The issues identified in paragraph 11.1 of the order of District Judge Phillips dated 22 February 2023 shall be remitted for a re-trial before a High Court Judge other than His Honour Judge Rawlings (the "Re-Trial"), directions for which shall be given at the CMC listed in accordance with paragraph 6 below.
>
> 6. A case management conference shall be listed before a full time High Court Judge on the first available date after 24 April 2026 with a time estimate of 1 day, to be listed by reference to Counsel's availability. Any applications to be heard at the case management conference shall be issued and served by 4.00pm on 27 March 2026."

13. On 16 April 2026, D2 to D6 applied to have the claim transferred to London ("***the Transfer Application***").

14. On 17 April 2026, C2 applied for permission to amend its Re-Re-Amended Particulars of Claim ("***the Amendment Application***").

15. The Transfer Application and the Amendment Application were listed for hearing before me at the case management conference on 9 July 2026, which had been listed pursuant to paragraph 6 of the Court of Appeal order dated 17 February 2026. I dismissed those applications and directed that the re-trial of the issues identified in paragraph 11.1 of the 22 February 2023 Order be heard by me from 8 to 19 March 2027.

16. On 7 August 2026, D2, D3, D4 and D6 made their present application.

Fortification Application

Applicable legal framework

17. It is not seriously disputed that C2's financial position is such that a cross-undertaking alone is not sufficient in providing protection against the risk of future loss.

18. The principles for deciding whether fortification of an undertaking in damages (or an increase in fortification), should be required were summarised by Phillips LJ in ***The Claimants listed in Schedule 1 v Spence & Ord*** [2022] EWCA Civ 500 as follows:

> "[17.] There was no dispute as to the principles to be applied when deciding whether to order fortification of an undertaking in damages (or an increase in fortification), nor that the Judge correctly identified those principles.

[18.] As the Judge noted, the relevant principles were set out in *Energy Venture Partners Ltd v Malabu Oil and Gas Ltd* [2014] EWCA Civ 1295, [2015] 1 WLR 2309. Tomlinson LJ (with whom the other members of the court agreed) stated:

> "[52] …since the Claimant has obtained a Freezing Order preserving assets over which it may be able to enforce on the basis of having shown the court that it has a good arguable case, it is only appropriate that if the Defendant can show that it too has a good arguable case that it will suffer loss in consequence of the making of the Order, it should equally be protected…
>
> [53] It is completely contrary to principle to require proof on the balance of probabilities on such an application and so to do would encourage wasteful satellite litigation. In my judgment Briggs J was correct in *Jirehouse Capital v Beller* [2008] EWHC 725 (Ch) to summarise the principles as he did at para 25:
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> > "Broadly speaking, they require an intelligent estimate to be made of the likely amount of any loss which may be suffered by the applicant for fortification (here the defendants) by reason of the making of an interim order. They require the court to ascertain whether there is a sufficient level of risk of loss to require fortification. They require that the loss has been or is likely to be caused by the granting of the injunction."
>
> The three requirements are of course inextricably linked. The principles could equally be summarised….as a requirement that the applicant for fortification show a good arguable case for it. In this interlocutory context, showing a sufficient level of risk of loss to require fortification is synonymous with showing a good arguable case to that effect. In some cases the assessment of loss may at the interlocutory stage be difficult. It is in such cases that an intelligent estimate is required. An intelligent estimate will be informed and realistic although it may not be entirely scientific.
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> [54] As to causation, it is sufficient for the court to be satisfied that the making of the order or injunction was a cause without which the relevant loss would not have been suffered…At the stage of considering whether fortification of the undertaking is required, the proposition could be restated as it is sufficient for the court to be satisfied that the making of the order is or was a cause without which the relevant loss would not be or would not have been suffered…"

[19.] The above requirements were summarised by Popplewell J in *Phoenix Group Foundation v Cochrane* [2018] EWHC 2179 (Comm) at [14] as follows:

i) First, that the court can make an intelligent estimate which is informed and realistic, although not necessarily entirely scientific, of the likely amount of any loss which might be suffered by the applicant by reason of the freezing order.

ii) Secondly, that the applicant has shown a sufficient level of risk of loss to require fortification, that is to say, has shown a good arguable case to that effect.

iii) Thirdly, that the making of the interim order is or was a cause without which the relevant loss would not be, or would not have been, suffered.

[20.] The appellants emphasised that an application for fortification could not be based on mere assertion or supposition but required an evidential foundation, referring to numerous authorities in support of that proposition, including *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139, [2016] 1 WLR 160 at [97]. However, that is not in my judgment a separate requirement, but merely an obvious aspect of the need for the applicant to demonstrate a good arguable case, it being impossible to demonstrate such a case without an evidential foundation.

[21.] The appellants further stressed that it was necessary for the applicant for fortification to demonstrate that the losses would result from the grant of the injunction rather than from the underlying proceedings, referring to the decision of Briggs J in *Harley Street Capital Limited v Tchigirinski* [2005] EWHC 2471 (Ch) and to the recognition in *Energy Venture* that it may be difficult to disentangle any damage which may arise from the mere existence of the litigation from that which may be caused by the making of the order. Again, in my judgment, that proposition, whilst no doubt important for the court to bear in mind, is no more than an aspect of the causation element of the applicable requirements referred to above."

19. It is argued on behalf of the applicant Defendants that the merits threshold is now a "serious issue to be tried" rather than a "good arguable case" following the decision in ***Dos Santos v Unitel SA*** [2024] EWCA Civ 1109.

20. Whilst ***Dos Santos*** concerned the merits threshold for the making of a Freezing Order, in ***Energy Venture Partners Ltd v Malabu Oil and Gas Ltd*** [2014] EWCA Civ 1295, which did concern the merits threshold for the fortification of a cross undertaking in damages, Tomlinson LJ held:

"[52] In my judgment the approach adopted by the judges of first instance in these cases has been entirely appropriate and in accordance with principle. I agree with Hamblen J's resort to symmetry since the claimant has obtained a freezing order preserving assets over which it may be able to enforce on the basis of having shown the court that it has a good arguable case, it is only appropriate that if the defendant can show that it too has a good arguable case that it will suffer loss in consequence of the making of the order, it should equally be protected. It may be said that what the defendant in such circumstances obtains is security whereas the claimant obtains something less, but in many cases, of which the present is probably one, a freezing order has the practical if not theoretical effect of giving security to the claimant for its claim."

21. In ***Dos Santos***, Popplewell LJ concluded:

"[131.] For these reasons there is not, and should not be, any distinction to be drawn between the 'good arguable case' test for freezing orders and the test of 'serious issue to be tried' for other forms of interim injunctions. That being so, it would be preferable to use the latter in the context of freezing orders and to restrict the use of the expression 'good arguable case' to the context of jurisdictional gateways, where it bears a different meaning in accordance with the principles explained in *Brownlie*. It is obviously unsatisfactory for an expression used to define a merits test to mean something different in one context (freezing orders) from that in another (jurisdictional gateways); that is likely to give rise to confusion and misunderstanding, as is well illustrated by the cases to which the Chancellor has referred."

22. In my judgment, the threshold merits test when deciding whether to order fortification of an undertaking in damages (or an increase in fortification) is 'serious issue to be tried' because of the requirements (i) for symmetry with the test for making the freezing order, and (ii) to distinguish it from the test applicable to jurisdictional gateways.

23. It was argued on behalf of C2 that I ought to approach D3's written evidence with considerable caution, but I decline to do so. It is not for me on the written evidence alone at an interim hearing to assess D3's reliability or credibility as a witness particularly as I will be the trial judge when the primary dispute will be factual (whether or not D3 and Pardeep Heer, C2's director, entered into an oral agreement). I will be required at trial to assess the witness reliability and credibility of both D3 and Mr Heer, and must be very careful not to, and not be seen to, have pre-judged that in any way.

24. That said, and notwithstanding the lower threshold merits test, it remains the position that the applicant Defendants cannot succeed in the absence of a solid evidential foundation, which objectively establishes a real risk that the claimed loss will be suffered in consequence of the Freezing Orders/Undertakings, and mere assertion is not enough.

real risk that the claimed loss will be suffered

25. It was D3's written evidence that he is a property developer who carries on business through special purpose vehicles and of these there are three projects ("***the Projects***") that are relevant to the Fortification Application:

    a. 80 Lancaster Street, which is held by Future High Street Living (PBSA) Limited ("***FHSL LS***"). D3 is the ultimate beneficial owner of 50%.

    b. 211 Broad Street, which is held by Future High Street Living (211 BS) Limited ("***FHSL BS***"). D3 is the ultimate beneficial owner of 50% of FHSL BS.

    c. Merry Hill, held by Future High Street Living (Pedmore) Ltd ("***FHSL MH***"). D3 is the ultimate beneficial owner of 100% of FHSL MH.

26. In his first two witness statements dated 5 and 7 August 2026, D3 stated that he was likely to suffer substantial losses because the continuation of the Freezing Orders/Undertakings prevent the Projects from progressing and him from realising the profits that he would otherwise be entitled to by virtue of his ultimate beneficial ownership of FHSL LS, FHSL BS and FHSL MH ("***the Project Companies***").

27. D3 argues that he has the benefit of cross-undertakings in damages from C2 in his capacities as (i) a respondent to the Freezing Order/Undertakings against him personally, and (ii) a third party within the terms of the third party undertakings from C2 in the Freezing Orders/Undertakings in respect of D4 and D6.

28. George Horley, Chartered Accountant, on the instructions of the applicant Defendants has produced an estimate dated 6 August 2026 of D3's losses totalling £33,061,579 calculated by reference to (i) the "funds that [D3] would be entitled to" receive in the event that the Projects proceeded to completion, and (ii) "the impact of the representations made in [D3's witness statement dated 5 August 2026]." The

applicant Defendants request an increase in security in the sum of £21.5 million being approximately 65% of the estimated future losses.

29. There is in my judgment a substantial difficulty in characterising these as losses in the absence of any evidence that there is a real risk that the profits will be permanently lost. Indeed, D3 stated in his first two witness statements that, if the Freezing Orders/Undertakings were lifted then the developments and disposals could proceed. D3's complaint was therefore one of delayed rather than lost profits.

30. In his third witness statement dated 8 October 2026, D3 stated that lenders were no longer prepared to wait for repayment such that there is a real risk that the Project Companies will be placed in administration as has happened with two other group companies, FHSL Digbeth and FHSL Talbots, which were placed in administration in March 2025.

31. There is some objective evidence of lender pressure:

    a. Two letters before action ("***the Letters Before Action***") from Bexley Beaumont on behalf of Mocca Capital Ltd for repayment of sums totalling £3,121,655.86 in respect of FHSL MH, and requesting a response within 7 days failing which the creditor reserved their rights to commence proceedings and to invoke the powers set out in the Debenture to recover the debts.

    b. A final demand from Rockbridge for repayment by FHSL LS of the outstanding sum of £3,482,500 ("***the Demand***").

32. However, the difficulty with that evidence is that:

    a. The Letters Before Action are dated 19 August 2025 and the Demand is dated 6 March 2026.

    b. There is no satisfactory evidence to explain what has happened in the meantime, whether enforcement action remains threatened, arrangements have been reached with the funders, or the Projects have been refinanced.

    c. The Letters Before Action and the Demand are now between some 6 to 12 months old, but no enforcement action has been taken by the lenders. Whilst I accept that this passage of time does not establish that there is no continuing risk of administration, I would expect reasonably current evidence demonstrating that it remains real where administration is relied upon as converting delay into a real risk of very substantial and irreversible loss.

33. Further, whilst the applicant Defendants rely upon the administration of FHSL Digbeth and FHSL Talbots, the Letters Before Action and the Demand (covering the 12 month period from March 2025 to March 2026) as demonstrating that the Project Companies face a real risk of administration, the Fortification Application was not made until 7 August 2026. It is not in dispute that fortification cannot be sought in relation to losses already incurred. The significant delay in making the Fortification Application tends to undermine the contention that there was a real and imminent risk of administration.

34. Still further, even if administration were a realistic possibility, the evidence does not provide a sufficiently solid foundation for concluding that the entirety, or any identifiable part, of the projected profits would thereby be irretrievably lost. Indeed, it was conceded in oral arguments on behalf of D3 that the project plan for ***FHSL MH*** is the sales of sites rather than the development of those sites, and which sales could still progress even if ***FHSL MH*** was placed into administration.

in consequence of the Freezing Order/Freezing Undertakings

reputational damage

35. In his witness statement dated 5 August 2026, D3 stated that he was unable to refinance the Project Companies because the Freezing Orders/Undertakings "have had a severe adverse effect on the name/brand of Taylor Grange in the market [and] was now seen with question marks over its reputation."

36. In ***PJSC National Bank Trust v Mints*** [2021] EWHC 1089 (Comm) Calver J summarised the principles in relation to the causation element and said this in relation to reputational damage (at [27(ii)]):

> "(i) … whilst a claim for general damages might in theory be available for reputational damage caused by the granting of a freezing order, it is likely to be a rare case as it will frequently be difficult for the defendant to show that the damage has been suffered as a consequence of the restraint and not as a result of other factors, such as the bringing/existence of the underlying litigation.
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> (j) It follows that if the reputational loss claimed is that of a third party who is not subject to the restraint of the freezing injunction, the causative link becomes even more tenuous and the alleged loss is very unlikely to be recoverable. Males LJ made this point in the present case (in refusing permission to appeal against the judgment and order of Cockerill J), in observing that damage to EGCA as a result of the undertakings given by IM cannot readily be separated from damage to the reputation of the family as a result of the proceedings against them and the undertakings given by other family members: "*if investors are indeed looking for "a safe pair of hands" in which to invest, they are likely to have concerns regardless of the applicant's undertakings.*""

37. As the Project Companies are not subject to the Freezing Orders/Undertakings, any reputational damage suffered by them as a result is very unlikely to be recoverable.

38. Further, there is a total absence of any documents evidencing that refinancing has been refused because of reputational damage to the wider group caused by the Freezing Order/Freezing Undertakings. Having apparently attempted unsuccessfully to refinance the Projects then the applicant Defendants could reasonably have been expected to provide some such corroborating evidence particularly where:

    a. The Project Companies hold the relevant land, which could be offered as security;

    b. In his witness statement dated 5 August 2026, D3 stated that Merry Hill was purchased in January 2024 for £1,879,360. Notwithstanding that this purchase completed when the Freezing Orders/Undertakings had already been in place for some 2 years, D3 further stated that (i) he got a very good deal on the site "as at the time we had a good reputation", and (ii) the

purchase was part funded by a £1.5 million facility provided by or through Mocca Capital Ltd.

c. Any such reputational damage could have been caused by the underlying proceedings themselves rather than the Freezing Orders/Undertakings. Indeed, in his witness statement dated 8 October 2026, D3 stated that after HHJ Rawlings gave judgment on 24 December 2024 "various lenders were concerned at the Defendants' ability to repay the loans made, which created a domino effect of collapsing several SPVs in the group."

Cash flow difficulties

39. D3 stated in his witness statement dated 8 October 2026 that the administrations of FHSL Digbeth and FHSL Talbots were the result of cash flow difficulties caused by the Freezing Orders/Undertakings. In particular, D6 was unable to return funds to the holding company.

40. In his witness statement dated 5 August 2026, D3 referred to a news article regarding the administration of FHSL Digbeth. In his witness statement dated 21 September 2026, James Woolstenhulme, C2's solicitor, exhibited a copy of that news article, which recorded that:

    a. D3 was the sole director of FHSL Digbeth, which was wholly owned by an investor Abu Jilal through his firm FG Management Ltd.

    b. The purchase had been funded by bridging loans from Together Money.

    c. Whilst the interest on the facility had been paid by Mr Jilal for 12 months, Together Money had become increasingly concerned at the lack of progress being made in securing long term finance, and it appeared that the relationship between D3 and Mr Jilal had irreparably broken down.

    Mr Woolstenhulme observed in his written evidence that there was no mention in that news article to any cash flow difficulties caused by the Freezing Orders/Undertakings. In his witness statement in response dated 8 October 2026, D3 sought to distance himself from the news article that he had initially sought to rely upon by saying that he had had no input into it and it contained several factual inaccuracies. However, the news article appears to do no more than quote extracts from the administrators' report.

41. In his witness statement dated 8 October 2026, D3 stated that the group ordinarily operated with funds generated by SPVs being returned or distributed through the holding company so that those funds can be deployed in support of other SPVs. D3 does not detail the wider group structure but it appears likely that there are a significant number of companies comprised within the group. For example:

    a. The accounts for Samuel & Co Holdings Limited for the period 1 October 2023 to 27 September 2024 record investments in several companies (Samuel & Co Consultancy Limited, Samuel & Co Estates Ltd, Future High Street Living (Holdings) Ltd, Future High Street Living Developments Management Ltd and Future High Street Living (SK) Ltd).

    b. Samuel & Co Holdings Limited owns 50% of the SPVs FHSL BS and FHSL LS.

c. Future High Street Living (Holdings) Ltd owns the SPV FHSL MH.

d. In his witness statement dated 5 August 2026, D3 stated that the purchase of Merry Hill by FHSL MH was part funded by Samuel & Co Consultancy Limited.

e. In his witness statement dated 5 August 2026, D3 stated that the purchase of 80 Lancaster Street by FHSL LS was part funded by way of a loan of £2.252 million, which was redeemed in 2021 following the sale of another site. In September 2021, D3 needed funding of £1.5 million in respect of another project, and Rockbridge provided the finance but took security on 80 Lancaster Street.

D3 does not explain in his evidence why group companies, other than D6, and which are not subject to the Freezing Orders/Undertakings, are prevented from continuing to return funds through the holding company structure in the support of other SPVs.

Conclusion

42. Whilst the deployment of extensive evidence is not an exercise to be attempted at an interim stage, there is a need for a solid evidential foundation, and mere assertion is not enough.

43. There are not only striking gaps in the written evidence, but also a distinct lack of supporting documentary evidence.

44. In my judgment, there is insufficient evidence to justify a finding that there is a real (as opposed to fanciful/speculative) risk that the Projects will fail in consequence of the Freezing Orders/Freezing Undertakings, and accordingly the Fortification Application is dismissed.

45. Ultimately, nothing turned on the correct threshold merits test to be applied in the present case because the Fortification Application fails irrespective of whether that test is expressed as a serious issue to be tried or a good arguable case.

46. Having dismissed the Fortification Application because the applicant Defendants have failed to establish the requisite risk and causal connection, it is neither necessary nor proportionate to consider the question of quantification.

The Security for Costs Application

Applicable legal framework

47. CPR r.25.27 provides that the Court may order security for costs if it is satisfied, having regard to all the circumstances, that it is just to make such an order and one or more conditions in CPR r.25.27(b) applies.

48. C2 accepts that condition CPR r.25.27(b)(ii) applies in that C2 "is a company….. and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so". Also, C2 does not seek to argue that the effect of a further order for security for costs would stifle the claim.

Material change of circumstance

49. Where there has been a previous security for costs order, to make a further order for security for costs it is usually necessary that there should have been a material change of circumstance:

    a. The applicant Defendants argue that it is unnecessary for them to show that there has been a material change of circumstance because the original security of costs order does not say that the security was put in place to cover any particular stage of the proceedings.

    b. C2 argues that the applicant Defendants originally applied for security for their costs to trial, including every step which now remains - witness statements, trial preparation, a 10 day trial and ADR. They compromised that application at £1,250,000, inclusive of fortification, and their application was dismissed.

50. In seeking to resolve the parties' disagreement over the terms of the compromise that they reached, the Court is required to construe the relevant documents, including the parties' communications. However, I do not consider that it is necessary for me to determine that particular issue because I am satisfied that there has been a material change of circumstances in any event:

    a. The claim began as a relatively straightforward commercial dispute.

    b. In February 2023, the parties provided the following costs budgets to the conclusion of the entire litigation –

        i. £1,886,193 for the Claimants; and

        ii. £1,302,871 for the Defendants.

        Those costs estimates assumed (i) a single CCMC, (ii) expert evidence, (iii) a single trial, and (iv) no interim hearings.

    c. A split trial was directed and costs budgeting was dispensed with.

    d. The first trial was heard on 15 and 16 October 2024.

    e. Following the successful appeal, the first trial is to be re-heard in March 2027 some 6 years after the claim was issued.

    f. In the meantime –

        i. the litigation has become intensely personal with D3 and Mr Heer accusing each other of dishonesty; and

        ii. the parties have become increasingly embroiled in satellite litigation culminating in repeated and hard fought interim hearings.

    g. The nature, complexity, trial timetable and importance of the litigation have materially changed. As a consequence, significant additional work has been generated and both sides have already incurred costs in excess of their February 2023 estimates –

i. £1,876,298.27 for the Claimants' costs as at 17 February 2026 and prior to the last CMC before me on 9 July 2026; and

ii. £1,810,391.04 for the Defendants' costs as at 7 August 2026.

Looking at the entire question of security afresh

51. There was further disagreement between the parties whether any additional security is limited to such additional amounts, if any, as may be attributed to the relevant changes in circumstances or will the Court look at the entire question of security afresh.

52. CPR r.25.27 provides that the Court must have regard to all the circumstances in determining what amount it is just to order. Therefore, once the Court is satisfied that there has been a material change in circumstances justifying the reassessment of the security for costs there is no restriction confining the increase in security to the additional amounts attributable to the changed circumstances. By contrast, CPR r.3.15A(3) provides that any revision and variation of costs budgets on account of significant developments must "confine the particulars to the additional costs occasioned by the significant development", but costs budgeting was dispensed with in the present case.

53. I am reinforced in my view that I can and ought to look at the entire question of security afresh by reference to the following authorities:

a. In ***Stokors SA v IG Markets Ltd*** [2012] EWHC 1684 (Comm), Popplewell J held:

> "[2.] On 1 July 2011, Steel J ordered the First and Third Claimants to provide security in the sum of £320,000 to cover the period up to completion of discovery. The Defendant's application, as it came before me today, was for a further £1.2 million or so as security for costs, security for those costs which had been incurred and were to be incurred up to the stage of the exchange of witness statements. That was calculated as 80 per cent of the estimate of the total costs after allowing for the £320,000 security already provided.
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> [3.] The largest part of that £1.2 million comprises the costs of the disclosure exercise which the Defendant contends should be further secured notwithstanding Steel J's order because the disclosure exercise has proved to be vastly more extensive and complex than had been contemplated and had been within the parties' contemplation at the time of the hearing before Steel J.
>
> …….
>
> [13.] The next matter of principle which is important is that where a security for costs up to a particular stage of proceedings has already been provided, a defendant who applies to increase the amount of security for the costs of that same stage in proceedings will generally have to justify a further order by reference to circumstances which did not exist or were not apparent at the time the order was made. For it to be just to order further security, a defendant will generally have to

show a material change of circumstances from those which pertained or were envisaged when the matter was before the court making the order. Otherwise the court is simply being asked to reconsider a decision made on the basis of arguments which were made or could have been made at the time (see CPR 25.12.1 and Republic of Kazahkstan v Istil Group Inc [2006] 1WLR 596 at paragraph 32).

……

[29.] Mr Nash QC, on behalf of the Claimants, submitted it was necessary for the Defendant to link the particular change of circumstances to the items of additional cost which went to make up the figure of £725,000. He submitted it was not sufficient for the Defendant simply firstly to point to a general change in circumstances which justified some further security and then to justify the further security by reference to the amount which had been incurred or which was indicated would be incurred. Mr Nash QC submitted it was necessary to identify what change had caused what increase and to link any particular increase to a material change.

[30.] I disagree. The rationale behind requiring a material change of circumstance is the policy of the courts that generally, in interlocutory matters, one does not have two bites of the cherry. If, however, it is established, as I find it to be in this case, there has been a material change of circumstance which justifies the court looking again at the amount of costs which have been incurred in relation to the disclosure exercise, then because the court is concerned ultimately in awarding security to award such further security as is just, the court can look in the round at the totality of the cost of the exercise."

b. In ***Mayr & Ors v CMS Cameron McKenna Nabarro Olswang LLP*** [2018] EWHC 3093 (Comm), Moulder J held:

"[7.] In this case, no order for security was originally made, but following an agreement between the parties it was recorded in an order of Andrew Baker J dated 24th November 2017 that the claimants agreed to provide an indemnity in three tranches by deeds of indemnity. These were to be in the sum of approximately £850,000 to be provided by 14 December 2017; £500,000 by 31st January 2018 and £649,000 approximately by 15th November 2018.

[8.] The question which falls to be considered by this court is following a change in circumstances the amount for which the defendant can now obtain an order for security for costs which provides for an increased amount over and above the amount which was originally agreed.

……

[14.] It was accepted by the claimants for the purpose of the application that there has been a significant and material change in circumstances sufficient to warrant additional security for costs being provided but counsel for the claimants submitted that the extent of the change arising out of the voluntary further particulars was not

sufficient to warrant the amount of additional security for costs which is now being sought.

[15.] Further, counsel for the claimants submitted that any additional security ordered should be limited to the additional costs arising out of the new matter and should not extend to other costs which the defendants say have now been shown to be inadequate and should be revised.

……

[17.] Counsel for the defendant submitted that some of the additional costs have themselves arisen out of a change of circumstances over and above the voluntary further particulars but in any event, once the court is satisfied that there has been a material change of circumstances, the court should look at the total estimate of the costs to determine what amount it is just to order by way of security.

……

[22.] It seems to me that Popplewell J in *Stokors* expressly rejected the submission that it was necessary to identify what change had caused what increase and to link any particular increase to a material change. It seems to me that the principle which is clearly stated by Popplewell J is that once the hurdle has been surmounted of whether the court should entertain a further application for security, then the court has to look at the matter in the round, looking at the totality of the cost and decide what is an appropriate amount.

[23.] It seems to me that the question for the court is as set out in *Stokors*. The question is, what amount is it just to order to protect the defendant from a costs order which the claimant is unable to pay? It is a two-stage test and to introduce a limit confining the increase in security to only those items which arise from a change in circumstances is not warranted. However, the court does need to look at the matter in the round and apply the usual principles which were set out by Popplewell J at paragraphs 5 to 9 of his judgment, that is that it considers the amount which the parties will be likely to recover in detailed assessment and it bears in mind that the test which will be applied on a detailed assessment is whether the costs are reasonably and proportionately incurred.

[24.] It seems to me that in deciding what is an appropriate amount to order by way of further security, the court should take into account the revisions which are being sought and it is in that context that it seems to me the decision in *Vald. Nielsen* should be read. The overall purpose of giving security for costs is to protect the defendant and that purpose can only be achieved if the court considers the overall figures on the basis of the up to date estimate before the court."

c. In ***Alta Trading UK Ltd and others v Bosworth and others*** [2025] EWHC 1097 (Comm), Henshaw J held:

> "[80.] It is unnecessary to establish a link between the particular change of circumstance relied upon and additional costs for which security is sought. If a material change of circumstance is established, the Court may recalculate afresh the totality of the sum to allow: see *Stokors SA* at [29]-[30]…."

Re-assessment of the security for costs

54. I take as my starting point the costs estimate provided by the applicant Defendants' solicitors in the total sum of £3,198,216.04. In summary, the costs estimate is broken down as follows:

    a. Incurred costs of £1,810,391.04, which are apportioned solicitors' fees of £1,238,732.21 and counsel's fees of £571,658.83.

    b. Counsel's fees of £57,500 for preparation and attendance at the case management conference.

    c. Costs of witness statements of £152,650, which are apportioned solicitors' fees of £122,650 and counsel's fees of £30,000.

    d. Solicitors' fees of £129,625 for preparation for re-trial.

    e. Costs of re-trial of £783,700, which are apportioned solicitors' fees of £155,700 and counsel's fees of £628,000.

55. An application for security for costs should be made promptly, as soon as the facts justifying the order are known. Delay in making an application is relevant to the court's exercise of its discretion.

56. The applicant Defendants' solicitors, in their letter dated 13 April 2026, threatened an application in the event that C2 failed to respond within 7 days. However, the application was not made until some 4 months later. Even then the application was not made until after the case management conference on 9 July 2026 and in non-compliance with the timeframe directed by the Court of Appeal. I therefore disallow security for Counsel's fees for preparation and attendance at the case management conference.

57. C2 argues that the additional sum sought is excessive including by reference to the solicitors' hourly rates that are substantially in excess of the National guideline rates. However, I am not undertaking a detailed assessment. Rather I approach the exercise of re-assessment on a robust basis and applying a broad-brush.

58. I was told that the applicant Defendants chose to change their legal team because they had lost confidence in their previous legal team. Whilst the applicant Defendants were entitled to change their legal team, it does not follow that the additional costs occasioned by that change would be recoverable on a detailed assessment.

59. Whilst the 'balance of prejudice' (too little security) is in favour of the applicant Defendants, in the absence of a detailed breakdown of the incurred costs I am unable properly to assess how much of the increased estimate involves potentially unrecoverable (i) duplication in terms of revisiting work already undertaken, and/or

(ii) additional expenditure that could reasonably have been avoided or substantially reduced.

60. Whilst the parties' costs need not mirror one another, I consider that a useful cross-check is by reference to an estimate of the amount of the Claimants' increased costs. The Claimants' incurred costs as at 17 February 2026 were £1,876,298.27. Their costs budget dated 17 February 2023 budgeted a total of £863,172 for the yet incomplete witness statement, trial preparation and trial phases giving a combined total revised figure of £2,739,470.27. There is no reason to think that such an amount is unreasonable, and so I adopt a figure of £2.7 million in re-assessing the reasonableness of the Defendants' increased costs.

61. By virtue of CPR r.44.3(1) the amount of any costs ordered payable by one party to another will be assessed on the standard basis or the indemnity basis. Before awarding costs on the indemnity basis the Court must be satisfied that there is something in the conduct of the action or the circumstances of the case, which takes the case out of the norm in a way that justifies an order for indemnity costs. I cannot assume that costs would be assessed on the indemnity basis at a detailed assessment of costs, and so I proceed on the basis that costs would be assessed on the standard basis in which case only reasonable costs that are also proportionate would be allowed – CPR r.44.3(2)(a).

62. Notwithstanding the changed circumstances noted above (increased complexity and importance) and the amount in issue, I consider that there would be a good argument on a detailed assessment that £2.7 million in costs is disproportionate in the context of a 10 day re-trial that will largely be confined to fact-finding with no expert evidence. Doing the best I can on a broad-brush basis and recognising that a security application does not involve the precision of a detailed assessment, I discount the figure of £2.7 million by 25% giving a revised figure of £2 million.

63. Taking into account the amount of the existing security, I consider that it is just in all the circumstances to order that additional security be provided in the sum of £750,000.

Conclusion

64. The Fortification Application is dismissed.

65. C2 shall give an increase in security for the applicant Defendants' costs by paying into Court the sum of £750,000.