

Neutral Citation Number: [2026] EWCA Civ 1353

Case No: CA-2026-000660-B

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
Mr Justice Bright
CL-2015-000396

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/10/2026

Before:

LORD JUSTICE PHILLIPS
LORD JUSTICE FANCOURT

- -

Between:

The Russian Federation	**Appellant**
- and -	
Hulley Enterprises Limited & Ors	**Respondents**

- -
- -

Mark Wassouf and Cameron Miles (instructed by **Pinna Goldberg Limited**) for the **Appellant**
David Peters KC (instructed by **Stephenson Harwood LLP**) for the **Respondents**

Hearing date: 13 October 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 22 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE FANCOURT:

1. On 15 June 2026, the respondents to the appeal in these proceedings, Hulley Enterprises Limited, Yukos Universal Limited and Veteran Petroleum Limited ("the Respondents"), applied for the imposition of conditions on the pursuit of the appeal and for security for the costs of the appeal. The appellant is the Russian Federation ("the Appellant").

2. Proceedings were started by the Respondents in the Commercial Court as long ago as 2015 for recognition and enforcement in England and Wales of three arbitration awards, whose seat was The Netherlands. The tribunal had determined that the Appellant was liable to pay the Respondents in the region of US$50 billion in aggregate in compensation, plus interest.

3. Following protracted proceedings in The Netherlands relating to the validity of the awards, a preliminary issue relating to state immunity was heard by Cockerill J in the Commercial Court in 2023, and on appeal in the Court of Appeal. Following determination in favour of the Respondents, Dias J directed the hearing of various further preliminary issues. These were tried by Bright J in January 2026. Judgment in favour of the Respondents was handed down at the end on 2 March 2026.

4. The Judge made an order on 2 March 2026 that the Appellant pay the Respondents' costs of the trial, and ordered an interim payment of £2.5 million by 4pm on 1 June 2026 ("the interim costs"). Notably, that was a period of 3 months, far longer than would normally be granted to a paying party in a commercial case. This was doubtless in response to the Appellant's argument (repeated in this court) that it would need substantial time to authorise and effect payment.

5. The Judge granted permission to appeal on one ground only. He declined to make permission conditional on the payment of outstanding costs orders (in substantial amounts) previously made in the proceedings ("the outstanding costs"), which the Appellant had not paid, or conditional on the payment of the interim costs. The Judge refused permission for the other grounds of appeal.

6. On a renewed application to the Court of Appeal for permission to appeal, Males LJ granted permission on 22 May 2026 on two further grounds (grounds 7 and 8), and granted permission to appeal "provisionally" on the remaining grounds (grounds 2-6). The provisional grant of permission reserved to the Respondents the right to apply for conditions to be imposed by the Court relating to the outstanding costs, the interim costs and the costs of the proposed appeal.

7. In those circumstances, when the 3 months expired with the outstanding costs and interim costs remaining unpaid, the Respondents issued their application. It seeks the imposition of conditions on all grounds of appeal except ground 1, for which Bright J granted permission, and, separately, an order that the Appellant provide security for costs of the appeal. The conditions sought to be imposed were payment of: the outstanding costs and the interim costs, with interest, and security for costs of the appeal. There followed an exchange of evidence and submissions in accordance with the directions given by Males LJ, which process ended on 9 July 2026.

8. Cutting out a lot of irrelevant detail, the evidence establishes the following, which are material:

(1) The amount of the outstanding costs unpaid was agreed to be £877,106.34, inclusive of interest to 23 June 2026, with continuing interest at the daily rate of £164.15 thereafter.

(2) The parties agreed a mechanism for payment of the outstanding costs and interim costs using a US law firm (Pinna Goldberg US PLLC) associated with the Appellant's English solicitors (Pinna Goldberg Limited), the Court Funds Office ("CFO") and an undertaking given by the Appellant's solicitors as to the provenance of the funds paid to the CFO. This was to provide a means of payment that was readily available to the Appellant and which gave sufficient reassurance to the Respondents' solicitors that the monies paid were clean, lawfully transferred and could safely be accepted by them.

(3) The Appellant was able to pay all such sums, and professed its willingness to do so, by 31 July 2026.

9. Meanwhile, the parties had agreed a consent order, made by Andrew Baker J on 11 June 2026. This varied the date for payment of the interim costs to 31 July 2026 (so giving the Appellant in total five months from the date of Bright J's order), recited the arrangement with Pinna Goldberg US PLLC, and further ordered that:

> "1. The [Appellant] shall have permission until 31 July 2026 to make payment of the sums due to the Claimants pursuant to the Unpaid Orders, including any accrued interest into the account of the CFO. For the avoidance of doubt, such payment is conditional on the [Appellant] complying with paragraph 2 below.
>
> 2. Following payment in accordance with paragraph 1 above, the [Appellant] shall promptly, and in any event within 48 hours of payment, instruct the CFO to pay the sums amounting to the Unpaid Orders on to the account of Stephenson Harwood LLP, the [Respondents'] solicitors in these proceedings (the "Client Account") …..
>
> 3. For the avoidance of doubt, until cleared and unencumbered funds are received into the Client Account, the [Appellant's] obligations pursuant to the Unpaid Orders shall not be released."

10. That order was agreed to be made (as all subsequent orders relating to payment were) without prejudice to each party's position on this application.

11. The mechanism therefore required the Appellant to do three things: make sufficient funds available to the identified US law firm, authorise it to pay the funds to the CFO, and instruct the CFO to pay out to the Respondents' solicitors the monies paid into court.

12. In the event, the principal amount of outstanding costs with interest to 23 June 2026 was paid into the CFO account on 30 July 2026 and acknowledged by the CFO on 4 August 2026. This was within the time that the Appellant in its evidence had assured the court that it would be paid. An order was then made by Robin Knowles J on 11 August 2026 by which, by consent, the court ordered payment of those funds to the Respondents' solicitors.

13. The £2.5 million interim costs were not paid into court within the time permitted. They were paid in late, in two instalments on 19 and 27 August 2026. The only explanation for the late payment of the principal was provided in a letter to the court from Pinna Goldberg dated 12 October 2026, which says that it was "caused by the CFO's need to complete its external due diligence checks". This is rather unconvincing (and otherwise unevidenced), given that both the outstanding costs and the interim costs would have been transferred by the same US law firm to the credit of the same case pursuant to the same orders of the court. However, the interim costs were not intended to be paid out to the Respondents at this stage.

14. The further interest on the outstanding costs and the interim costs has not yet been paid into court, though the Appellant has attempted to do so. The sum paid in for the outstanding costs and interest has not yet been paid out to the Respondents, despite the order of Robin Knowles J.

The relevant rules and practice

15. The application to impose conditions on grounds 2-8 was made pursuant to CPR rule 52.18(1)(c). Rule 52.18 provides:

> "(1) The appeal court may –
>
> (a) strike out the whole or part of an appeal notice;
>
> (b) set aside permission to appeal in whole or in part;
>
> (c) impose or vary conditions upon which an appeal may be brought.
>
> (2) The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.
>
> (3) Where a party was present at the hearing at which permission to appeal was given, that party may not subsequently apply for an order that the court exercise its powers under subparagraphs (1)(b) or (1)(c)."

16. Rules 52.6 and 52.7 specify the test for granting permission to appeal on first and second appeals respectively. Rule 52.6(2) provides:

> "An order giving permission under this rule or rule 52.7 may –
>
> (a) limit the issues to be heard; and

(b) be made subject to conditions."

17. Conditions may therefore be imposed on the appeal when permission to appeal is granted or at a later time. But a party cannot seek to impose conditions after permission to appeal has been granted if they were present at a hearing when permission was granted.

18. Rule 25.29(1) separately provides:

> "The court may order security for costs of an appeal against an appellant, or a respondent who also appeals, on the same grounds as it may order security for costs against a claimant."

The conditions for making an order for security for costs are set out at rule 25.27(b) and include that the claimant is resident out of the jurisdiction. In such circumstances, the court may make an order for security if it is satisfied, having regard to all the circumstances of the case, that it is just to do so (r.25.27(a)).

19. The standard form (PF44) for an order for security for costs states how a specified amount of security is to be given and stays the proceedings in the meantime. It then provides that unless security is given as ordered, the claim is struck out without further order, and provides for judgment for the defendant to be entered on production of evidence of default.

20. More recently, the usual practice in the Business and Property Division has been to continue the stay, upon default in payment, but allow a respondent to apply to strike out the claim.

What is left of the application for conditions?

21. The Respondents submitted that a condition should be imposed on the appeal (other than in relation to ground 1) notwithstanding that the principal sums sought have now all been paid into court. The condition sought was that the outstanding costs sum should be paid out to the Respondents and that the unpaid interest should be first paid in and (so far as relating to the outstanding costs) then paid out to the Respondents.

22. Mr Peters KC, who appeared for the Respondents, submitted that the condition might easily be complied with, in that it appeared that all that was needed by the CFO was an appropriately signed version of the order of Robin Knowles J. Either this condition would be no significant obstacle and would soon be discharged, he said, or if there is an unidentified problem with the monies that prevents payment out, the condition would be correctly imposed. The responsibility would then be on the Appellant to find another way of paying the Respondents (such as instructing a firm of solicitors regulated by the SRA with a client account), as the Andrew Baker J order provides that the Appellant's obligations to pay are not released until the funds reach Stephenson Harwood's client account.

23. So far as the additional unpaid interest is concerned, although strictly this should have been paid but has not yet been paid, a mechanism for payment by 31 October 2026 has been agreed, by further consent order, and the sums in question are very small in the context of these proceedings. Mr Peters therefore did not pursue the application

for a condition in so far as it related to the unpaid interest, recognising that the court would be unlikely to consider that the amounts in question provided a compelling reason for a condition.

24. The application was pursued in relation to security for costs, not only on the basis of the freestanding application for security but also on the basis that payment of security should be a condition of pursuing the appeal, save in relation to ground 1. Mr Peters accepted that, since permission to appeal on that ground was granted by Bright J at a hearing at which the Respondents were present, any application for a condition (as opposed to an application for security for costs) had to be made at that hearing, applying rule 52.18(1)(c) and (3).

25. Mr Wassouf on behalf of the Appellant contested that the Respondents had not made out any proper basis, let alone a compelling reason, for imposing any condition, and disputed that the court could do so – a submission to which I will return when dealing with the application for security for costs.

26. I am satisfied that there is, as things stand, no compelling reason to impose a condition on the pursuit of any of grounds 2-6 of the grounds of appeal, for which Males LJ had provisionally granted permission to appeal. As the Respondents accept, there is no jurisdiction to do so in relation to ground 1. The position in relation to grounds 7 and 8 is less clear: although Males LJ clearly did not consider that permission on those grounds should be provisional, his decision to grant permission to appeal on those grounds was not made at a hearing where the Respondents were present. However, it is unnecessary to determine the question of whether the Respondents can apply for a condition in relation to those grounds as I am satisfied that there is no sufficient reason in relation to any ground, as things stand.

27. The non-payment of the outstanding costs monies by the CFO to the Respondents' solicitors appears to be a purely administrative matter resting with the court, and does not require the Appellant to take any further step. There is every reason to think, therefore, that the payment out will shortly be made. The Appellant has done all that it was required to do. The more convenient course is to order that in the event that further information comes to light after this judgment that materially changes the circumstances of the case, the Respondents may apply to have the matter re-considered.

28. As for the non-payment of interest, the sums are small and do not in themselves amount to a compelling reason to impose a condition on the appeal. The Court nevertheless expects the Appellant to demonstrate the good faith that its Counsel avowed on its behalf by complying with the Consent Order of Birt J dated 1 October 2026 and paying the remaining interest into the CFO by 30 October 2026.

29. As for the condition of payment of security for costs, the Respondents seek an order for the provision of security for costs under rule 25.29 on terms that the appeal be struck out if payment is not made within 3 months and 4 weeks of the order. There is no effective difference, however, between making such an order and imposing a condition on the pursuit of the appeal that security be provided within the same timescale. Indeed, in one respect it is more favourable to the Respondents, as security for costs can be ordered in relation to all grounds of appeal, whereas a condition of

provision of security cannot be made in relation to the costs of arguing ground 1, as the Respondents accept.

30. In these circumstances, there is no compelling reason to make the appeal subject to any condition. Had the Appellant not paid the outstanding costs and interim costs by the date of the hearing, it is very likely that conditions would have been imposed.

31. That means that permission to appeal is now to be confirmed for grounds 2-6.

Security for costs

32. The relevant condition in the Rules for making an order for security for costs is, self-evidently, that the Appellant is resident out of the jurisdiction, being a foreign state.

33. In summary, the Respondents contend that, by reason of the identity of the Appellant, the nature of the arbitration awards that the Respondents are seeking to enforce and the Appellant's conduct in the enforcement proceedings to date, there are likely to be real difficulties in enforcement of an order for the costs of the appeal. That difficulty exists in this jurisdiction, where it appears that the Appellant has insufficient assets to satisfy the awards and the costs of the appeal, and even more so abroad, in Russia. At the very least, what has happened to date in the enforcement proceedings, together with the Appellant's case that six months is needed to arrange to make any payment into the CFO, demonstrates that there may be very substantial delay in payment, if payment is made at all, and that it may therefore be just to make an order to protect the Respondents against the effect of delay and substantial further enforcement costs.

34. The question for decision, ultimately, is whether it is just in all the circumstances to order the payment of security.

35. Mr Wassouf on behalf of the Appellant argued with persistence that it was not just, because the Respondents had not established by evidence that there was a real risk of non-payment. He also submitted that authority established that the court could not lawfully order security for costs in the form of the order sought by the Respondents. This was because they had not made an application for security for costs to Bright J when he handed down judgment, and to order security for costs now would be to impose a condition on the pursuit of the appeal, contrary to rule 52.18(3). For reasons that I will come to, that argument is simply wrong and depends on a misreading of the authorities cited.

36. I will deal first with the evidential argument.

Is it just to order security for costs?

37. This is not a case in which there is doubt about the ability of the Appellant to pay security for costs, and no question of stifling an appeal arises.

38. The Appellant argues that its good faith in respecting and paying orders for costs made by the English courts is established by the evidence, such that it is unnecessary to make an order for security for costs. It therefore submits, in effect, that there is no risk that the Respondents will go unpaid (in terms of costs liability) if its appeal fails.

39. The Appellant points to two voluntary payments made earlier in the Commercial Court proceedings: one, resulting from its opposition to lifting the stay on the proceedings, was set off against an order for costs previously made in favour of the Appellant (so no payment in money was made); the second was the delayed payment of Cockerill J's order for an interim payment following her dismissal in November 2023 of the Appellant's state immunity challenge. These costs were paid in May 2024. The outstanding costs and the interim costs have now also been paid, in the face of the Respondents' application.

40. Mr Goldberg's ninth witness statement asserts, without supporting evidence or any identified source, that the delay was caused by the time needed by the executive in Russia to arrange payment. It may, however, be relevant that the unpaid costs were paid at a time when the Appellant was seeking to appeal to the Court of Appeal and was therefore at risk of an application for conditions to be imposed on that appeal. The evidence, as far as it goes, does not in my view give much comfort that the Appellant would pay within a reasonable time the Respondents' costs of this appeal. It is equally consistent with the Respondents' case that the Appellant pays costs if and when it suits its purposes to do so, but not otherwise.

41. The Appellant submitted that there was a distinction that can properly be drawn between the Appellant's refusal to pay the debt arising from the arbitration awards themselves and the question of whether it will honour the orders of the courts of England and Wales in respect of the Respondents' costs. I found this argument unconvincing beyond the mere proposition, readily grasped, that an order to compensate the Respondents for the conversion of their assets and the destruction of their businesses is different in kind and scale from an order to pay legal costs of court proceedings. The costs that the Respondents are incurring, in resisting the appeal, are with a view to enforcing the very same arbitration awards against the Appellant. On the hypothesis being considered, the Respondents will have succeeded in preserving their right to enforce the awards in the UK by incurring those costs. Mr Goldberg did not go so far as to suggest that the Appellant had respect for orders of a foreign court of competent jurisdiction (despite its having challenged that jurisdiction) and that that is why future costs orders would be paid. In reality, the distinction between the awards and costs that Mr Wassouf pressed is little more than a convenient forensic distinction arising from the fact that the costs ordered by Cockerill J were belatedly paid.

42. Mr Wassouf said that further comfort could be derived from the fact that, even if it lost the appeal, the Appellant was very much interested in still pursuing at first instance the issue of enforceability of orders to pay the costs of the arbitrations, which he said was worth US$60 million. Accordingly, he implied, there might in practice be a need to pay the appeal costs in order to have that trial, rather than walk away from an appeal costs order. There was, however, no credible evidence from an identified source on which Mr Wassouf could base the assertion that he made, and so no real weight can be given to it. Whether the Appellant will really involve itself in a trial relating to the enforceability of $60 million out of (with interest, currently) over $66 billion of debt is inherently doubtful. Further, the submission that the Appellant is very serious about challenging that costs liability does not sit comfortably with the previous submission that the Appellant viewed costs orders differently from the underlying awards.

43. The Appellant submitted that Mr Goldberg's evidence, in which he says that "The Appellant is both willing and able to pay" was itself clear evidence of the Appellant's intention, in good faith, to pay any adverse costs of the appeal – however, in context, Mr Goldberg is clearly addressing the historic unpaid costs orders. I accept the Respondents' submission that this is saying nothing about future costs liability and that there is no clear statement made in evidence where any assurance is made about payment of future costs in the event that the Appellant fails on its appeal.

44. The Appellant submitted that the court should draw no adverse inference regarding willingness to meet costs orders from the delay in payment of the outstanding costs and the interim costs. The reason advanced for this was difficulty in agreeing with the Respondents a mutually acceptable payment route, or, as Mr Wassouf characterised it, deliberate and unreasonable obstruction by the Respondents or their solicitors. Why the Respondents would wish wilfully to obstruct the payment of large sums of money owed to them was not explained. Mr Wassouf did, however, establish on the evidence that Marks and Sokolov (a US law firm) and then Pinna Goldberg US PLLC were in funds in relation to the outstanding costs as early as August 2025. Thereafter, it was said to have been impossible to pay the monies to Stephenson Harwood LLP because of that firm's unreasonable position about money laundering risks.

45. What is extraordinary is that the Appellant has not previously arranged for the monies to be paid from an SRA-regulated firm of solicitors, which at all times it has been clear would be acceptable to the Respondents. Mr Goldberg said in evidence that his firm in the UK does not have a client account, though its associated firm in the US does. Why it does not have, or cannot open, a client account was not explained. But even if it does not and cannot have such an account, many other law firms in the UK have client accounts, including, one assumes, the firm of Curtis, Mallet-Prevost, Colt & Mosle LLP, which firm instructed Mr Flynn KC and Mr Wassouf on behalf of the Appellant in proceedings in the Commercial Court in April and May 2025. The argument that the Appellant did not pay sooner because it could not make a satisfactory arrangement is wholly unconvincing.

46. The Appellant also relied on the fact that the Respondents had made, initially, an allegation of an attempt by the Appellant to dissipate a property asset, and that on the evidence put forward by the Appellant in response the Respondents were unable credibly to pursue it (which indeed, properly, they did not do). I do not however see how, apart from a moral victory on that particular point, it casts any further light on whether there is a risk that the Respondents' costs will be unpaid if the appeal fails. Mr Wassouf's attempt to elevate it into compelling proof of the Appellant's good faith was wide of the mark.

47. While the Appellant did not seek to argue that it had sufficient assets within this jurisdiction on which the Respondents could seek to enforce their awards and orders for costs, Mr Wassouf effectively submitted that that was of no materiality, because the Respondents could seek to enforce their costs order through the Russian courts. He said that the burden lay on the Respondents to prove, with evidence, that there would be a problem for the Respondents if they had to enforce their costs orders in Russia.

48. Mr Peters accepted that he had to satisfy the court that the Respondents would not be able to enforce their judgment in Russia. The Respondents' position is that, first, the

court can take judicial notice of the self-evident proposition that, in the current political climate, there is no prospect of those behind the Respondents, of whom the Kremlin disapproves and has harmed and, in at least one case, has imprisoned for many years, being allowed to execute foreign judgments against the Russian state itself through Russian courts. The submission to the contrary was characterised as unsustainable and "preposterous".

49. Second, the Respondents pointed to evidence and observations in another case, which support the obvious inference that these Respondents would not be able to enforce in Russia orders for payment by the Russian state. Mr Peters pointed to the terms of the arbitration awards themselves, where there is a finding that the Russian courts supported the actions of the executive against the former owners of the Respondents:

> "The Russian court proceedings, and most egregiously, the second trial and second sentencing of Messrs. Khodorkovsky and Lebedev on the creative legal theory of their theft of Yukos' oil production, indicate that the Russian courts bent to the will of the Russian executive authorities to bankrupt Yukos, assign its assets to a State-controlled company, and incarcerate a man who gave signs of becoming a political competitor" (Hulley Final Award at [1583])

Mr Peters emphasised that this court has previously decided that the tribunal had jurisdiction to reach the findings that it did, and that the Appellant's grounds of appeal do not impugn the findings in the awards about the conduct of the Russian state.

50. Third, the Respondents referred to the judgment of Henshaw J on the application in 2021 to lift the stay on these proceedings, where the Judge summarised the Respondents' evidence there that there had been changes made to the Russian Constitution, prompted by the awards in the Yukos case among others, that put Russia on a collision course with its international obligations and the decisions of international courts and tribunals. These enable Russia's Constitutional Court to declare unenforceable decisions of international courts and tribunals. On 19 January 2017, there was a ruling made by the Constitutional Court, following a referral by the Russian Ministry of Justice, to the effect that Russia was not bound to enforce the judgment of the European Court of Human Rights ordering the Appellant to pay €1.866 billion to the former shareholders of Yukos. This characterised the shareholders as creators of "illegal schemes of evasion of taxation" and stated that payment of such a sum "in itself contradicts constitutional principles of equality and justice in tax relations".

51. That ruling was followed in 2020 by constitutional amendments signed by President Putin granting the Russian Constitutional Court the power to decide whether a binding decision by a foreign court or tribunal should be enforced if it "contradicts the tenets of public order in the Russian Federation", and precluding their enforcement if they contradict the Constitution of the Russian Federation.

52. Fourth, Mr Peters relied on the conclusion of Cockerill J in Danilina v Chernukhin [2018] EWHC 39 (Comm) ("*Danilina*") on a security for costs application against a Russian national who was understood only to have assets (if any at all) in Russia. There was no suggestion that Ms Danilina was closely associated with the interests of

the Russian state or members of the executive. In that case, the Judge did hear expert evidence about the process and difficulties of enforcement of an English court order in Russia. She concluded that, although there was a recognised process, it was subject to various exceptions, including lack of sufficient reciprocity, violation of Russian public policy, service issues and jurisdictional issues.

53. In that case, Cockerill J concluded that the risk of refusal on public policy grounds was "not high, but demonstrated on the authorities", and that overall:

> "…it does not appear that the risk of a complete failure of enforcement is high, but taking the possibilities of reciprocity and other grounds together a real risk (albeit not at the high end of probability) is, it seems to me, demonstrated."

54. Ordinarily, one would expect a defendant seeking to establish difficulty (or impossibility) of enforcing an English judgment for costs in a foreign state to adduce evidence to justify a conclusion that there is a "real risk" of difficulty rather than just a "mere possibility" (see *Danilina* at [61]). In this case, in my judgment, that would be superfluous. Unlike in *Danilina*, the issue here is about enforcement in the Russian courts against the Russian state itself, at the behest of individuals to whom the state is, to put it at its lowest, strongly antipathetic, in connection with enforcing arbitration awards in respect of which the Russian state is determined not to pay a cent. Moreover, the climate for enforcement of English judgments must inevitably have deteriorated since 2018 for geo-political reasons that hardly need to be rehearsed.

55. In short, this is a rare case in which the court can conclude without evidence that, for these Respondents, there is self-evidently a real risk of inability to enforce a costs judgment against the Appellant in Russia, unless payment happens to suit the Appellant's other purposes at any time. This conclusion does not establish any precedent for what is needed to establish a real risk of non-enforcement in other, different cases.

56. This is also a case in which the evidence on which the Appellant relies demonstrates that there could be serious delay in being paid, even if the Appellant were willing to pay, which is likely to entail further expense for the Respondents. That is also a factor that the court can take into account in concluding that it is just in all the circumstances to order the provision of security.

57. On the other side of the equation, the disadvantage to the Appellant of ordering it to provide security is very slight. There is no issue about ability to pay and no risk of stifling, just a degree of administrative inconvenience in having to arrange a further payment within a generous time permitted for it, and perhaps some modest cost in transferring the money. When the balance is drawn, the justice of ordering security is clear.

Does the Court have power to order security for costs?

58. It is necessary to deal now with the Appellant's argument that the court cannot order security, at least in the form of order sought by the Respondents.

59. The argument, in a nutshell, is that the sanction upon failure to make a timely payment of security is equivalent to imposing a condition on the pursuit of the appeal, which by reason of rule 52.18(3) (as set out in [15] above) the court cannot do. The Respondents had to apply to Bright J for security for costs when he gave permission to appeal on ground 1 if they wished to do so.

60. The idea that a successful party, whether in the county court following an ex tempore judgment or on the electronic handing down of a long judgment in the High Court, had to be ready not just to meet and answer any application for permission to appeal but also to make there and then (supported by evidence) an application for security for costs of an appeal on newly-disclosed grounds, would, I suspect, come as something of a surprise to most practitioners, as it did to the court. While rule 52.18(3), precluding any later application for conditions to be imposed where the respondent was present when permission to appeal was granted, is perhaps not as well-known as it needs to be, its precluding in those circumstances any later application for security for costs is a novelty indeed.

61. Mr Wassouf's proposition was, he said, notwithstanding the difficulty it might create, the inescapable conclusion from the two authorities that he cited, Spar Shipping v Grand China Logistics Holding (Group) Co Ltd [2016] EWCA Civ 520 ("*Spar Shipping*") and Spicejet Ltd v De Havilland Aircraft of Canada Ltd [2021] EWCA Civ 1834 ("*Spicejet*").

62. In *Spar Shipping*, the court had before it an application for two things: security for costs, and the imposition of stringent conditions (including payment of the judgment sum) on the right to proceed with the appeal. Security for costs was not sought to be imposed as a condition on the appeal. Longmore LJ noted at the outset of his judgment that the application for security for costs was not in issue, save about quantum. The rest of the judgment is concerned with whether the court could entertain the application to impose conditions when the applicant had been present when permission to appeal had been granted, and in particular whether, if the application were amended, rule 52.18(1)(a) could justify making an order conditionally striking out the appeal. Longmore LJ held that permission to amend for that purpose should not be granted. His Lordship's judgment ends with the words: "So I do not think that this application should proceed any further for those reasons."

63. Mr Wassouf submitted that the Lord Justice had thereby dismissed the application for security for costs, on the basis that he was required to do so by the terms of rule 52.19(1)(c) and (3) in combination, since he could not impose what amounted to a condition on the pursuit of the appeal. That is plainly not how the judgment should be read. It only deals with the application for the imposition of conditions, not the application for security for costs, which had been agreed subject to some issue about quantum. How that issue was dealt with does not appear, without sight of the order that the court made. But what is clear is that Longmore LJ did not dismiss the security for costs application by the last words of his judgment. The notion that, having recorded that the application for security for costs was agreed save for quantum, the application was then dismissed is absurd, and wrong. It is therefore wrong to conclude that the application for security for costs was rejected in *Spar Shipping* because it amounted to imposing a condition, contrary to the Rules.

64. In *Spicejet*, the original application before the court was for the appeal to be struck out pursuant to rule 52.18(1)(a) unless the appellant paid into court the judgment debt (of nearly US$43 million) and/or for an order for security for costs. Again, security for costs was not sought as a condition of the appeal but, conventionally, pursuant to Part 25 of the CPR.

65. The application for security for costs was refused (at [38]) on the basis that there was no particular difficulty or substantial extra expense in enforcing an order for costs in India. The majority of the judgment is concerned with the interplay between paragraphs (a) and (c) of rule 52.18(1), and whether the court had jurisdiction to make what was effectively an unless order striking out the appeal in circumstances in which the applicant could not make an application under rule 52.18(1)(c), by reason of rule 52.18(3). Phillips LJ, giving the lead judgment, expressly recognised at [14] that "this was plainly asking for the imposition of a condition by another route".

66. Nevertheless, the court held that an application under rule 52.18(1)(a) with this aim was permissible and that the court had jurisdiction, in exercise of its case management powers, to impose a condition under paragraph (a) in an appropriate case. At [20], Phillips LJ stated:

> "In my judgment, whilst the Court of Appeal undoubtedly retains jurisdiction to make an order under CPR 52.18(1)(a) which effectively imposes a condition which could not be imposed under CPR 52.19(1)(c), the discretion to make such an order must be exercised with some care and with regard to the important policy considerations as identified by Longmore LJ in Spar Shipping. It is not appropriate to attempt to define the precise circumstances in which that discretion might be exercised for obvious reasons, but I would expect that in most cases the court would require that there had been a material change in circumstances since the hearing at which permission to appeal was granted such as to justify re-opening the matter at a further hearing. Absent a material change of circumstances, the respondent seeking an unless order under CPR 52.18(1)(a) would effectively be attempting to re-litigate an issue which should have been (and may have been) determined before, contrary to well-established principles."

67. Phillips LJ proceeded to explain why the basis on which the application had been brought (essentially, non-payment and the alleged difficulty of enforcing in India) did not amount to a material change in circumstances, but that actions taken by the appellant in India since the grant of permission to appeal to obstruct enforcement did, and these justified the court, in the exercise of its discretion, imposing a (different) condition.

68. Mr Wassouf drew attention to the terms in which Phillips LJ explained that he would not have acceded to the application as brought, at [26]:

> "It follows that, had the application come before me on the basis it was issued and initially advanced, I would have been minded to refuse it out of hand. It was, in my judgment, no

> more than a blatant attempt to re-open the question of whether a condition should be imposed on the grant of permission to appeal on grounds which were available before the Judge. That have been, in my judgment, directly contrary to the purpose of and policy behind CPR 52.18(3)."

Mr Wassouf submitted that this explains why the application for security for costs was rejected (its being part of the application as issued).

69. Once again, that is a misreading of the authority. The security for costs application was quite distinct from the application for an unless order in relation to the judgment debt. The reasoning of the Court on the latter had no application to the separate security application, which was rejected for wholly different reasons.

70. Shorn of the authoritative foundation that the Appellant tried to invoke, the simple question is whether an application for security for costs under CPR rule 25.29, which will usually (at least in this court) be made in the form of an unless order, is an application for a condition to be imposed under rule 52.18(1)(c). The simple answer is that it is not. The rules are distinct and are intended to operate distinctly. As the authorities explained above show, the fact that an order made under rule 52.18(1)(a) takes effect as a condition does not mean that it is an order illegitimately made under rule 52.18(1)(c). Similarly with an order made under rule 25.29.

71. The Respondents applied for security for costs in terms under rule 25.29 and the operation of that rule is not constrained by rule 52.18(3). Further, Bright J expressly stated at the consequentials hearing at which permission to appeal on ground 1 was granted that any application for security for costs should be made to the Court of Appeal. There is therefore no question of the Respondents illegitimately trying to have two bites at the cherry, or failing to make an application for security when it should have been made at an earlier time.

72. The edges between the separate rules only become blurred if an application under rule 52.18(1) includes, as the Respondents' application did here, a request that the prompt payment of security ordered under rule 25.29 should additionally be made a condition of the appeal, pursuant to rule 52.18(1). As an application under rule 52.18(1), it is arguable that, at least in relation to ground 1, this court could not entertain the application under rule 52.18(1)(c) because rule 52.18(3) would bar that application. Even so, that would only have applied in relation to ground 1, and not in relation to grounds (2) to (8), permission for which was granted (in part provisionally) without a hearing at a later date.

73. In view of the difficulty of applying rule 52.18 in relation to a condition of payment of security for costs and the broad discretion that the court has under Part 25, including the sanction of striking out in the event of non-payment, it may be advisable for parties in future to avoid a twin-track application of the kind that the Respondents made, seeking an order for security for costs and seeking separately to have payment of the security made a condition of the appeal. If the court is not minded to make the order for security an unless order, it is hardly likely to accede to an application to make payment a condition of the appeal.

74. I am clear that the court has jurisdiction to engage with the security for costs application under Part 25 as made, and have already decided not to impose any condition in that regard under rule 52.18(1). This is, in my judgment, clearly a case in which security for costs should be granted, in the discretion of the court, because it is just to do so. The reason is that there is a real risk that the Appellant will not pay the costs if it loses its appeal and that the Respondents will be unable to enforce the costs order.

75. There is another factor too that supports that conclusion. The Appellant and the Respondents did, belatedly, agree a mechanism for payment that is both practicable and acceptable to them both. The mechanism does, however, depend on the will of the Appellant to provide funds, the willingness of the Appellant's solicitors to give the required undertaking as to the provenance of the funds, and the will of the Appellant to give a direction to pay monies in court to the Respondents and take any further steps that the CFO requires. Following an unsuccessful appeal, the will or willingness to do one or more of those things, and, in a rapidly changing world the means of making payment in that way, may no longer exist, whereas at present they do. I note that, in written submissions, Mr Wassouf asserts that the Appellant is willing and able to make payment of future costs by the same route, but then qualifies this with the words "to the extent it remains open".

Timing and quantum of security

Timing

76. That leaves the issues of timing and quantum.

77. The Respondents are willing to give the Appellant 3 months to provide the security, on the basis that the Appellant has said in evidence that executive authority to make the payment takes 3 months or so (albeit the Respondents do not believe that assertion). Why the Appellant contended that 6 months is needed was not explained in its evidence or submissions. It was said that such a long period will not inconvenience anyone because the appeal hearing date is likely to be more than 6 months away.

78. I do not accept that suggestion. The issues on the appeal are complex and the Respondents are likely to wish to do substantial work on them well in advance of the hearing, with the benefit of security for the costs incurred. It is also unsatisfactory to court listing, which operates under constant pressure, if the effectiveness of a listed hearing is not known until relatively shortly beforehand. Nor is it just to the Respondents if the hearing of the appeal will be delayed.

79. Having enquired of civil appeals listing when this 4-day appeal might come on, the court was told that it might be as soon as the end of the Hilary Term or during the Easter Term (i.e. March to May 2027). Given the accepted need to allow at least 3 months for payment of the security from the date of this judgment, it does not seem to us to be practical for the appeal to be heard before the Easter Term. It also seems undesirable, on the facts of this case and given the history of delayed payments, to adopt the Respondents' proposal for a two-stage deadline, with the proceedings being stayed after three months and then struck out after a further four weeks have elapsed. That risks perpetuating uncertainty or causing further delay.

80. We have therefore decided to allow a single, generous time for payment of the security, in default of which the appeal will stand struck out without further order. In the event of any change of circumstances affecting payment, the Appellant has the right to apply for further time. However, the court will be unlikely to allow further substantial time for payment if the circumstances are foreseeable or the reason for delay is under the Appellant's control, and it will not grant any extension that will prejudice the orderly preparation of the appeal to start on the hearing date. There will be no stay of the appeal in the meantime, so the Respondents can choose to incur costs on the appeal at their own risk, if they so choose.

81. Accordingly, we will order that by no later than 4pm on 1 March 2027 the security for costs must be paid into court, using the payment route now agreed and established, or alternatively sending the funds to the Respondents' solicitors from an SRA-regulated law firm on behalf of the Appellant, to hold and dispose of solely in accordance with the further orders of the court. That is a period of about four and one-half months, which on any view of the evidence must be sufficient. We will direct that the appeal shall not be listed before 9 June 2027. The parties should file within 7 days of handing down this judgment a single composite schedule of unavailable dates from 9 June 2027 to 30 July 2027.

Quantum

82. The sums sought by way of security are extraordinarily large for a four day appeal. The total sum expected to be incurred by the Respondents, including costs prior to 1 June 2026, the date of the schedule, is £3,642,000-odd. The majority of the total is disbursements, namely Counsel's fees. The profit costs for the Respondents' solicitors are £217,685.38 to the date of the schedule and estimated at a further £458,623.50 from then onwards. The Respondent seek 70% of those sums as security.

83. That amount is in my view much too high. The views that I express below should not, of course, be seen as limiting in any way the discretion of the costs judge if and when a detailed assessment of the actual costs is performed.

84. Counsel's fees up to 31 May 2026 were modest, and these included the preparation of a skeleton argument on ground 1, following a respondent's notice served in relation to that ground. The fees for Counsel (one leading counsel and one junior) are then:

(1) £60,000 for leading counsel and £9,000 for junior counsel to prepare the application for conditions and security for costs;

(2) £200,000 for leading counsel and £75,000 for junior counsel to adapt the respondent's notice and skeleton argument previously filed to address also grounds of appeal 2-8;

(3) £2,000,000 for leading counsel's brief fee and £375,000 for junior counsel's brief fee, and refreshers of £20,000 and £32,750 respectively;

(4) £100,000 for leading counsel and £25,000 for junior counsel to deal with matters consequential on the judgment, including a half day hearing.

85. These sums are astonishing and cannot be justified, at least for these purposes. We cannot understand how a brief fee of £2,000,000, on top of all the highly paid work previously done to prepare the skeleton arguments, is appropriate. £125,000 for a consequential hearing that will not ordinarily take place is also unjustified. Mr Peters sensibly did not try to justify the fees, except on the basis of the excellence and seniority of leading counsel and market forces. However, that yardstick has little relevance to the criteria that the costs judge will apply, in the context of admittedly complex issues and substantial value on a four day appeal. However much the Respondents choose to spend on their lawyers, the Appellant can only be expected to pay what is reasonable and proportionate (there being no basis at this stage for contending that an indemnity basis of assessment will be appropriate).

86. We find it unhelpful to approach Counsel's fees on the basis of allowing a percentage of what has been included on the schedule of costs, as the schedule is too extravagant. Instead, we consider that £600,000 is sufficient security for the disbursements on Counsel's fees.

87. As for the profit costs, our concerns are whether the following, in particular, will be payable:

(1) over 100 hours' work done up to 22 May 2026 on considering and commencing preparation of the application and preparing a costs schedule (£74,428.30);

(2) a further 65 hours or thereabouts between 26 and 31 May 2026 addressing the implications of the order of Males LJ dated 22 May 2026 granting further permission to appeal and reviewing the proposed application (£48,796.50);

(3) a further 130 hours estimated from 1 June 2026 for preparing the application and drafting the evidence and submissions (£99,238.00) – work for which Counsel were also expected to charge £69,000;

(4) over 60 hours' further work on amending the respondent's notice and the skeleton argument to take account of grounds 2-8 (£53,123.00) – work for which Counsel were also expected to charge £275,000;

(5) 185 hours for preparing for the hearing of the appeal (£125,125.00);

(6) 160 hours for 4 solicitors attending 4 days of the hearing (£122,800).

88. These are very large numbers of hours being recorded or estimated. They give rise to doubt about the reasonableness of time spent prior to 1 June 2026 and the accuracy of the estimate and reasonableness of the allowances for work to be done in future. There are obvious questions about unnecessary duplication of work and the number of fee earners involved at various stages.

89. We consider that a sum of £375,000, to include also the expected disbursements on court fees, transcripts and costs consultants' fees is appropriate.

90. We will therefore order security for costs in the sum of £975,000 to be provided by 1 March 2027. We invite Counsel to agree the terms of an order to give effect to this judgment.

LORD JUSTICE PHILLIPS:

91. I agree.