Neutral Citation Number: [2021] EWHC 1647 (Comm)

Case No: CL-2020-000471

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS**
**OF ENGLAND AND WALES**
**QUEEN'S BENCH DIVISION**
**COMMERCIAL COURT**

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

Date: 17/06/2021

**Before** :

**THE HONOURABLE MR JUSTICE HENSHAW**

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**Between :**

| | |
|---|---|
| **LONDON PARTNERS CAPITAL MANAGEMENT LLP** | **Claimant/ Respondent** |
| **- and -** | |
| **(1) UMUT UTKAN**<br>**(2) THOMPSON CROSBY & CO LIMITED** | **Defendants** |
| **(3) ALINA ROXANA MOISE** | **Defendant/ Applicant** |

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# JUDGMENT

**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 17th June 2021 at 10:30 am**

**Mr Justice Henshaw:**



## (A) INTRODUCTION

1. This judgment concerns an application made on behalf of the Third Defendant ("***Ms Moise***"), by correspondence, for amendments to a search and imaging order ("***the Search Order***") (i) to remove Mr Frederick Warburton as supervising solicitor with immediate effect, and (ii) to direct the Claimant/ Search Order Applicant to deliver up forthwith certain disputed documents and delete all copies of those documents.

2. The Search Order was originally granted by Moulder J on 23 February 2021, at a without notice hearing, and I continued it in amended form at a hearing on 5 March 2021. The First and Second Defendants/ Respondents to the Search Order did not oppose the continuation of the order, and I resolved certain disputes as to the process for review of the imaged documents. The Search Order was not originally made against Ms Moise, but was extended by consent to apply to her solely as regards certain storage facilities referred to in Schedule B § 3 to the order ("***the Storage Facilities***"). Ms Moise thereby became the Third Respondent to the Search Order. Ms Moise had been added as a Defendant to the action in November 2020 on the basis that she is alleged to have received part of the allegedly misappropriated proprietary funds.

3. The Search Order was made in support of a worldwide freezing order made by Foxton J against the First and Second Defendants in July 2020, as varied by subsequent orders.

4. The background relating to the underlying dispute and previous orders is set out in Moulder J's ruling of 23 February 2021 §§ 6-14, which I shall not repeat. In very brief outline, the Claimant's claim is that the First Defendant, Dr Utkan, while he was the Claimant's *de facto* CEO, misappropriated some €74m and $83m of funds belonging to Credins Bank. Later, there was a settlement agreement under which the First and Second Defendants agreed to transfer to the Claimant specified assets with a total value of some €130.9 million, including securities said by Dr Utkan to be held with State Bank of Mauritius. It appears no assets were transferred. However, the Claimant has separately recovered about €86 million worth of assets, leaving some €60 million outstanding.

5. The original searches were executed on 24 February 2021, and I was provided with reports from the supervising solicitors. The searches covered both hard copy

documents and the imaging of electronic documents on laptops, phones and other devices.

6. The present application relates to a further search, on 26 March 2021, of the Storage Facilities ("***the Search***").

7. The parties agreed that I should deal with this matter on the papers.

8. For the reasons set out below, I have concluded that Mr Warburton should not be removed as supervising solicitor, but that the Claimant should hand over to the supervising solicitors the copies (and any retained originals) of the documents to whose removal Ms Moise's solicitors objected during the Search as not constituting Listed Items, insofar as those documents pre-date 1 October 2017, and delete any additional copies they may have of such documents, pending resolution of the question of whether they do or do not in fact constitute Listed Items.

## (B) FACTS

9. The controversies about the Search concern:

   i) the participation in the search of Maria Newsome, a trainee solicitor with the Claimant's solicitors Mishcon de Reya LLP ("***Mishcon***"),

   ii) the removal by the Claimant of a number of items pre-dating 1 October 2017, the date on which the Claimant claims the First and Second Respondents first misappropriated money allegedly belonging to Credins Bank; and

   iii) Mr Warburton's experience.

10. I summarise the sequence of events below.

11. On 24 March 2021, two days before the search, the Respondents' solicitors Steptoe & Johnson UK LLP ("***Steptoe***") wrote to Mishcon saying, among other things, that due to space constraints they considered that *"in addition to Ms Moise, a representative from this firm and the supervising solicitor, the search need only be attended by one representative from your firm. Please confirm by return that this is agreed and the identity of the person."*

12. At 9.56am the following day, 25 March, Mishcon emailed a letter in response, which included the following:

> "The mechanisms to ensure safety on the search are provided for in the various undertakings set out in Schedules E-H of the Search Order. The Court has approved these mechanisms. There will be three representatives of this firm on the search, namely, Rhymal Persad, Georgie Wilson, and Maria Newsome."

13. Rhymal Persad and Georgina Wilson, respectively a partner and an associate with Mishcon, were among the persons listed in Schedule A ("*The Search Party*") to the Search Order. Maria Newsome, a trainee solicitor, was not in the list. The list included her predecessor in her training contract 'seat', Kiros Papaloizou, but had not been

updated to reflect the trainee solicitor seat rotation which, according to Mishcon, occurred at the beginning of March.

14. Paragraph 8 of the Search Order provides that the Respondent and any Controller of Access (both as defined) *"must permit the Supervising Solicitor, the Independent Computer Specialist, the Applicant's Solicitors and Investigators retained by the Applicant identified in Schedule A to this Order"* to enter the Premises (as defined) and carry out searches as thereafter set out. Paragraph 8 goes on to provide that at no time will more than four of the Claimant's solicitors identified in Schedule A be present on the Premises identified at § 2 of Schedule B (a residence) *"unless otherwise authorised by a Supervising Solicitor"*. Thus the supervising solicitor was authorised to control the number of persons on the Schedule A list attending those particular premises, but was given no power to require the Respondents to permit entry to any premises by a person not on the list.

15. A little later in the morning of 25 March, Mishcon sent a further email to Steptoe timed at 11.34am about some logistical details of the Search the following day, including recording their understanding *"that all attendees will also need to bring photographic ID"*. Steptoe sent no response to either email.

16. Mr Warburton's report dated 31 March records the relevant events of Friday 26 March, the day of the Search, as follows:

> "3. I met Rhymal Persad, Georgia Wilson and Maria Newsome of Mishcon de Reya ("MdR"), the Applicants solicitors, Alina Roxana Moise and Elliot Letts of Steptoe & Johnson LLP, her solicitors outside Harrods.
>
> 4. Mr Letts checked the identity of those present. Maria Newsome was not one of the Search Party named in Schedule A of the Order. Mr Letts objected to her being a member of the Applicants Solicitors' team. I considered that as:
>
> > 4.1 All parties were present outside Harrods, ready to conduct the search.
> >
> > 4.2 I could see no disadvantage to Ms Moise resulting from the substitution of Ms Newsome for another named MdR representative.
> >
> > 4.3 We were searching safety deposit boxes and a storage facility, rather than a home where prior knowledge of the exact identity of attendees is a more sensitive issue; and
> >
> > 4.4 I was keen to complete the search and listing of documents as quickly as possible and every pair of hands speeds up the process
>
> I told Mr Letts that I thought the search should proceed with Maria Newsome as one of the search party. Mr Letts asked that

I note that he had objected to Ms Newsome's being a member of the search party.

Mr Persad told me subsequently that MdR had, some days previously, told S&J that Ms Newsome would be present, and S&J had not objected.

…

10. We went to Safe Store at 59A Tregunter Road. I agreed with Ms Moise and Mr Letts that in order to conclude the search as quickly as possible, we would, if space allowed, have all three of the MdR representatives involved in the search. They were content with that.

…

13. A number of invoices, for sums in excess of £5,000, for chattels, mainly handbags, were identified. I agreed with the parties that MdR would set aside all documents they considered to be Listed Items, and, once the search was complete, any representations as to whether or not the documents fell within the definition of Listed Items would be made and decisions taken on any issues.

14. There were two boxes containing documents, most in ring binders. Most related to Ms Moise's business, though there were some utility bills relating, Ms Moise said, to her residence.

15. MdR claimed they were Listed Items. S&J said they, as well as the invoices referred to in paragraph 13 above, were not Listed Items because:

15.1 Some pre-dated the date on which the Applicant claims the Respondents first misappropriated money; and

15.2 The documents related to Ms Moise's business and not to assets of the Respondents.

16. We discussed these issues and I decided that:

16.1 The Order contained no limitation as to time; and

16.2 Paragraph 5(a)(i) of the Order includes as Listed Items those evidencing assets whether in the Respondent's name or not. I considered that as the First Respondent and Ms Moise are married, it is possible that assets of the First Respondent might be tied up in Ms Moise's business.

…"

17. On Monday 29 March, Steptoe wrote to Mishcon asking for an explanation of (a) Ms Newsome's attendance, (b) the removal of business and personal records of Ms Moise pre-dating 1 October 2017 (*"copies of Ms Moise's business and personal records for the period pre-dating 1 October 2017 (including for example VAT returns for 2015, which is from a time when she had not even met Mr Utkan)"*), and (c) the photographing of some of Ms Moise's personal items at one of the premises searched.

18. Mr Warburton's report was circulated on 31 March.

19. On 1 April Steptoe wrote to Mr Warburton asking for his "*urgent explanations*" about his professional qualifications (pointing out that Mr Warburton's online profile describes him as heading his firm's property practice and specialises in commercial property); Ms Newsome's participation in the Search; and the removal of documents pre-dating 1 October 2017. Steptoe drew attention to PD25A § 7, which in relevant part reads:

> "7.2 The Supervising Solicitor must be experienced in the operation of search orders. …"
>
> "7.4(3) the Supervising Solicitor may be accompanied only by the persons mentioned in the order."
>
> "7.5(1) no material shall be removed unless clearly covered by the terms of the order."

20. Steptoe's letter also referred to the undertaking given by Mr Warburton in Schedule F § 1 to the Search Order, which states:

> "The Supervising Solicitor shall not allow any person listed in Schedule A to this Order to attend the Premises unless that person has received a negative test result for COVID-19 within 48 hours immediately preceding execution of this Order. …"

commenting *"there being no discretion to allow persons who are not listed to attend"*.

21. On 12 April Mr Warburton wrote to the court, attaching a copy of Steptoe's letter of 1 April and responding to the allegations it contained. In summary, he stated as follows.

    i) Although nowadays his primary practice is commercial property, he has supervised some 30 to 40 search and seize orders, and has on no occasion been criticised by the court or the solicitors for any party.

    ii) He knew that Ms Newsome was not named as a member of the Search Party and that he had no discretion to allow her to be added. He acknowledged *"that there was a breach"* but believed it to be one with no consequences. A fundamental purpose of the appointment of a supervising solicitor was to protect the respondent, and he could see no adverse consequence for Ms Moise in allowing Ms Newsome to be substituted for one of the Mishcon personnel named in the Search Party. Further, anything Ms Newsome did remained subject to the undertakings Mishcon had given in relation to the Search Order, and to his own supervision. Ms Moise and her solicitors could have prevented the Search

proceeding if they considered that Ms Newsome's presence was prejudicial to Ms Moise's interests. Mr Warburton considered his actions to be in line with the overriding objective in seeking to ensure that the parties were dealt with fairly and that the matter proceeded swiftly and in the most cost-efficient way possible.

iii) 34 invoices for sums in excess of £5,000, primarily relating to handbags, had been removed during the (prior) search of the residence covered by the Search Order. Although Dr Utkan averred that they related to Ms Moise's business, the Respondents' former solicitors acknowledged that those invoices were "*Listed Items*", i.e. items falling within the scope of the Search Order. The documents removed from Safe Store (one of the storage facilities searched on 26 March) comprised almost exclusively invoices for sums in excess of £5,000, primarily relating to handbags, and VAT returns: all of which, Ms Moise said, related to her business. The nature of the documents in both cases was identical, and Mr Warburton did not regard the objection made on 26 March as raising a legitimate dispute.

iv) Mr Warburton apologised *"for my breach of the Order and for this becoming a distraction from the proper conduct of the litigation"*. He invited the court to let him know if he could do anything to remedy it, and whether the court considered that he should cease to act as a supervising solicitor in this or other cases.

22. Further correspondence followed, including letters from Steptoe dated 14 and 27 April, letters from Mishcon dated 13, 16 and 27 April and a letter from Mr Warburton dated 15 April. The parties also responded to the query I subsequently raised referred to in § 42-48 below.

## (C) ANALYSIS

### (1) Ms Newsome's participation in the Search

23. Because Ms Newsome's name did not appear in Schedule A to the Search Order, the Respondents were not obliged to permit her to participate in the Search. Ms Moise and Steptoe would have been entitled simply to refuse her admission, and the Search Order did not empower Mr Warburton to insist that she participate. Instead, whilst Steptoe registered their objection, it seems that they and Mr Warburton took the view that it was his decision.

24. Insofar as Mr Warburton purported to take the decision, he assumed a power not conferred by the Search Order. That was not, in my view, a direct breach of any provision of the Search Order. Nor do I consider it to have involved a breach by Mr Warburton of the undertaking he gave in Schedule F, quoted at §20 above. The substance of that undertaking is not to permit a person lacking a negative Covid test to enter the premises: it assumes that the persons who might otherwise be admitted are persons listed in Schedule A, but is in reality directed at a different issue.

25. On the other hand, by permitting Ms Newsome to enter the premises Mr Warburton did act in a way which was contrary to PD25A § 7.4(3), as well as inconsistent with the intention behind the Search Order.

26. I do not regard the breach of the Practice Direction, and the intention underlying the Search Order, as having been an especially serious one. As Mr Warburton has explained, it is difficult to see how the substitution of one trainee for another, although it was irregular, would be likely to cause any prejudice to Ms Moise. Ms Newsome was at all material times going to be under the supervision of her more senior colleagues, and of Mr Warburton himself. The search was of two safety deposit boxes and a storage facility, rather than a residential address. Moreover, whilst Ms Moise, though Steptoe, had objected to Ms Newsome's presence, she did not seek to stand on her rights and refuse Ms Newsome entry. Steptoe have asserted in correspondence that these events have caused Ms Moise "*distress*", but no evidence of this has been provided and in all the circumstances I find it hard to see how this factor could genuinely have given risen to distress.

27. In addition, although Mr Warburton was not aware of this at the time, Steptoe had had almost a full working day to object to Ms Newsome's participation, following Mishcon's email of 25 March, but had not done so. Had Mishcon asked Steptoe – as strictly speaking they ought to have done – to agree a form of order varying the Search Order, and invited the court to approve the variation, there would have been no apparent ground (and none has been put forward in the subsequent correspondence) on which Steptoe or the court could reasonably have objected to it.

28. Steptoe suggested in correspondence to the court that, between their letter of 29 March to Mishcon and Mr Warburton's report, Mishcon *"contacted Mr Warburton in what appears to be an attempt to "get their stories straight""*. Steptoe also allege that Mr Warburton *"has improperly sought to justify the breach by conducting private conversations with Mr Persad of Mishcon and then in his report to your Lordship by relying on submissions subsequently made to him by Mishcon"*. That is a reference to the conversation referred to in the last paragraph of § 4.4 of Mr Warburton's 31 March report, quoted at §16 above. However, Mr Warburton has explained in a letter of 15 April to the court that the conversation, in which Mishcon told him they had notified Steptoe of Ms Newsome's proposed participation in the search, occurred before the Search took place, albeit after Mr Warburton had decided to allow Ms Newsome to participate in it. I accept that explanation. Steptoe's allegation of improper collusion between Mishcon and Mr Warburton to 'get their stories straight' was, it appears to me, made with no proper basis in any event.

29. Steptoe have also suggested that Mr Warburton's decision to let Ms Newsome participate in the Search showed a *"lack of independence"* and an *"apparent willingness to bend over backwards to help the Claimants"*. Those suggestions are in my view extravagant and unjustifiable.

**(2) Pre 1 October 2017 documents**

30. The Search Order defines the scope of the Search by reference to *"the documents and articles which are listed in Schedule C to this Order (the "Listed Items")"* (§ 8, and see also § 21). As noted earlier, § 8 provides for the Search Party (as defined) to enter premises and have access to items *"so that they can search for, inspect, photograph, electronically copy or photocopy and deliver to the Applicant's Solicitors all the documents and articles which are listed in Schedule C to this Order (the "Listed Items")"*. Paragraph 21(a) provides that the Respondent or any Controller of Access must:

> "Immediately hand over to the Applicant's Solicitors any of the Listed Items or procure the delivery up to the Applicant's Solicitors of any of the Listed Items, which are in his possession or under his control. Any items the subject of a dispute as to whether they are Listed Items must immediately be handed over to the Supervising Solicitor for safe keeping pending the resolution of the dispute or further order of the Court."

31. Schedule C §§ 4 and 5 provide that:

> "4. For the purposes of this Order, a Listed Item is any item that falls within the descriptions set out below or (in the case of dispute) are items which in the opinion of the Supervising Solicitor are likely to fall within such description.
>
> 5. For the purposes of this Order, "**Listed Items**" shall constitute:
>
> a. all categories of document or information evidencing:
>
> i. the existence of the First or Second Respondent's assets worldwide whether in his or its own name or not and whether solely or jointly owned, including (without limitation) the value, location, and details of all such assets save for chattels which are less than £5000 in value;
>
> ii. what has happened to, and the current status of, the following assets:
>
> 1. any of the monies or assets which were within the GPP Account;
>
> 2. any monies or assets which derive (in whole or in part) from, directly or indirectly, monies or assets which were within the GPP Account; and
>
> 3. the Washburn Monies, as defined in paragraph 33 of the Order of Mr Justice Andrew Baker dated 15 October 2020.
>
> iii.any dealings by a Respondent in relation to such assets;
>
> iv.the location or means of access to Listed Items (including, without limitation the location of any Electronic Data Storage Device that may contain such items and the identity and contact details of persons who hold such device for or to the order of a Respondent)."

32. Schedule C § 5(a)(i) thus applies (without limit of time) to assets belonging to the First and Second Respondents, whether in his/its name or not and whether solely or jointly owned. It does not apply to Ms Moise's assets unless they are in fact owned by, or jointly owned with, the First or Second Respondent.

33. Schedule C § 5(a)(ii) concerns the monies allegedly misappropriated and their proceeds. This subparagraph also contains no express time limit either. On the other hand, no allegations are made against any of the Defendants of misappropriation prior to 1 October 2017. It is therefore difficult to see how § 5(a)(ii) could apply to documents earlier than that date (unless, perhaps, they contained or evidenced plans for the misappropriation that allegedly took place after 1 October 2017). In any event, Mr Warburton's report indicates that it was § 5(a)(i) which he considered applied to the documents whose removal has given rise to the complaint.

34. Mr Warburton's report describes the documents in question as being two boxes of documents, mainly in ring binders, most relating to Ms Moise's business along with some utility bills which Ms Moise said related to her residence (report § 14). In addition, there were some invoices for chattels, mainly handbags, for sums in excess of £5,000 (report § 13).

35. Steptoe took the position that these were not listed items because (i) some pre-dated the date on which the Claimant claims the Defendants first misappropriated money and (ii) the documents related to Ms Moise's business and not the assets of the (First and Second) Respondents (report § 15). Mr Warburton took the view that:

    i) the order contained no limitation as to time; and

    ii) § 5(a)(i) includes as Listed Items those evidencing assets whether in the (First and Second) Respondents' names or not. He considered that as the First Respondent and Ms Moise are married, assets of the First Respondent might be tied up in Ms Moise's business (report § 16).

36. In his letter of 12 April to the court, Mr Warburton added that, given the documents' similarity to the 34 invoices removed during the residence search, he did not see Steptoe's objection as raising *"a legitimate dispute requiring that I take the documents into my custody rather than allowing their removal by MdR"*.

37. Read literally, Schedule C § 4 would suggest that an item which, in the case of dispute, is in the supervising solicitor's opinion likely to fall within the definition of "*Listed Items*" is *ipso facto* a Listed Item, with the result that § 21(a) of the body of the Search Order will not apply to it. Realistically, however, the two provisions must be read together, so that where the Respondent disputes that something is a Listed Item, then it must be handed over to the supervising solicitor for safekeeping pending resolution of the dispute.

38. It appears that, based partly on the events he recounts in relation to the residence search, Mr Warburton took the view that although Steptoe objected that the pre 1 October 2017 items were not Listed Items, there was no genuine dispute. However, such items could fall within § 5(a)(i) of the definition of Listed Items only if they were in fact owned, solely or jointly, by the First or Second Respondent. It certainly seems possible, as Mr Warburton said, that items in Ms Moise's possession could be so owned. On the other hand, there might be items that are not so owned. In principle there could be genuine disputes about this issue in relation to particular items.

39. Mr Warburton's report indicates that, at the time of the Search, Steptoe objected on the basis that the documents in question related to Ms Moise's business and not to assets

of the (First and Second) Respondents. The possibility that the assets might in fact be beneficially owned or jointly owned by the First Respondent did not in my view mean that no genuine dispute existed. Accordingly, § 21(a) of the body of the Search Order applied, and the items in question should have been kept in the supervising solicitor's possession pending resolution of the dispute. That is what should happen now, unless the dispute has in the meantime been resolved.

**(3) Mr Warburton's experience and appointment**

40. Before being appointed, Mr Warburton provided an affidavit setting out his relevant experience, generally and specifically, regarding the conduct of orders for search, delivery up and imaging. He stated that since qualification he had been concerned with *inter alia* commercial litigation, and:

> "I have extensive experience of the operation and execution of entry of premises and search orders, freezing injunctions, proprietary injunctions and restraint orders. I have assisted in obtaining and executing such orders on behalf of a number of clients and I have advised clients against whom such orders have been obtained with regard to their rights and obligations. I have acted as supervising solicitor upon the execution of entry of premises and search orders and freezing injunctions on many occasions. I am particularly familiar with the law and practice concerning privilege against self-incrimination and legal professional privilege."

41. On the basis that Mr Warburton has substantial experience of search orders as set out above, I do not consider the fact that he now specialises in commercial property to cast any doubt on his qualification to perform the role of a supervising solicitor.

42. Steptoe's letter of 1 April to Mr Warburton, in addition to asking about his relevant experience, asked *"how you came to be appointed in this case, in particular were you approached through the Law Society or the LSLA, or by some other process"*. Mr Warburton did not respond to that part of Steptoe's letter. Steptoe contended that Mr Warburton has *"refused to disclose any connections to the Applicant or to Mishcons and how he came to be appointed"*, and said this caused them and their client to be concerned as to his independence.

43. As I could not identify the answer to Steptoe's question in the papers provided to me, I raised this with the parties.

44. In response, Mr Warburton said his firm was approached by Mishcon direct, and had acted in the past as supervising solicitors on search and seize orders that Mishcon had obtained. Mr Warburton said his firm acted on one such order a couple of years ago, and before that in about 2008/9.

45. Mishcon replied indicating that:

i) They had instructed Mr Warburton as a supervising solicitor twice in the last three years or so, and prior to that around 12 or 13 years ago. In the present case, they instructed not only Mr Warburton but also two other solicitors from

his firm, Bankside Commercial, and two solicitors from another firm, Bates Wells.

ii) In appointing supervising solicitors, Mishcon select people based on their experience, suitability, and availability. That said, all things being equal, Mishcon will approach the same individuals to act as supervising solicitors whom they have asked on a previous occasion, if in their opinion that person is of an exceptional standard (which in Mishcon's view Mr Warburton is).

iii) In any event, there appears to be no mandatory pre-requirement to approach individuals to act as supervising solicitors via the Law Society or London Solicitors Litigation Association. CPR 25A PD §7.2 merely states:

> "The Supervising Solicitor must be experienced in the operation of search orders. A Supervising Solicitor may be contacted either through the Law Society or, for the London area, through the London Solicitors Litigation Association."

This is, Mishcon say, unsurprising: the selected individuals in any event are officers of the court who give the court separate undertakings in the course of their appointment.

iv) Mishcon have (to the author's knowledge) never previously encountered complaints of this kind despite having executed multiple search orders on a regular basis over many years.

46. Steptoe's response made the following points:

i) The witness statement in support of the Claimants' application for a search order stated that:

> "Five solicitors have each confirmed to me that they are able to act as a supervising solicitor for the purposes of executing a search order, and have the appropriate experience to do so. The following supervising solicitors will from part of the search party in respect of each Premises (together, the "Supervising Solicitors"):
>
> [followed by a list of firms and names]"

but was silent as to how Mr Warburton came to be identified.

ii) Mr Warburton's pre-appointment affidavit was also silent as to how he came to be identified. Mr Warburton did in the affidavit acknowledge the seriousness of the proposed search order and his obligations thereunder.

iii) In neither of those statements (made in support of an *ex parte* application with duties of full and frank disclosure) was the court made aware that (a) Mr Warburton had been approached direct by Mishcon or (b) he had previously been instructed by Mr Nouroozi of Mishcon on other search orders.

iv) Steptoe had identified one reported case where Mr Warburton was the supervising solicitor, *ArcelorMittal USA LLC v Essar Steel Limited* [2019] EWHC 724, and assumed this to be the recent case to which Mr Warburton referred. Mishcon acted for the claimant in that case and that Mr Nouroozi was the partner on that matter, as he is in the present case.

47. PD 25A § 7.6 provides that *"[t]he Supervising Solicitor must not be an employee or member of the applicant's firm of solicitors"*. No requirement is imposed, in either § 7.2 or § 7.6, about how a supervising solicitor must be identified (as opposed to how he/she may be identified). In my view there is no principle to the effect that a supervising solicitor ought not to be approached direct, or that a direct approach should be disclosed to the court. It is important to bear in mind that a supervising solicitor, however approached, is appointed by the court and independently assumes duties requiring him or her to act properly.

48. There is also no express requirement that a supervising solicitor must be a person who has not previously been instructed in that capacity by the solicitors for an applicant for a search order. Nor has any evidence been put before me suggesting any general practice of not appointing such persons; nor to the effect that disclosure is or should be made to the court where a proposed supervising solicitor has previously acted in that capacity in a case involving the same solicitor acting for the applicant. I would not entirely rule out the possibility of a case arising where a firm has instructed the same supervising solicitor so many times as to give rise to a potential question about his/her independence, which would then require disclosure to the court when making the application for the search order. However, Mr Warburton's previous involvement in cases involving Mishcon (and Mr Nouroozi) does not in my view come close to such a situation. I do not consider that those previous cases give rise to any possible objection to Mr Warburton's appointment, nor that they required to be disclosed to the court.

**(4) Overall assessment**

49. I have concluded that Ms Newsome's participation in the search was not consistent with the Practice Direction, but was not a direct breach of the Search Order, nor a breach of Mr Warburton's undertakings set out in the Search Order. I have rejected Steptoe's suggestion that by permitting her to participate, Mr Warburton showed a lack of independence making him unsuitable to act as supervising solicitor.

50. In relation to pre 1 October 2017 items relating to Ms Moise's business or personal affairs, I have concluded that the items to whose removal Steptoe objected during the Search should have been kept by the supervising solicitor, rather than Mishcon being allowed to take them. I have thereby differed from the approach Mr Warburton took. On the other hand, I consider that he took a decision in good faith reflecting his genuine view as to what the Search Order required. I do not consider that this matter calls into question his suitability to continue to act as supervising solicitor in this or other cases.

51. For the reasons given above, I do not consider that Mr Warburton's experience, or his previous work as supervising solicitor on other cases involving Mishcon, cast any doubt on his suitability to have been appointed, and to continue to act, as supervising solicitor in this case.

52. Accordingly, the application to remove Mr Warburton as supervising solicitor must be dismissed.

## (D) CONCLUSIONS

53. The application to remove Mr Warburton as supervising solicitor will be dismissed.

54. Unless the relevant dispute has by now been resolved, the Claimant's solicitors must hand over to the supervising solicitors the copies (and any retained originals) of the documents to whose removal Steptoe objected during the Search as not constituting Listed Items on the ground that they pre-dated 1 October 2017, and delete any additional copies they may have of such documents, pending resolution of the question of whether they do or do not in fact constitute Listed Items.

55. I shall hear any submissions as to the precise form of order required to give effect to this judgment.