Neutral Citation Number: [2026] EWHC 1328 (Comm)

Case No: **FL-2022-000024, FL-2022-000025, FL-2022-000026, FL-2022-000027, FL-2023-000004, FL-2023-000009, FL-2023-000024**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
FINANCIAL LIST (COMMERCIAL COURT)

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **5 May 2026**

Before:

Mr Justice Butcher

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Between:

Aabar Holdings S.à.r.l. & others	**Claimants**
- and –	
(1) Glencore plc **(2) Mr Ivan Glasenberg** **(3) Mr Steven Kalmin**	**Defendants**
- and –	
(1) The Serious Fraud Office **(2) A** **(3) B**	**Interested Parties**

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Richard Lissack KC, **Richard Mott KC**, and **Matthew Barry** (instructed by **Stewarts Law LLP**, **Quinn Emanuel Urquhart & Sullivan UK LLP**, **Pallas Partners LLP**, and **Bryan Cave Leighton Paisner LLP**) for the **Claimants**
Richard Hill KC and **Gregory Denton-Cox** (instructed by **Clifford Chance LLP**) for **Glencore plc**
Ben FitzGerald KC and **Leonora Sagan** (instructed by **Corker Binning**) for **A**

Alexander Polley KC and **Andrew Lodder** (instructed by **Steptoe International (UK) LLP**) for **Mr Glasenberg**
Patrick Goodall KC and **Rebecca Loveridge** (instructed by **Hogan Lovells International LLP**) for **Mr Kalmin**
Hodge Malek KC and **Yash Bheeroo** for the **Serious Fraud Office**
Alex Bailin KC and **Edward Craven KC** (instructed by **Boutique Law LLP**) for **B**

Hearing dates: **28, 29 and 30 April 2026**

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JUDGMENT

Tuesday, 5 May 2026

MR JUSTICE BUTCHER

1. There are a number of applications before the court. They raise the central question of how the civil trial currently fixed for October this year, and which I will refer to by way of shorthand as 'Trial 1', should proceed given the substantial overlap with the pending criminal prosecution.

2. The applications which have been issued and which the court has to determine are as follows.

3. Firstly, an application dated 2 April 2026 issued by the First Defendant ('Glencore'), for witness summonses to be issued in respect of two individuals, "A" and "B".

4. Secondly, the SFO seeks orders in relation to the conduct of the presently fixed Trial 1 in order to protect the fairness of the criminal prosecution. The orders sought are, firstly, a continuation of the confidentiality ring order, or 'CRO', made by Mr Justice Bryan on 21 May 2025, and secondly, orders concerning the use of documents within the CRO at Trial 1, redactions to written submissions at Trial 1, as to oral evidence of witnesses at Trial 1, and as to the judgment in Trial 1.

5. Thirdly, applications dated 15 April 2026 by A and B by which they oppose the witness summonses applications and apply, should witness summonses be granted, for an adjournment of Trial 1. They also apply for reporting restrictions at and in Trial 1.

6. In addition, although Glencore had not issued a formal application to this effect, it made it clear that its position was that if the orders sought by the SFO were granted, Trial 1 should

be adjourned and, further, that if its witness summonses were not granted by the court, Trial 1 should be adjourned.

7. Given the importance to the parties of knowing the results of these applications as soon as possible I decided that I should proceed to deliver this judgment orally today. This is a case in which the issues involved, though important, are relatively easy to state, and where the principles to be applied are also relatively uncontroversial. As I had the benefit of two and a half days of oral submissions, and have had further time to consider my decisions and this judgment, it appeared to me expedient to give judgment now rather than going through the process of producing what would almost inevitably have been a longer written judgment, in a longer time frame, circulating a draft and arranging for a hand down. The parties were supportive of that approach.

8. The nature of the civil claim is well known to the parties and is set out in the Case Memorandum and List of Common Ground and Issues. The Claimants say that they are either current or former shareholders of Glencore. They bring claims under section 90 and/or section 90A and schedule 10A of the Financial Services and Markets Act 2000 ('FSMA') alleging that certain prospectuses published in 2011 to 2013 and certain other information published by Glencore was misleading or contained material omissions.

9. The procedural background to the present applications also needs to be understood. It may be shortly summarised as follows.

10. The present proceedings were commenced on 28 September 2022. Between 21 and 23 May 2024, the first CMC took place before Mr Justice Bryan. Pursuant to the order made at that CMC the various Claimants' claims are to be tried together, but by way of a split trial.

11. Trial 1 was listed for 10 to 12 weeks to commence on 5 October 2026. Broadly, the issues in Trial 1 were to be 'Defendant-side' issues, namely those relating to liability for misstatements in the prospectuses and the published information. 'Claimant-side' issues, including reliance, causation, loss, and limitation, would take place in trial 2.

12. In summer 2024, that is after the first CMC, the SFO brought charges against the SFO Defendants.

13. The second CMC took place between 26 and 28 November 2024. Shortly before it took place, the SFO had made an application. The evidence in support of that application raised the possibility that the SFO might seek the adjournment of Trial 1, or seek an order circumscribing its scope, due to concerns about the overlap between the civil and criminal proceedings. The Claimants had proposed that the SFO's application should be limited for the purposes of that CMC to certain uncontroversial matters, including a reporting restrictions order.

14. The court made an order imposing reporting restrictions and ordered further that any application which the SFO wished to make concerning the Defendants' disclosure, or the wider conduct of the civil proceedings, should be made by a specified deadline and determined at a hearing which came to be fixed for 20 to 22 May 2025.

15. At that hearing in May 2025, the SFO's position was that it was not necessary for it to seek a stay of any part of the civil proceedings.

16. At that May 2025 hearing, the judge, Mr Justice Bryan, made a number of orders as to confidentiality. He established a CRO, and placed restrictions on the use of confidential

documents at hearings and the use of documents even if they had been referred to in open court.

17. That regime was intended to be in place pending further consideration of the conduct of Trial 1. Glencore indicated at that hearing that it considered that any final decisions about the conduct of Trial 1, including as to whether there should be a stay and as to whether the whole of Trial 1 should be conducted in private, should be dealt with in about December 2025.

18. Mr Justice Bryan decided, however, that the appropriate and logical time for the confidentiality orders to continue until was April 2026, on the basis that it was then that a judge would be best placed to foresee the likely scope of the trial and to decide on the orders which would be necessary.

19. Mr Justice Bryan also ordered that the hearing in April 2026, that is to say this hearing, should be the occasion to consider any applications for witness summonses requiring certain categories of persons (which would include A and B) to give evidence at Trial 1.

20. The criminal trial is currently listed for 4 October 2027, that is to say after the scheduled conclusion of Trial 1, and after the judgment is likely to have been delivered in it.

21. There is undoubtedly a significant degree of overlap between Trial 1 and the criminal proceedings. The SFO puts it in this way in its skeleton argument for this hearing, in which it calls the criminal trial the "Individuals Prosecution". I quote:

> "21. The SFO's intervention in the Civil Proceedings was precipitated by its concern about the substantial overlap between the Trial 1 Issues and the issues that form part of the Individuals Prosecution. The SFO was and remains concerned that the Civil

Proceedings (and steps to be taken in the conduct of this litigation) risk causing serious prejudice to the administration of justice and undermining the integrity of the Individuals Prosecution if appropriate confidentiality measures are not put in place to guard against such matters: see Favaloro 6, paras. 19-20. The SFO's concerns in this respect were summarised by Bryan J in the SCPA Judgment at [52]. Those concerns are not repeated in the same detail here; however, the primary concern is that confidential and sensitive material or information gets into the public domain before the Criminal Trial, which would be seen by, and therefore influence, potential jurors. This is particularly so in respect of (although not limited to) witness statements and interview transcripts of the Criminal Defendants, other suspects and the prosecution witnesses, which were obtained (voluntarily and under compulsion) as part of an ongoing criminal investigation, and the information within which is specifically in issue in the Individuals Prosecution.

26. In addition, the Claimants have noted in correspondence that approximately 60,000 of the c.260,000 documents disclosed by Glencore have been designated to the CRO (c.23%): see letter from Stewarts dated 31 March 2026, para. 6; Favaloro 6, para. 34; see also Bailes 5, para. 46(a), which suggests the number of disclosed documents may be lower. These documents have largely been designated on an automated basis, including by applying search terms that were identified in Confidential Annex A to the CRO: see Favaloro 6, para. 56. The SFO submits that the proportion of documents designated to the CRO reflects the significant overlap between the issues in the Civil Proceedings and the Individuals Prosecution."

22. On 23 March 2026, Glencore made a witness summary application without notice in relation to the evidence of A and B. That application was granted on the papers. No application to set it aside was made within the time specified in the order.

23. On 2 April 2026 Glencore then issued, as I have already said, an application for witness summonses in respect of A and B.

24. I now turn to the principles which should guide the decisions which I have to make.

25. To state what is perhaps obvious, the core principle which I should apply is to give effect to the overriding objective, namely to deal with this matter justly. There are two bodies of more specific case law which provide particularly helpful guidance as to the decisions I have to make.

26. One of those relates to how the court should manage concurrent criminal and civil proceedings. In this regard, I was referred to a number of authorities. I draw from those authorities the following.

27. First, that the question of whether a stay or adjournment should be granted where there are concurrent proceedings is a matter for the discretion of the court, which has to weigh up the competing considerations to achieve a balance of justice between the parties in civil proceedings, see Panton and Others v Financial Institutions Services Ltd [2004] 1 LRC 768, at [6] to [7]. There is no automatic requirement to stay the civil proceedings until the conclusion of the criminal trial.

28. Secondly the overarching test to be applied as to whether there should be a stay or adjournment is whether there is a real danger of causing injustice in the criminal proceedings. It is, as was stated by Lord Justice Neil in R v Panel on Takeovers and

Mergers, ex parte Fayed & Ors [1992] B.C.C. 524 at 531E-F, 'a power which has to be exercised with great care, and only where there is a real risk of serious prejudice which may lead to injustice'.

29. Thirdly, what constitutes a real risk of serious prejudice which may lead to injustice has to be considered on a case-by-case basis, see Jefferson Limited v Bhetcha [1979], 1 W.L.R. 898 at 905D as to factors which may be relevant. The risk of injustice must however be a real and not merely a notional risk, see Akciné Bendrové Bankas Snoras v Antonov [2013] EWHC 131 (Comm) at [18(iii)] and FM Conway Limited v Suggett & Ors [2018] EWHC 3173 (QB) at [19].

30. Fourth, one factor which will militate against a stay, even if there is a risk of serious prejudice to the criminal proceedings, is if appropriate and sufficient safeguards will be imposed in the civil proceedings which would mitigate or eliminate the risks identified, see Re DPR Futures Ltd [1989] 1 W.L.R. 778 790G, Zambia v Meer Care & Desai & Ors [2006] 1 C.L.C. 436 at [30] to [33], and Akciné v Antonov at [18(ix)].

31. The other area of guidance is in relation to the issue of witness summonses.

32. Ordinarily no permission is required for the issue of a witness summons, but the recipient is afforded an opportunity to set the summons aside, CPR 34.3(2) and 34.3(4).

33. The principles in relation to the setting aside of a summons already issued, and those which should apply when, as here, the court is considering whether permission to issue the summons should be granted should be in essence the same.

34. Those principles were summarised in Banque Havilland SA v FCA [2025] UKUT 00197 (TCC) at [18] as follows:

First, there is a burden on the party seeking a witness summons to justify the need for it. See Morris v Hatch [2017] EWHC 1448 (Ch).

Secondly a witness summons will be justified only if there is a real likelihood that the witness would give evidence which will materially assist the Tribunal in its determination of an issue or issues in the proceedings. See Ford and Owen v FCA [2017] UKUT 147 (TCC) at [12].

Thirdly, the grounds on which a potential witness can oppose the issue of a witness summons include where it would be unfair and oppressive for the Tribunal to issue a witness summons. See Barclays Plc v FCA [2024] UKUT 00214 (TCC) at [47] and [48].

Fourthly, there is a burden on the potential witness to establish that a witness summons would be unfair and oppressive, see Barclays Plc v FCA at 51.

Fifthly, what is unfair and oppressive is extremely fact sensitive. It involves a balancing exercise taking into account all the circumstances including any unfairness to a potential witness, the materiality of the evidence and the consequences for the fairness of the proceedings if the potential witness is not required to give evidence. See Barclays v FCA at [48].

35. In Morris v Hatch [2017] EWHC 1448 (Ch) at [21], the following further points were made:

'But it is also clear that the court must balance the interests of justice in the fair disposal of the claim with competing outside interests. And the fact that a party issuing a witness summons has motives going beyond the purposes of the particular action does not by itself make the issue of the summons oppressive. Similarly, the fact that a witness may (or,

indeed, may be obliged to) claim privilege against answering certain questions does not mean that the witness summons should be set aside. Privilege may be waived, or may not prevent the particular question, or a part of such a question, from being answered.'

36. I turn, therefore, to what appears to me to be the first question that has to be answered: should witness summonses be issued in respect of A and B?

37. In looking at this question, I will endeavour in the first instance to answer it without regard to any problems which may flow from the fact that any evidence given in response to the summonses may be given in advance of the criminal trial.

38. In my judgment, putting aside questions of oppression and inconvenience which may arise from their giving evidence in advance of the criminal trial, it would be clearly appropriate to give permission for the issue of witness summonses.

39. I say this for the following reasons.

40. First, there is a real likelihood that A and B can give evidence which will be of material assistance in the determination of issues in the civil proceedings.

41. Secondly, the objections to the summonses based on the supposed immateriality of A and B's evidence or the pointlessness of calling them are in my judgment unfounded.

42. Nor do I regard it as possible to say that their evidence will be unnecessary and pointless because the facts to which they may speak will be covered by other evidence, documentary or otherwise.

43. Thirdly, it has been suggested by a number of the interests represented before me, with more or less directness, that Glencore's applications for witness summonses addressed to A and B are tactical and designed to promote an adjournment of Trial 1.

44. I cannot proceed on any such basis. Glencore tells me it wishes to have the evidence of those witnesses, and would regard itself as prejudiced in its defence if it could not have such evidence. Mr Kalmin's and Mr Glasenberg's positions are similar. I am able to see a basis on which they may reasonably consider that the evidence may be of assistance to the court. In the circumstances, I consider that I must accept that the application for witness summonses has been made in good faith and with a purpose, even if it is not the only purpose, of securing the evidence of the witnesses in question at Trial 1.

45. For these reasons I would, considerations relating to the pendency of the criminal trial apart, have been minded to grant the witness summonses.

46. I now turn to consider whether that pendency alters matters. In my view, it clearly does. I am in no doubt that it would be unduly prejudicial and oppressive to A and B to issue summonses compelling them to give evidence at a civil hearing in advance of a criminal trial fixed for October 2027.

47. On that basis, there are in effect two courses open to the court. The first is to refuse the summonses because of possible prejudice that would be caused to A and B from having to give evidence in advance of the criminal trial. The other is to adjourn Trial 1.

48. The consideration of these alternatives cannot be divorced from the arguments as to whether it would be desirable to adjourn Trial 1 in any event, by which I mean irrespective of whether the witness summonses are or are not issued.

49. Glencore submits that that is indeed the case. An adjournment is, meanwhile, strenuously opposed by the Claimants.

50. Glencore's position here is as follows. If the measures proposed by the SFO in order to protect the fairness of the criminal trial are adopted, Trial 1 would be unworkable, or at least that those measures would cause very significant inconvenience and require Trial 1 to be conducted substantially in private. Further, there would still remain the risk that the criminal trial would be prejudiced.

51. Glencore points in the first place to the SFO's proposal that the CRO should continue up to and including Trial 1, and that no reference should be made in open court at Trial 1 to the contents of any document designated to the CRO, and that in so far as it is necessary for the contents of any such document to be referred to, the parties and the court and any other participants should read the relevant contents to themselves, or, if the judge considered it necessary, the court should sit in private.

52. As to that, Glencore points out that there are currently approximately 60,000 documents designated to the CRO, which is both a large number of documents and a significant proportion of the total number of documents in the proceedings. Even if the number of documents in the CRO could be reduced it is likely to remain a significant one. This gives rise to the problem that participants will need not only to ensure that they do not quote directly from documents, but also that they do not make reference to the contents of documents designated to the CRO. It would, Glencore submits, be disruptive and unfair to Glencore's witnesses and to the director Defendants to the civil proceedings that they should be required to watch their words and attempt to avoid referring to such information while giving evidence. Avoiding this problem would in practice likely involve sitting

more in private. To the extent that evidence and submissions were to be conducted in public, redacted versions of such documents, such as pleadings and witness statements, would have to be used.

53. Secondly, the SFO seeks orders that certain witnesses, if they give evidence, should give evidence in private, and as to other witnesses the trial judge should consider whether it would be appropriate for any part of those witnesses' evidence to be given in private. This, Glencore argues, would put a great burden on the trial judge even if the SFO were present at Trial 1. That judge would be required to try these detailed and complex civil proceedings whilst also seeking to police the risk of prejudice to separate and also complex criminal proceedings for which he or she was not the trial judge.

54. Thirdly, the practical effect of the preceding points is that a substantial proportion of the trial would have to be held in private. This might be as much as a half. This would involve a significant departure from the norm of open justice.

55. Fourthly, the order sought by the SFO would require the judgment from Trial 1 to be redacted so as to remove any reference to the contents of documents designated to the CRO, any oral evidence given by witnesses in private and any material that would otherwise risk undermining the integrity of the prosecution. Undoubtedly this would mean extensive redactions and conceivably withholding of the judgment.

56. There would also be the risk, or indeed as Glencore would say likelihood, of market speculation if there were no public judgment or one which was heavily redacted. Glencore is subject to disclosure obligations and it would be placed in a difficult position if it knew the result of Trial 1 but that outcome could not be made public. There would also be unfairness to Mr Glasenberg and Mr Kalmin if they were found not liable but there

could not be a public vindication in an unredacted judgment which dealt clearly and comprehensively with the allegations made against them.

57. Fifthly, there would, on the SFO's proposals, be the continuation of reporting restrictions which are extensive and which would, in themselves, involve a derogation from open justice, and furthermore, there is a real risk that organisations and overseas media may not adhere to any reporting restrictions.

58. In my judgment, there is force in each of those points. I do not say that Trial 1, subject to the safeguards sought by the SFO, would be entirely unworkable. It would, however, be inconvenient, and difficult to manage, and there would remain a risk, which I would characterise as real and not insignificant, that those measures fail, and material comes into the public domain which could, even if there were questionnaires given to a jury panel, and appropriate directions given to the jury as to reliance on material other than evidence heard in court, come to the knowledge of the jury or otherwise prejudice the fairness of the criminal trial.

59. Given what I consider to be a real risk of serious prejudice to the criminal prosecution, and the Defendants to it, as well as the inconveniences and the derogation from open justice involved in a Trial 1 subject to the measures proposed by the SFO, I consider that it is clearly preferable to have the civil trial follow the criminal trial. That would mean postponing the currently fixed Trial 1.

60. The adjournment of a fixed trial date is almost always undesirable and something which the court will not order lightly. As Mr Justice Robin Knowles put it in PCP Capital Partners LLP v Barclays Bank plc [2017] EWHC 2897 (Comm) at [22], achieving justice includes timely justice.

61. Here, however, I think it is fair to say that the date for Trial 1 has been at risk, or perhaps it might be better expressed as being provisional, since it was set. It was inevitable that there would have to be an occasion at which the court could consider in the light of an informed understanding of what Trial 1 would involve, whether it was desirable or practicable for such a Trial 1 to precede the criminal trial. This is that occasion.

62. Furthermore, this is a case in which I consider that the Claimants will suffer limited prejudice from a delay. The nature of the claims is such that considerable time had already elapsed between the acquisitions of shares by the Claimants which are said to have caused loss, and the commencement of the claims. Further, Trial 1, even if it went ahead in October 2026, would, on no view, lead to a monetary award. Assuming that relevant elements going to liability were established at Trial 1, there would still need to be a Trial 2, and that would, on any view, happen after the criminal trial. Moreover, the civil claims are brought by professional investors and are about money. Delay in their receiving it can be compensated in interest. There has been no suggestion that Glencore will be less likely to be able to meet an award of damages if there is some delay.

63. Thus, I consider that the balance comes down in favour of an adjournment of Trial 1, even without regard to the prejudice which will be caused to Glencore, Mr Glasenberg, and Mr Kalmin if Trial 1 goes ahead as scheduled, applications for witness summonses in respect of A and B, having been refused because of the pendency of the criminal prosecution.

64. Given my conclusions above, that it would not be appropriate to accede to those applications if it meant A and B had to give evidence in advance of the criminal trial, this is, however, a real additional consideration. The only basis on which Trial 1 could go ahead is if the applications for witness summonses were refused. That, however, would

be prejudicial to Glencore, Mr Glasenberg, and Mr Kalmin in the way I have described. When that factor is taken into account as well, the balance, to my mind, comes down firmly in favour of adjourning Trial 1 until after the criminal trial as currently fixed is due to have been completed.

65. This, as it has been put by counsel on behalf of Mr Glasenberg, is the least bad option. It is, in my view, to use the language of Mr Justice Robin Knowles in PCP v Barclays at 21, the course that best serves the interests of justice.

66. I will hear further submissions on the length of the adjournment which is appropriate to order.

67. I should add two things.

68. First, it may well be that if the criminal trial does not proceed in accordance with the currently anticipated timetable, the court would be unwilling to contemplate a further delay of the civil trial. At that point, it might be that the court would regard the Claimants' legitimate interest in progressing their claims as meaning that it was expedient to have the first part of the civil trial in any event, even if there were inconveniences and potential pitfalls in hearing Trial 1 before the criminal trial.

69. The second is that what I will order is an adjournment of Trial 1, not a stay of these proceedings. I consider, as Glencore submitted, that it is likely that there can be steps taken in the meantime both to complete preparations for what is currently envisaged as Trial 1, and also to give consideration as to whether there are Trial 2 issues which can be progressed in the interim, and perhaps included within the deferred Trial 1.

70. It may well be that the date presently fixed for the PTR would be an appropriate opportunity for consideration to be given to those matters.

71. As to the applications for witness summonses, I have decided, in light of my decision as to the adjournment of Trial 1, that the best course is for those applications also to be adjourned. It seems possible that the considerations relevant to whether there should be witness summonses will be different, or at least will appear in a different light, if the question is being considered after the criminal trial.

72. As I have already indicated, I will hear submissions as to the precise terms of the order I should make to reflect what I have decided, and I will also consider the practicalities of what, if anything, can be made public of my decisions and this judgment.