Neutral Citation Number: [2020] EWHC 2114 (Ch)

Case No: BL-2018-002691

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice
Rolls Building, Fetter Lane, London EC4A 1NL

Date: 05/08/2020

Before:

MRS JUSTICE FALK

- -

Between:

VNESHPROMBANK LLC (a company registered and in liquidation in the Russian Federation)	**Claimant**
- and –	
(1) GEORGY IVANOVICH BEDZHAMOV	**First Defendant**
(2) UNIFLEET TECHNOLOGY LIMITED	**Second Defendant**
(3) PERSONS UNKNOWN (as defined in the Claim Form)	**Third Defendant**
(4) BASEL PROPERTIES LIMITED	**NCA Defendant**
(1) MAXIM GOLODNITSKY (2) BERKELEY SQUARE INVESTMENT PARTNERS LIMITED	**Third Parties**

Alan Gourgey QC & Jack Watson (instructed by **Keystone Law**) for the **Claimant**
Justin Fenwick QC, Daniel Saoul QC & William Harman (instructed by **Mishcon de Reya LLP**) for the **First Defendant**
Adam Baradon & Felix Wardle (instructed by **Signature Litigation LLP**) for the **Third Parties**

Hearing dates: 20 and 21 July 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE FALK

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.00 am on Wednesday 5 August 2020.

Mrs Justice Falk:

Introduction

1. This decision follows a two day hearing of an application made on 28 April 2020 by the Claimant ("VPB") for directions in respect of the conduct of a search of electronic documents obtained pursuant to a search order dated 27 March 2019 made by Arnold J. That order has already been amended, principally by two orders of Fancourt J, namely an order dated 1 April 2019 (the "Variation Order") and an order dated 10 April 2019 (the "Return Date Order"). Also of particular relevance is a consent order made by Mann J on 2 August 2019. References in this judgment to the "Search Order" are to Arnold J's order as amended.

2. The underlying claim relates to what VPB alleges is a massive fraud carried out by the First Defendant, Georgy Bedzhamov ("GB"), together with his sister Larisa Markus, who was President of VPB. VPB was declared bankrupt on 14 March 2016, and a Russian state corporation called the Deposit Insurance Agency ("DIA") was appointed to act as liquidator. The DIA's primary purpose is to maintain and operate a deposit insurance scheme, but under Russian federal law it also acts as the liquidator of failed Russian banks. As I understand it, VPB does not now undertake separate executive action, and acts solely through the DIA as liquidator.

3. It is alleged that GB was the *de facto* controller of VPB and used that position to perpetrate the alleged fraud. VPB claims damages for the substantial losses which are said to have resulted from the fraud, and further damages for causing VPB's bankruptcy. GB resists the claim, and denies his participation in any fraud.

4. The claim against GB was issued in December 2018, although the claim form was anonymised and the court file was sealed pending an application for freezing and search orders. The Search Order was initially obtained, together with a worldwide freezing order, without notice. The current status of the proceedings is that most of the disclosure is due to occur on 31 October 2020, and the timetable envisages a 40 day trial commencing in January 2022. There have been a number of case management hearings, including several disclosure guidance hearings, before Master Kaye.

5. I heard oral submissions from Mr Watson for VPB, Mr Fenwick for GB and Mr Baradon for the Third Parties. I am grateful to all of them for their clear submissions, but I should pay particular tribute to Mr Watson, junior counsel to Mr Gourgey, who had to prepare oral submissions at very short notice after his leader was taken ill.

The relevant orders

6. The Search Order permitted a search of premises in central London which were said in the affidavit evidence to be "GB's London office". In fact, the premises are rented by the Second Third Party, Berkeley Square Investment Partners Limited ("BSIP"), a company wholly owned and managed by the First Third Party, Maxim Golodnitsky ("MG"). MG is a friend of GB and they have conducted business transactions together. GB did visit the property regularly, but he did not have an office there. BSIP provides advice to a number of clients, of which GB is one.

7. Although BSIP and MG were referred to in the affidavit evidence, the court was not told that BSIP deals with clients other than GB and that their data could be on the premises. BSIP's clients are individuals who are generally exiles from the Russian Federation, and most are seeking or have been granted political asylum. Information provided by these clients to MG and BSIP includes sensitive personal and business information, including information that is legally privileged. Indeed, one such client was having a meeting on the premises with his immigration solicitor when the Search Order was executed.

8. The search party included the supervising solicitor, Fiona Simpson of Kingsley Napley LLP (the "Supervising Solicitor"), representatives from VPB's then solicitors PCB Litigation LLP ("PCB"), computer specialists from a firm called Consilio LLP ("Consilio"), and Dmitri Tchernenko of A1 LLC ("A1"), VPB's funder in this litigation. The role of A1 is discussed further below.

9. The Search Order permitted searches for hard copy documents and, of relevance to this application, electronic imaging of data stored on any electronic data storage devices "situated on the premises". Under paragraph 17A of Arnold J's order the copies taken were to be held by Consilio to the order of the Supervising Solicitor (who would hold them to the order of the court). Consilio would index or otherwise prepare the copies for searching, and VPB's solicitors and Consilio would then be entitled to search for "listed items", being items listed in Schedule B to the order. GB had to be given 24 hours' notice of any search, which would also need to take place under the supervision of the Supervising Solicitor and with GB and his legal advisers being entitled to be present. VPB's solicitors could take copies of listed items, subject to protection for privileged or incriminating material.

10. The listed items set out in Schedule B are primarily a list aimed at identifying GB's assets or assets under his control (defined as "Bedzhamov Assets"). There is however also a specific heading for documents relating to claims made by VPB in these proceedings.

11. The undertakings given in Arnold J's order included an undertaking (in paragraph (2) of Schedule C) that, pending the return date, VPB would not use any information or documents obtained:

> "…except for the purposes of (1) these proceedings…or (2) commencing or pursuing civil proceedings in relation to the same or related subject matter to these proceedings or (3) commencing or pursuing proceedings in this jurisdiction in connection with any Bedzhamov Asset…"

This reflects the dual purpose of the Search Order from VPB's perspective, namely both to secure assets and to obtain information relevant to its claims against GB.

12. The search was executed on Friday, 29 March 2019 (on which date GB was also served with the claim). Material from six data storage devices was selected for processing of which only one, a mobile phone, was GB's. The other devices comprised four computer hard drives and a phone belonging to MG. The resulting total of documents was 514,069.

13. On the day of the search both GB and MG obtained orders from the out of hours judge, Barling J. The order obtained by GB (the "Information Restriction Order") required all information or documents provided by him to be kept confidential to VPB's solicitors and the Supervising Solicitor. The order obtained by MG (the "Imaging Order") required the electronic images taken to be held by the Supervising Solicitor and not released until further order.

14. The matter then came before Fancourt J on Monday, 1 April 2019, VPB having applied to set aside both of the Barling J orders. This led to the Variation Order, varying the restrictions imposed by Barling J. Paragraph 1 of that order required that, pending the return date, all material relating to assets located in the Russian Federation had to be kept confidential to VPB's solicitors and English counsel. Material relating to assets located outside the Russian Federation could, solely for the purposes of obtaining instructions in relation to taking further steps in respect of those assets outside Russia, also be shared with Mr Tchernenko, with a representative of the DIA (Anna Shin) and with overseas lawyers. This was subject to undertakings as to the use of the material being provided by Mr Tchernenko and Ms Shin. As far as the Search Order was concerned, these undertakings were in similar terms to that given by VPB in the Arnold J order and set out at [11] above. The undertakings were required to be given both personally and on behalf of A1 and the DIA respectively. Undertakings in the form required were provided the following day, 2 April.

15. The Imaging Order was eased by paragraph 2 of the Variation Order, as follows:

> "The Imaging Order is varied such that the indexing or other preparation for searches (and subsequently, subject to (a) below, searches) of electronic copies referred to at paragraph 17A of the Search Order may commence but shall be subject to:
>
> a. 24 hours' written notice being given to Mr Golodnitsky's solicitors;
>
> b. Mr Golodnitsky and his solicitors having the right to be present at the searches; and
>
> c. the entitlement of the Applicant's solicitors[1] to take copies of any listed items found being subject to Mr Golodnitsky's right to prevent the Applicant's Solicitors from making a copy of any part of a document which the Supervising Solicitor believes to be privileged or incriminating."

16. The return date for both the freezing order and Search Order was 10 April. On that date Fancourt J continued both orders subject to a right for GB to apply to set them aside by a specified date. Provision was also made to allow a confidentiality club to be established, with a view to that replacing the regime in paragraph 1 of the Variation Order on an interim basis, pending resolution of any application by GB for continuing confidentiality restrictions. Any application for continuing restrictions was required to be made by 1 May 2019.

[1] That is, VPB's solicitors.

17. Paragraphs 7 to 9 of the Return Date Order provided as follows:

> "7. Paragraph 1 of the Variation Order shall continue to apply until a confidentiality club (if any) is formed, whether by agreement or by order of the Court…save that [there follows an immaterial variation].
>
> 8. The Claimant shall continue to be bound by the undertaking at paragraph (2) of Schedule C to the Search Order (which operates for the benefit of both the First Defendant and the Third Parties) until further order of the Court save that [there follows an immaterial variation].
>
> 9. Insofar as the restrictions contained in paragraph 1 of the Variation Order are replaced by the agreement of the parties or order of the Court, the undertaking given by Mr Tchernenko pursuant to the Variation Order (which operates for the benefit of both the First Defendant and the Third Parties) shall continue but only in respect of the non-use or disclosure of information contained in the documents that are not "listed items" as defined in the Search Order that were seen during the course of the execution of the Search Order on 29 March 2019 or the inspection of hard copy documents on 8 April 2019 (and shall not continue to apply in any other respect)."

The provision in paragraph 9 in respect of Mr Tchernenko reflected the fact that he had been part of the search party, and may have seen non-listed items in that capacity.

18. Paragraph 13 of the Return Date Order required VPB, as a condition of continuation of the Search Order, to pay the Third Parties' reasonable costs of compliance with the Search Order, to be assessed on the indemnity basis if not agreed, and to give the Third Parties a cross undertaking in damages, subject to the same fortification as provided for in the Search Order.

19. Morgan J made an order providing for an interim confidentiality club on 25 April. That order restricted the distribution of information and documents to PCB, English counsel, overseas lawyers instructed with regard to the preservation of assets and three named individuals at each of the DIA and A1, including Mr Tchernenko and Ms Shin. This was subject to undertakings from the four additional individuals in similar terms to those previously provided, but for themselves and not on behalf of their respective organisations.[2]

20. GB did not, in the event, apply for further confidentiality restrictions or otherwise to vary or set aside the Search Order. Mann J's consent order dated 2 August 2019 reflects this, recording that the "confidentiality restrictions contained in the Information Restriction Order, the Variation Order and the 25 April 2019 Order no longer apply", and that members of the confidentiality club were released from their

[2] The undertakings provided by these four individuals were not provided to GB's solicitors as required by the terms of the Morgan J order, and they only became aware of them when the bundle for this hearing was produced.

undertakings. The sole exception was that referred to in paragraph 9 of the Return Date Order, namely Mr Tchernenko's undertaking in respect of non-use or disclosure of items other than listed items.

21. The Third Parties were not represented at the hearing that led to the 25 April order, and were not notified of the consent order. It is clear from the correspondence that, until mid June 2020, their solicitors, Signature Litigation LLP ("Signature"), believed that the undertakings from Mr Tchernenko and Ms Shin were still in place.

Role of A1

22. A1 is VPB's litigation funder, and it was A1 that funded the original fortification of VPB's undertakings in the Search Order. An apparently associated entity based in the British Virgin Islands has since met some of the Third Parties' costs and paid further funds into court as part of an ongoing obligation to give security for GB's costs.

23. It is fair to say that A1's role is an unusual one that appears to go well beyond that of a conventional litigation funder. It is authorised by the DIA to manage the proceedings on its behalf. Mr Tchernenko, a senior staff member at A1, has what is described as day-to-day conduct of the proceedings, liaising as necessary with the DIA and being "under their supervision". Effectively, therefore, A1 is acting as the agent of the DIA (and thus VPB) for the purposes of this litigation. In particular, VPB's legal advisers take instructions from Mr Tchernenko and (at least when PCB was involved) he was said to be their primary point of client contact. I infer that, at least on a day-to-day basis, A1 are running the litigation.

24. Mr Tchernenko is an English qualified solicitor who is said not to be resident in the UK. He has been described as Head of International Dispute Resolution at A1.

Progress (or lack of it) with the search

25. Some, albeit slow, progress was initially made with the electronic images following the search. Consilio hosted the documents on a platform called Relativity. A protocol was developed which, in the iteration reflected in a report of the Supervising Solicitor dated 20 May 2019 (which was also the final report made before the date of this hearing), provided for documents that responded to search terms provided by PCB to be batched. Initial checks for privilege and incrimination would be made first by Signature (in respect of the Third Parties' dataset) and by GB's solicitors Mishcon de Reya LLP ("Mishcon") (in respect of items promoted to that stage by Signature and in respect of GB's dataset), subject in each case to confirmation of privilege or incrimination by the Supervising Solicitor. Remaining documents in the batch would then go to PCB for review. Documents regarded by PCB as listed items would be released back to Signature and Mishcon to consider, with disputes as to whether they were listed items being referred to the Supervising Solicitor. Only documents agreed to be listed items would be released to PCB to deal with as permitted under the Search Order.

26. It appears that by the beginning of July 2019 of the order of 4000 documents may have started this process, of which around 2000 had made their way to PCB to determine their status as listed items. However, on 3 July 2019 PCB went off the record and was replaced by Keystone Law ("Keystone"). There was then a complete

hiatus until October 2019, when Keystone started to put in place undertakings that would allow it to replace PCB in the Search Order process. That process completed in January, but there has since been no resumption of the search process. GB and the Third Parties lay blame at VPB's door, pointing not only to the delay following the change of solicitors but to an apparent inability or unwillingness to reconstruct what PCB and Consilio had previously done, including a repeated failure to confirm what items had in fact so far been agreed to be listed items. They also highlight other matters such as data breaches (in particular a data breach at Consilio which allowed Mishcon to view data of the Third Parties before it had been reviewed by Signature), and a failure to pay any of the Third Parties' legal costs incurred after 1 December 2019 in accordance with what the Third Parties considered to be an agreed monthly payment mechanism. As discussed below, additional concerns also arose around further work Keystone had done in relation to the data. VPB in turn points to what it says were delays and unreasonable demands by GB and the Third Parties, and what it claims to be excessive costs incurred by the latter.

Search protocol

27. By the end of the hearing before me, sufficient progress had been made to allow the search process to be restarted, using a protocol similar to the one agreed in May 2019 but with further refinements. Among other things, points determined or agreed by the end of the hearing included:

    i) clarity that it is the responsibility of Keystone/VPB and Consilio to establish the status of documents reviewed, or partially reviewed, to date (including whether they are agreed listed items, whether they have been reviewed for privilege/incrimination, and by whom). Related to this, both Consilio and the Supervising Solicitor will provide a formal update as to the position to date;

    ii) determination that the c.27,000 documents most recently identified by Keystone for review will be reviewed, rather than trying to restrict the search terms further;

    iii) determination that disputes as to the status of a document as a listed item (or in respect of privilege or incrimination) which are not successfully resolved by the Supervising Solicitor will be referred to the court;

    iv) an agreement by all parties to use reasonable endeavours to progress the review expeditiously, and to provide weekly updates;

    v) agreement that documents determined not to be listed items will not be accessible by VPB, and that, unless otherwise agreed by GB and the Third Parties, no further searches will be run on them on behalf of VPB without the court's permission, but those documents will be retained until the conclusion of the proceedings (or further order);

    vi) agreement that all parties will be copied in to communications with Consilio (except in respect of its retainer); and

vii) determination that, pending resolution of the matters addressed in this judgment, VPB's legal team will not share any listed items with VPB or any other person.

28. The main issue left outstanding related to confidentiality, or more accurately to the dissemination and use of listed items. GB and the Third Parties requested that undertakings be required to be obtained from any individuals at the DIA to whom any listed items were proposed to be provided, to the effect that information or documents would not be used other than for the purposes of these proceedings, or for commencing or pursuing proceedings in this jurisdiction in connection with any Bedzhamov Asset. They also said that A1 should be entirely prohibited from reviewing listed items, or alternatively that every individual A1 employee who reviewed them should give the same undertaking.

29. Undertakings had also been requested from individual Keystone lawyers and/or paralegals in respect of their review, but that was resolved at the hearing by a decision that Keystone should keep a record, which would be shown to the court in the event of an issue arising, of all Keystone personnel who have access to the material obtained under the Search Order, and would remind them of the obligations it owes (which include an existing contractual undertaking provided by Keystone, as well as undertakings to the court). In relation to counsel instructed in this jurisdiction, VPB was content that they provide undertakings similar to those already provided by Keystone.

The Third Parties' costs

30. The Third Parties made an application on 2 July 2020 in relation to payment of their costs, which was listed to be heard at the same time as VPB's application for directions. In the event, this was largely settled by consent shortly before the hearing started, subject to two issues that I determined at the hearing, namely the time within which an interim payment should be made and an issue as to whether the costs of the application were not reasonably incurred (which I determined against VPB).

31. The effect of the agreement is that an agreed proportion of outstanding costs will be paid on account (50% to the Third Parties and 30% into court), with monthly payments on a similar basis in respect of ongoing costs.

Confidentiality and undertakings sought: introduction

32. As already mentioned, both GB and the Third Parties sought an undertaking from every individual at the DIA who reviews listed items, and requested that A1 representatives should either not be permitted to review them or should each give a similar undertaking. The proposed undertaking would prevent use of information or documents without permission of the court except for the purposes of these proceedings or for commencing or pursuing proceedings in this jurisdiction in connection with a Bedzhamov Asset. It would also require the signatory to submit to the jurisdiction of the English courts in respect of any dispute arising from or relating to the undertaking and to provide an address for service in the jurisdiction.

33. The justification for seeking to narrow the undertakings as compared to the terms of the Search Order and undertakings given pursuant to that was that the permission

previously given for use in "civil proceedings in relation to the same or related subject matter" (see [11] above) was broader than the normal rule in CPR 31.22, which only permits document to be used for the purposes of the proceedings in which they were disclosed. Whilst the broader form of permission was typically given to search order applicants in the immediate aftermath of a freezing and search order, it was said that it was not an appropriate concession at this advanced stage of the proceedings, when the freezing and search orders had been in place for more than a year.

34. VPB objected to this. It pointed out that no application had been made to this effect and undertakings were being sought informally as part of the responsive evidence to the directions application. However, the fundamental objection was that what was sought was said to be wholly inconsistent with Mann J's consent order. Whilst the Third Parties were not party to that order, it was submitted that MG knew from April 2019 that any confidentiality restrictions would depend solely on the position between GB and VPB. In any event, the approach was inconsistent with the Return Date Order, and the Third Parties were effectively seeking to vary that order. Furthermore, the undertakings went beyond what was in place previously, requiring submission to the jurisdiction and an address for service. It was clear from *Tibbles v SIG plc* [2012] 1 WLR 2591 that the court's discretion under CPR 3.1(7) would normally only be exercised where there had been a material change of circumstances or where the facts on the basis of which the original decision was made were misstated. There was no suggestion of misstated facts, and there was no change of circumstances to justify what was proposed.

CPR 31.22 and use of material for other proceedings

35. During submissions by Mr Watson for VPB on the first day of the hearing it was clarified (a) that both the DIA and A1 accept that they are subject to the restrictions contained in CPR 31.22[3] and (b) in response to a question from me, that (despite the wider provisions in the amended Search Order) it was accepted that listed items would be used only as permitted by CPR 31.22, namely for the purposes of these proceedings. In relation to (b) Mr Watson asked for an opportunity to confirm his understanding to that effect during a transcriber's break. I permitted that, and emphasised the importance, including in ensuring that there was no conflict between the search order process and the "mainstream" disclosure process that was now proceeding in parallel. Nothing more was said on this point on day one, and in their submissions Mr Fenwick for GB and Mr Baradon for the Third Parties proceeded on the basis of that understanding.

36. However, in reply near the end of day two Mr Watson sought to maintain the ability of VPB (including the DIA and A1 if acting through it) to use listed items for related proceedings in accordance with the terms of its original undertaking, on the basis that there had been no application to vary it, and indeed submitted that if that was the case then any undertakings given by the DIA and A1 should mirror VPB's. He pointed to the dual purpose of the Search Order, namely to obtain information about GB's assets as well as information relevant to the claim.

[3] This was stated in Ms Bloom's witness statement of 13 July (referred to in [44] below) but was only confirmed in respect of the DIA in VPB's skeleton argument for the hearing, and not made clear in respect of A1.

37. In my view this point was raised too late, and should at the very latest had been clarified at the start of day two, before Mr Fenwick and Mr Baradon made submissions on the basis that the concession had been made. I, as well as Counsel, had proceeded on the basis of that concession, taking account of the fact that a period of 16 months has elapsed from the date of the Search Order and that the litigation is now in a disclosure phase. I indicated during reply that I was strongly minded to bring all undertakings into line, reflecting CPR 31.22, subject to liberty to apply for permission to use documents in other proceedings. Further reflection has confirmed this view. It is a narrowing of the existing undertakings, but it reflects the fact that it was the basis on which I heard most of the arguments and the stage that the litigation has now reached. In my view VPB is appropriately protected by the ability to seek permission of the court to use documents for other purposes.

38. The one exception to this is that, in line with the third limb of the undertaking in the Search Order and the form of the undertaking proposed by GB and the Third Parties prior to the hearing, use for the purpose of commencing or pursuing proceedings in this jurisdiction in connection with any Bedzhamov Asset should be permitted. This reflects a key purpose of the Search Order, namely to secure assets. Permission can of course be sought in respect of similar proceedings in other jurisdictions, and can be expected to be forthcoming in respect of appropriate action to secure assets pending resolution of the dispute.

The Third Parties' position and the release of the undertakings

39. In relation to the Third Parties, the first important point to make is that they are just that. They are not defendants in this litigation. They have also not been the subject of any direct action against them, whether for third-party disclosure (in which event they would have searched their own documents to identify relevant material), or as a non-defendant respondent to a search order. It is worth noting that before granting a search order against a non-defendant the court would require it to be shown that there was a real risk of destruction or concealment of evidence (*Abela v Baderaani (No.2)* [2018] 1 WLR 89 at [32]). No such allegation has been made in respect of the Third Parties, and the Search Order was not in fact made against them, even though it seems that the great majority of the electronic material obtained belongs to the Third Parties.[4]

40. With the benefit of hindsight, it is fair to say that the Third Parties' position under the amended Search Order is less clear than would ideally have been the case. Having not been made aware that the relevant office was not GB's office and that much of the material seized might belong to the Third Parties (given that the Search Order extended to electronic devices "situated on the premises": see [9] above), the court was obviously intending to put in place provisions that protected them. That is the effect of the Imaging Order as varied by the Variation Order. The Return Date Order explicitly refers at paragraph 9 to Mr Tchernenko's undertaking operating for the benefit of both GB and the Third Parties. There is a similar comment at paragraph 8 in respect of VPB's undertaking in paragraph (2) of Schedule C to the Search Order. However, it is the case that the procedure put in place to establish a confidentiality club, and any continuing confidentiality restrictions, did not explicitly involve the Third Parties, and they neither appeared before Morgan J on 25 April, nor were they

[4] For example, only about 7.5% of the pool of c.83,000 documents referred to at [81] below derives from GB's phone.

notified of the subsequent consent order. As mentioned at [21] above, they believed that undertakings were still in place as late as mid June 2020.

41. Paragraph 9 of the Return Date Order (set out at [17] above) can certainly be interpreted as envisaging that the undertakings would fall away (apart from Mr Tchernenko's undertaking in respect of non-listed items) on agreement between the parties or order of the court. On its explicit terms, the consent order has that effect. However, given the clear relevance of the undertakings to the Third Parties that strikes me as an odd result. It is certainly arguable that the words "insofar as… replaced" indicate that what the court envisaged was some form of replacement regime that provided protection. In any event the absence of any notice to the Third Parties of the proposed loss of protection, and therefore of any opportunity to object, is notable. That is particularly so against the background to the grant of the Search Order and the fact that the court was unaware of whose office it was. If the court had fully appreciated the position, I expect that it would at the least have wanted to give the Third Parties the opportunity to be heard before the undertakings were released.

42. Mr Watson suggested that the agreed protocol provided appropriate protection, because under its terms only listed items would be passed on by VPB's solicitors to its client or anyone else. Documents that have nothing to do with GB and, for example, relate to other clients of BSIP, would simply not be listed items. However, that protocol was not agreed by the date of the Return Date Order. Furthermore, the protocol does not provide a complete answer to the Third Parties' concerns. As Mr Baradon explained, they have a legitimate concern about material obtained from their devices being treated as listed items in a way that compromises confidentiality, and in particular client confidentiality. This concern extends not only to material that does in fact relate to GB in some way but may relate to another client as well, but to material which may be considered to be a listed item at this stage but which may turn out at trial not to relate to GB at all.

43. Signature's belief that the undertakings continued is not only clear from the correspondence but was shared by Keystone, at least as recently as 28 April 2020. A witness statement given by Anya Bloom, a partner of Keystone, on that date contains an explicit statement that "Mr Tchernenko's and A1's undertakings have been in place for some considerable time". There were also references to both Mr Tchernenko's and Ms Shin's undertakings in a letter dated 1 April 2020 as a reason not to identify persons to whom information had been provided or provide undertakings. It is quite clear from the witness statement and this letter that Keystone was at that stage under the impression that the undertakings were still in force, and would continue to provide protection if documents were provided in the future.

44. Signature only became aware of the release of the undertakings by copy of a letter to Mishcon dated 15 June 2020, and sought urgent confirmation of the position by a letter dated 17 June. No response was received until Ms Bloom's seventh witness statement was produced on 13 July, which maintained that the undertakings were indeed released (subject to the caveat already mentioned in respect of Mr Tchernenko and non-listed items).

45. The failure to confirm the position to the Third Parties, and an attempt in submissions to argue that Keystone had not been under the impression (and indeed given the impression) that the undertakings continued, was notable, and unattractive.

Circumstances relied on to justify fresh undertakings

46. The starting point to the request for undertakings from the DIA and A1 was that, on its express terms, CPR 31.22 only applies to parties to litigation, and binds third parties only under an implied undertaking against collateral use (see *Riddick v Thames Board Mills* [1977] QB 881 at 896 and 901-2). As that case makes clear, the existence of such an undertaking is a matter of public interest, to encourage openness and fairness. It is in the interests of the proper administration of justice. It is also important that the protection should be capable of being enforced: Stephenson LJ at p 902A. *Riddick* approved the approach taken in *Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd* [1975] QB 613, which emphasised that those who disclose documents on discovery (now disclosure) are entitled to the court's protection against use of the documents otherwise than in the proceedings, and that protection extends to use by any person into whose hands the documents come, unless that use is directly connected with the proceedings in question.

47. Given the role of the DIA and A1 it is not surprising that GB and the Third Parties were concerned to ensure that the principle now reflected in CPR 31.22 was understood and would be observed by those organisations and their representatives. Concern was expressed that it is not clearly established that a third party who breaches the implied undertaking can be committed for contempt. It was also noted that the court is prepared to put confidentiality clubs in place where a real risk is established of use for a collateral purpose (*Libyan Investment Authority v Société Générale SA* [2015] EWHC 550 (Comm) at [21]).

48. However, the key prompt for the request for undertakings from GB's perspective was the refusal by A1 and three of its employees, including Mr Tchernenko, to submit voluntarily to the jurisdiction of the English court for the purposes of harassment proceedings issued by GB on 6 March 2020, insisting instead that Hague Service Convention procedures be followed, which Signature suggested will in practice take between 18 months and two years. The harassment proceedings relate to alleged undercover surveillance of GB and his family in late 2018 and early 2019, together with a press campaign in Russia in August 2019 offering a reward for information about his assets, and (importantly) a similar campaign in the UK in December 2019. That campaign involved adverts in the London Evening Standard and City AM newspapers and billboards driven around central London, seeking information in relation to GB's assets in return for a reward. It is worth noting that A1 claimed that its conduct, including the billboard campaign, had been for the purpose of "policing" the freezing order.

49. Mishcon wrote to Keystone on 12 March seeking express undertakings from A1 and DIA individuals about collateral use of search material documents, and the appointment of English solicitors to accept service. That was refused.

50. The DIA is not a defendant in the harassment proceedings (although A1 has said in correspondence that the DIA was consulted about and agreed to a publicity campaign). However, a concern is expressed about the lack of visibility as to who at the DIA would inspect documents and whether they were familiar with and intended to respect the English rules against collateral use.

51. GB also relied on other matters which Mr Fenwick submitted showed that the DIA was not acting as a responsible liquidator. In particular, he pointed to the fact that the DIA and its Russian lawyers had continued to seek to uphold a judgment against GB in Russia for unjust enrichment (a judgment which had been used as a foundation to bankrupt him there) which included a claim for receipt of around RUB 2 bn which, according to a report prepared by the DIA itself and which had not been shared with the Russian court, was a sum that GB had not in fact received. GB had to make an urgent application to this court in November 2019 to allow him to use the report, which had been in evidence in the application for the freezing order, in the Russian proceedings. Following that the DIA has continued to resist GB's attempt to overturn the judgment.

52. GB also relied on resistance by the DIA to requests by GB for permission to pay rent on family homes, what he claims was an inappropriate attempt by the DIA's Swiss lawyer to frustrate a sale of shares permitted by Morgan J, and what Mr Fenwick described as repeated heavy applications, in the form of an application for summary judgment and an application to join another entity, which were withdrawn after GB had been put to the effort and cost of providing evidence in response.

53. In relation to A1, GB pointed to the fact that it is not subject to the Code of Conduct for Litigation Funders published by the Association of Litigation Funders (which includes a requirement that the funder will not seek to influence the party's solicitor or barrister to cede control to the funder) and said that, if it was really necessary for A1 personnel to inspect documents at all, then there should be clarity as to exactly who would have access.

VPB's response to the request for undertakings

54. As already mentioned, VPB objected to the undertakings on the basis that there was no relevant change of circumstances, and they in any event went further than the undertakings previously given. Both the DIA and A1 accepted that they were subject to CPR 31.22. The DIA and A1 had been involved from the outset and were obviously based in Russia. Both were prepared to accept that, if permission was given to serve outside the jurisdiction, they would not insist upon service under the Hague Service Convention and would not oppose an order for alternative service. No evidence had been produced to suggest that there was any risk of misuse of documents.

55. Mr Watson submitted that there was a concern that if addresses for service are given in the UK then that would encourage GB to make unfounded committal applications. The requirement that, in order to serve out of the jurisdiction, he must show a serious issue to be tried provided a safeguard whilst providing comfort to the court that any obligations were capable of enforcement.

56. The suggestion that the DIA was not behaving as a responsible liquidator was rejected. The position in respect of the Russian unjust enrichment proceedings was that GB was estopped from contending that he had not received the funds. In any event there had been no change of circumstances since the date of the Return Date Order and there was no link to any concern about a failure to comply with CPR 31.22. The complaint about opposition to payment of rent was neither a change of circumstances nor indicated any risk of misuse of documents. Similarly, opposition to

the Swiss share sale occurred before the Search Order was made, and a clear explanation for what had happened (which was said not to involve misconduct) had been provided. The application for summary judgment was withdrawn only once it became clear that GB proposed substantially to amend his defence, and the application to join a further entity was withdrawn with liberty to restore, so as not to prejudice the trial date.

57. VPB's position in relation to A1 is that it must be able to review relevant documents given the authority it has to give instructions to the legal team on VPB's behalf, and there has been no relevant change of circumstances as to its involvement. As regards the alleged harassment campaign, matters occurring in late 2018 and early 2019 could not constitute a change of circumstances, and in any event VPB's position was that there was nothing prima facie wrongful about undertaking surveillance on someone whom Ms Bloom described as a "known fraudster", and seeking information in relation to his behaviour. I should make clear that it was inappropriate for Ms Bloom to describe GB as a "known fraudster" in circumstances where that remains to be determined in these proceedings, and where Russian criminal proceedings in respect of GB are also not concluded.

Discussion

58. I have concluded that it is appropriate to restrict disclosure of documents obtained pursuant to the Search Order. The restriction would be on terms that the release of documents to employees of the DIA and A1 would be permitted, subject to the provision of undertakings not to use the documents except for the purposes of these proceedings or proceedings in this jurisdiction in connection with a Bedzhamov Asset.

59. The terms of the undertakings would require submission to the jurisdiction and the provision of an address for service in England and Wales. Consistent with the undertakings required by Fancourt J, I consider that an appropriate individual from each organisation should give the undertaking both on their own behalf and on behalf of their organisation. Any other individuals who need to be involved in any document review would give undertakings only for themselves, in the same way as contemplated by the order of 25 April 2019.

60. Permitting VPB's legal team to share documents with representatives of A1 as well as the DIA reflects the reality that VPB's legal team is reliant on them for instructions. As an English qualified solicitor, the requirement for an undertaking should certainly not be onerous for Mr Tchernenko, who appears to be the primary individual concerned.

61. The starting point for my conclusion is the respective roles of the DIA and A1 in this litigation. VPB is subject to the court's jurisdiction as a result of bringing the claim (and has supplied an address for service), but in reality VPB does not exist as an independent entity. It acts solely through its liquidator, the DIA. In turn, the DIA has chosen to delegate control of the litigation, at least on a day-to-day basis, to A1.

62. A1, as has already been explained, has a role that is far from that of a normal litigation funder. It is not only funding but, at least on a day-to-day basis, controlling the conduct of the proceedings. It is individuals at A1 to whom VPB's legal team

appear to turn for their instructions. A1's evident interest and unusual role is also amply demonstrated by the surveillance and advertising campaign that it has conducted. Since the activities complained of are the subject of separate proceedings I will not comment further, beyond reiterating what I said at the hearing. Even for alleged fraudsters, conducting a newspaper and billboard campaign are not, so far as I am aware, normal hallmarks of litigation in this jurisdiction.

63. In principle there seems to me to be no good basis to conclude that, given its particular role, A1 should be in a better position than a party to the litigation. Any party would submit to the jurisdiction. In substance, A1 is acting as if it were a party. Although the DIA's role as liquidator is a more conventional one, and I do not suggest that it would be right as a general matter to say that a liquidator of a company should submit to the jurisdiction (at least in its own capacity) simply because it causes the company to bring proceedings, this is not a conventional case, because it appears to have handed control to A1.

64. Through its conduct of the litigation, A1 (and through it the DIA, on VPB's behalf) seek to benefit from the procedures of the English court, and specifically seek to make use of material seized pursuant to a search order, which has been described as a "nuclear weapon" in the court's armoury. As beneficiaries of such an order, they are in a position of power, but with that comes responsibilities. That is always the case, but it is particularly so with this Search Order, because the great majority of the material seized is derived from devices that were not under GB's control. It is also relevant that this would not have been apparent to the court at the time the Search Order was granted. I do not consider that the absence of any application to set aside the Search Order affects the court's ability to take account of this fact. There are many reasons why such an application may not have been made, and its absence does not mean that there are no concerns relating to the Search Order as made.

65. The court's duty to protect the Third Parties, quite apart from GB, is obvious. The extent to which it is intended that individuals from the DIA and A1 will review listed items, which may in some cases transpire not properly to relate to GB at all (see [42] above), and which will certainly extend to material not under GB's control, is unclear.

66. Although it has been clarified that the DIA and A1 accept that they are subject to the restrictions in CPR 31.22, that is not the same as confirming that all the individuals involved understand what that involves, and will comply with English law requirements. The point has also been confirmed by VPB's legal advisers rather than directly, and on instruction by persons who are not, strictly, their client. It is principally these features that have led me to conclude that in this particular case, where the identity, roles and indeed number of the individuals are wholly unclear (apart from Mr Tchernenko), it is appropriate to require undertakings from individuals as well as the organisations.

67. I do not accept the "concern" raised about unfounded committal applications. If GB or the Third Parties were sufficiently ill-advised to make such applications (which I doubt) then the court would give them short shrift. There are very significant protections in relation to such applications, including among other things the requirement for affidavit evidence. There is no good reason why the persons concerned should benefit from any further protection beyond the (considerable) safeguards available to any other person faced with an application for committal.

68. Confirmation on instruction that the DIA and A1 would not "oppose" an order for alternative service is not the same as an agreement to accept service and provision of an address for service. I reach that conclusion without any need to refer to two Russian cases relied on by Mr Fenwick (without input from a Russian legal expert) as to the Russian court's approach to the recognition and enforcement of proceedings not served pursuant to the Hague Service Convention. In particular, an agreement not to oppose does not prevent a jurisdictional challenge and it does not amount to a positive agreement to accept that service is validly effected.

69. I accept that, ordinarily, a material change of circumstances is required to depart from a previous order. As explained further below, I am satisfied that there is a sufficient change of circumstances. However, I should also make it clear that the guidance in *Tibbles* is not absolute. The purpose of that guidance is to ensure finality, by preventing litigants having two bites at the cherry and undermining the normal appeal process. It cannot be the case that the court is precluded from intervening where it identifies a real area of concern, in this case the public interest in ensuring that protections against collateral use are properly enforced: see [46] above. The court must be able to regulate and enforce its own procedures.

70. I also accept that none of the issues raised by GB or the Third Parties provides specific evidence of risk of misuse of documents. However, I think the cumulative effect of the concerns raised, together with the voluminous witness statements and correspondence to which I have been referred and points that emerged during the course of submissions, have persuaded me that undertakings along the lines I have described are appropriate in this case.

71. Features of particular note are as follows.

72. The advertising campaign, and in particular the newspaper and billboard campaign in London with the stated aim of "policing" the freezing order, together with the refusal to submit to the jurisdiction in the harassment proceedings, clearly postdate the Search Order and in my view constitute a material change in circumstances. A campaign of that nature is not normal behaviour in litigation, even where a freezing order is concerned. The DIA cannot simply disassociate itself from this, bearing in mind that it appears to have effectively handed control of the litigation to A1. The refusal to submit indicates active resistance to the court's jurisdiction, including in respect of conduct that took place in this jurisdiction.

73. As far as the Third Parties are concerned, I also regard the absence of notice in relation to the consent order, and the failure to make clear that the confidentiality restrictions had fallen away, as material changes. The fact that any items disclosed to the DIA or A1 should be limited to listed items does not fully allay the Third Parties' concerns: see [42] above.

74. There are legitimate concerns about the way in which VPB (and therefore the DIA and A1, who is instructing VPB's legal advisers) has dealt with the Search Order process to date. The most obvious of these is the extremely significant delay, which combined with the uncertainties over the process have clearly caused prejudice to BSIP's business (which is reliant on the confidence of its clients), as well as cost. The significant delay contrasts with a principal stated reason for seeking the Search Order, namely to enable GB's assets to be identified and secured.

75. In my assessment the delays that have occurred are at least in material part the responsibility of VPB. Although VPB is justified in some criticism of GB and the Third Parties, for example in relation to the nature of certain demands made before searches could be resumed, the primary responsibility is that of VPB and those controlling its conduct of this litigation. It is VPB's Search Order. It holds the firepower, and the data is held by the firm instructed by it, Consilio. It is VPB's responsibility to ensure that the process is properly implemented, and without undue delay. The roles of GB and the Third Parties are responsive. For example, an issue raised by Keystone about alleged inconsistent coding of documents in the Relativity system is essentially a matter for VPB given the manner in which the available codes were set up in the system and the way in which PCB requested the processing of documents to be confirmed, and bearing in mind that it was agreed at a relatively early stage that the initial review to be conducted by Signature and Mishcon would be for privilege and self-incrimination only.

76. Significant problems were caused by, or followed, VPB's change of legal advisers. These problems were not limited to delay following PCB ceasing to act. VPB's advisers have for months appeared to be either unwilling or unable to answer basic, but important, questions about what work had been done while PCB were instructed and what processes had been carried out. There appears to have been a failure of record keeping, or an inadequate handover, or both. A key example of this is a failure to identify what items had already been determined to be agreed listed items. Mishcon had repeatedly requested access to such documents in four letters between 1 May and 8 July 2020. Indeed by the end of the hearing the question of what documents were agreed listed items was still not clear. That is not a minor point. The Search Order included an undertaking by VPB's solicitors that they would answer "at once" to the best of their ability any question about whether a particular item is a listed item. The undertaking is standard and is included in search orders for good reason.

77. Ms Bloom's seventh witness statement exhibited a significant number of WhatsApp messages between GB and MG. They were said to be relevant as demonstrating the nature of their friendship and their business dealings. However, neither of those points is in dispute and it is far from apparent that the messages had any real relevance to the matters for decision at the hearing. Although it was suggested that they may have been relevant to the costs application (see [30] above), I am not persuaded that they were necessary for that purpose. But there are also two other important points.

78. First, the messages provide a stark illustration of the failure to clarify what items were agreed listed items. Whilst VPB's position was that they were agreed listed items, and it was obvious that they had also been seen by those instructing Keystone, their status as such was not understood by either GB's or the Third Parties' advisers. Both Signature and Mishcon raised concerns immediately after service of the witness statement on 13 July, and requested confirmation of whether they were listed items. Mr Fenwick made submissions on the basis that the messages appeared not to be agreed listed items, in which case they had been wrongly disclosed to VPB (and others). Mr Baradon had to make submissions on the basis that they either were or were not listed items. This was not for want of attempts to understand the position. Mr Watson did state in reply, late on the day of the second hearing, that he had been told that PCB had confirmed that they were agreed listed items, but that did not it seems to me fully resolve the doubt. This is unsatisfactory. A point of that significance should

have been clear, and properly explained to the other parties in *inter partes* correspondence. There should never have been scope for the level of confusion that I saw.

79. Secondly, the exhibit as originally filed with the court, for a public hearing, included sensitive information contained in the messages such as private telephone numbers, bank details and email addresses, which appeared to show little concern about confidentiality. I made it clear that I have not reviewed the messages and have not taken their contents into account, and I have made an order pursuant to CPR 31.22(2) prohibiting their use even though they have been referred to at a public hearing. However, the approach to the messages justifies concern about a lack of care over confidential information.

80. The Supervising Solicitor has not prepared a report since May 2019. She was not represented at the hearing. That is itself unusual, and indeed it might have been expected that the Supervising Solicitor would be the natural applicant for directions. That is not a criticism of the Supervising Solicitor (which I am not in a position to make), but rather a comment on what appears to have been a concerning breakdown in the process.

81. There are particular concerns about how VPB arrived at the current proposed set of around 27,000 documents for review. At the end of January GB and the Third Parties thought they had agreed to a review of around 46,000 documents (the "46k Pool"), which they thought had been cut down from a pool of around 83,000 documents (the "83k Pool") identified by PCB by the application of 471 search terms. But confusion, as well as disagreement, arose when it became apparent that Keystone also wished to consider the 83k Pool, and it transpired that the 46k Pool was not a simple subset of the 83k Pool (it turned out that there are some 18,000 documents in the 46k Pool which do not form part of the 83k Pool). Additional costs were caused by an inability to explain what search terms or other processes had produced the 46k Pool and by an (ultimately allayed) concern that documents already reviewed would need to be reviewed again. In a further shift of position – albeit one that does, at least, now reduce the scale of the task – Keystone then wrote at the end of May 2020 saying that it had proved possible to reduce the number of documents to be reviewed to around 27,000. This pool is an amalgam of some of the documents from each of the 46k Pool and 83k Pool.

82. This in turn produced a further, understandable, concern on the part of the Third Parties that Keystone had been running searches without their involvement. This is discussed further below, but I was particularly concerned to be shown a comment from Consilio in the correspondence referred to in the next paragraph warning Keystone that "significant details" can potentially be derived from the reports that are generated by successive applications of search terms to arrive at a cohort of documents to be reviewed. Keystone's position was that what it was doing did not amount to searches, and presumably it therefore considered that it could show the results of the work to those instructing it. However, by definition the reports related to material which, in large part, will be material belonging to the Third Parties which may well not be listed items. The ability to derive information from those reports to my mind clearly risks compromising the confidentiality of non-listed items, and the agreement that such items will not go beyond Keystone to anyone instructing it.

83. For many months neither Mishcon nor Signature were provided with details of correspondence with Consilio, which they had asked to see (and which it has now been agreed that they should see on an ongoing basis, in line with what they thought PCB had agreed on VPB's behalf). They were belatedly provided with over 300 pages of correspondence on 6 July, relatively shortly before the hearing.

84. The Third Parties have also been particularly, and justifiably, concerned about the failure to pay any amounts in respect of their costs for work done since 1 December 2019.

85. All these matters, put together with other matters such as the data breach, have led not only to frustration on the part of GB and the Third Parties and their respective legal teams, but to an understandable lack of confidence in VPB's management of the search order process, concern about what is seen as a lax approach to confidentiality and control over execution of the search, and increased costs in trying (and often failing) to identify what has happened or is happening. A number of VPB's complaints about alleged lack of cooperation and delay, as well as the request for undertakings, need to be seen in the light of this. It is, frankly, wholly unsurprising that the process has entirely broken down.

86. Any litigant executing a search order must do so with care and responsibility. However, the position is particularly acute in this case given the fact that the data seized is primarily that of the Third Parties, and because of the particular sensitivities in relation to the Third Parties' own clients and their concerns about access to their data by the Claimant or by persons linked, or perceived to be linked, to it. Those concerns cannot simply be dismissed as irrelevant or illegitimate.

87. I have not placed weight on GB's assertion that the DIA was not acting as a responsible liquidator, subject to one point, which is a continued concern about the Russian unjust enrichment proceedings. The explanation given is, essentially, that the lawyer tasked with obtaining judgment against GB was not aware of the DIA report, which in any event was produced after the initial judgment was obtained, and this was made clear in the evidence used to secure the Search Order. Furthermore, it was explained that the lawyer who used the judgment to petition for GB's bankruptcy was also not given access to the DIA report. That may very well be the case, but it does not by itself justify the fact the DIA resisted, and has continued to resist, attempts to appeal or otherwise reopen a judgment in respect of an amount which its own report has found not to be due.

88. I should emphasise that, at this stage, I have reached the conclusion that I have in respect of undertakings solely in relation to material derived from the Search Order, rather than in respect of material derived from disclosure. Although some of the reasons for my conclusion would also apply to material derived from the disclosure exercise, a number do not.

Foreign lawyers and experts

89. The starting point for the undertakings sought by GB and the Third Parties was a provision in GB's mark up of the draft order that no disclosure of listed items should be made to anyone other than a party to the litigation. The mark up contemplated exceptions either for DIA employees or for any foreign lawyer engaged by the DIA,

subject to an undertaking being given in the terms already discussed (including submission to the jurisdiction).

90. The position of foreign lawyers was not determined at the hearing. The position of experts was also not discussed, although it had previously been raised by Keystone.

91. Bearing in mind that under the terms of the order permission will in any event be required to use material for the purposes of proceedings in other jurisdictions, I accept the principle that disclosure to persons other than VPB and its English solicitors and counsel (as to which see [29] above) should be subject to restrictions. I consider that it is appropriate to permit disclosure to foreign lawyers subject to a requirement to provide undertakings, as GB's mark up provides (in addition to permitting disclosure to DIA and A1 employees subject to undertakings, as discussed above). If and to the extent that the requirement to provide an undertaking in the specified form proves problematic in respect of a foreign lawyer, the inclusion of a general liberty to apply should assist. That liberty to apply would also be available to seek permission to make disclosure (subject to suitable undertakings) to any experts that it proves appropriate to involve.

Breach of orders?

92. Mr Baradon for the Third Parties submitted that the processes undertaken to revise the dataset down to c.27,000 documents has involved VPB running searches without notice to the Third Parties (or GB), in breach of the Search Order as amended by paragraph 2 of the Variation Order (see [15] above). The Third Parties' concern is that the reports produced as part of this process betray highly sensitive, and irrelevant, information relating to the Third Parties' personal and business affairs, for example as to business opportunities being pursued, business strategy, and the level of business activity and contact between the Third Parties and others. Keystone has not identified with whom it has shared the reports, and Mr Baradon sought a direction that details be provided.

93. Keystone's position is that it was not conducting searches because there was never intended to be a review of documents, and that it was not even preparation for a search, but instead was a step taken with a view to reducing the number of documents that would in due course be the subject of a search.

94. Whilst I understand that point, and I am not suggesting that any breach was deliberate, it does seem to me that what was done involved a search. The process involved applying search terms, as well as date parameters, to a dataset. That seems to me to be a search as that term is ordinarily understood. I note that Consilio itself described the process as running searches. The results produced, which Consilio describes as "Search Hit Reports", show information from the dataset, in particular how many documents contain the relevant search term or a combination of search terms. That conveys information about the content of the documents, which as explained at [82] above is potentially sensitive.

95. In these circumstances it is appropriate to direct that details of the dissemination of the reports generated in the process of arriving at the c.27,000 pool of documents should be provided, and further that (because they betray information about

documents that are not listed items) such reports should not be disseminated to those instructing Keystone.

Conclusion

96. In conclusion:

i) documents obtained pursuant to the Search Order and determined to be listed items should only be released by VPB's solicitors subject to the provision of undertakings as described in this judgment; and

ii) details of the dissemination of the reports referred to at [92] above should be provided, and no further dissemination of them by Keystone should be permitted.