Neutral Citation Number: [2024] EWHC 881 (Ch)

Claim Nos. BL-2021-0001939 / BL-2021-002082

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

The Rolls Building 7 Rolls Buildings Fetter Lane London EC4A 1NL

Date: Wednesday, 20th March 2024

Before:

MASTER MCQUAIL

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Between:

BARCLAYS BANK PLC	Claimant/ Respondent
- and -	
(1) SCOTT DYLAN (2) GARETH MICHAEL DYLAN (3) SALLY ANN GLOVER (4) DAVID SAMUEL ANTROBUS	Defendants

And between:

BARCLAYS BANK PLC	Claimant/ Respondent
- and -	
(1) OLD3 LIMITED (IN ADMINSTRATION) (Previously FRESH THINKING GROUP LTD) (2) JACK MASON 3) OLD3 LIMITED (IN ADMINISTRATION) (Previously INC TRAVEL GROUP LTD)	Defendants

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MR. JAMES KNOTT (instructed by Eversheds Sutherland (International) LLP) appeared on behalf of the Claimant

MS. GURPRIT MATTU (instructed by Direct Access) appeared on behalf of the Defendants

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Approved Judgment

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MASTER McQUAIL:

1. I have listed before me today disclosure guidance or directions hearings in two actions which are being case managed and will be tried together. The claimant in each is Barclays Bank plc represented by Mr. Knott instructed by Eversheds. The defendants in the first claim are Scott Dylan, Gareth Michael Dylan, Sally Ann Glover and David Antrobus. The defendants in the second are a company previously called Fresh Thinking Group Limited (now in liquidation), an individual Mr. Jack Mason and a second company previously called Inc Travel Group Limited (also now in liquidation).

2. In the underlying proceedings Barclays Bank seeks the return of moneys said to have been wrongly taken from it by some combination of the defendants. Early in the life of the proceedings freezing orders were obtained against the individual defendants and the companies now in liquidation.

3. The case first came before Deputy Master Henderson for a costs and case management hearing in June of 2023. On that occasion, Mr. Knott appeared for the claimant. Scott Dylan appeared by counsel, Mr. Weiss who was instructed by solicitors. The individual defendants were also represented by counsel instructed on a direct access basis. The solicitors for the other individual defendants had ceased to act about a month before that hearing.

4. The upshot of the hearing were directions for matters to proceed to a trial which has now been listed in January 2025. Unfortunately, on that occasion disclosure could not be dealt with because Deputy Master Henderson concluded that the individual defendants' failure to engage with the DRD process simply meant he was not able to progress that matter. What happened was that the Deputy Master ordered that a further disclosure hearing was to take place, and it was listed to take place in September last year. Shortly before it was due to happen it was adjourned by consent until today.

5. In the meanwhile, contempt proceedings were brought by Barclays alleging that the defendants Scott Dylan, David Antrobus and Jack Mason had breached obligations under the freezing injunctions. Those contempt proceedings were due to be tried in January of this year, shortly before the date on which they were due to be heard, Scott Dylan raised with the court a question of his mental fitness to participate in those proceedings. The intended trial was adjourned and Meade J held a PTR in the contempt proceedings on 24th January 2024. On that occasion Mr. de Mestre KC appeared for the claimant, possibly with Mr. Knott, and Scott Dylan engaged Mr. Gloag of counsel on a direct access basis and Mr. Skeate appeared on a direct access basis for David Antrobus and Jack Mason.

6. The upshot of that hearing was an agreed process embodied in the order of Meade J for the joint instruction of an expert to report on Mr. Scott Dylan's:

> "(i) capacity to conduct proceedings, (ii) mental health conditions (if any), (iii) prognosis for any such conditions, and (iv) ability to attend trial and be cross-examined on his evidence at the Adjourned Trial".

7. That report has been produced and I understand that Mr. Dylan has asked at least a question of the expert who produced it. I have not seen it and it is not relied on by either side today.

8. What is anticipated to happen, although subject to a possible application to adjourn which has not yet actually been made, is that on 9th April 2024 there will be a further pre-trial review in the contempt proceedings where the question of Scott Dylan's capacity to and any adjustments that may need to be made for him to participate in the trial will be settled. The contempt trial, subject as I say to the application to adjourn, is listed to take place in a window commencing 29th April 2024.

9. Against that background, on 13th of this month, so a week ago, David Antrobus on behalf of all the individual defendants filed with the court an application to adjourn this hearing on the basis that Jack Mason had recently undergone an appendectomy and there might be complications with that operation. The second basis was that Scott Dylan has significant mental health conditions. In light of the health circumstances of those two defendant it was contended that it would be unfair to proceed with the hearing.

10. That application was supported by a witness statement of David Antrobus dated 13th March which exhibited no supporting medical evidence and simply asserted that the conditions of Mr. Mason and Mr. Dylan were such as to not enable them to participate. The evidence also made the suggestion that there would be a disruption as to the continuity or the integrity of evidence if the disclosure processes relating to all defendants did not happen together.

11. That witness statement was answered by a witness statement of Dominic de Bono of Eversheds. Presumably as a result of the suggestion of Eversheds or by me to David Antrobus in response to his evidence that medical evidence would be needed if any truck was to be had with the adjournment application, on 18th Marc David Antrobus put in a further witness statement. That was not served and still has not been served on the claimant formally. It was handed to the claimant’s representatives at court this morning. Exhibited to that witness statement is Scott Dylan's witness statement of 17th January 2024 which was before Meade J on the occasion of his granting the adjournment to which I have referred.

12. That evidence of Scott Dylan exhibited, and this was included in Mr. Antrobus's exhibit, a psychiatric report of a Dr. Raffi dating from January 2024, a letter of 17th January 2024 from Scott Dylan’s GP, Dr Farooq, and the report of Louise Sheffield, an MOJ trained intermediary, dated 16th January 2024. It also exhibited material relating to Mr. Mason's appendicitis showing that he had been admitted to hospital on 12th March 2024 with appendicitis, had an appendectomy operation on 13th March and had been discharged later that day without there any reference to complications that had been foreshadowed by Mr. Antrobus's first statement.

13. The grounds for the application are that by reason if the medical condition of Scott Dylan and the medical condition of Mr. Mason it would be prejudicial to them and undermine their right to a fair trial to proceed. Further it is said that to ensure fairness and the integrity of the procedure there should be an adjournment.

14. Ms Mattu has appeared at short notice instructed on a direct access basis for the individual defendants solely for the purpose of the adjournment application and has made submissions in support of that application. In addition to the grounds set out in

the application she also submitted the court must be careful to ensure that as her clients are litigants in person matters are fair to them and that they are not put on an unequal footing. What she says is there should be a six week adjournment. Six weeks is the period referred in a further GP's sick note that has been produced to me today (but not formally put in evidence) after which Jack Mason would be fit for work. It is said that a six week adjournment should not prejudice the trial date. It is also said that Eversheds changed their position about the question of an adjournment of this hearing, because they offered an adjournment on 30th January but now oppose one.

15. The first matter to consider is the medical grounds for the adjournment. Mr. Knott in his skeleton argument refers to the well known passage in the case of GMC v Hayat 2018 EWCA Civ 2796 concerning the nature and quality of evidence necessary to support an adjournment on the grounds of a party's unfitness to participate in a hearing:

> "Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties."

16. Picking out the points from that passage, where an adjournment is sought on the grounds of parties' ill health, it is necessary for there to be (i) unchallenged medical evidence of unfitness to participate, (ii) the evidence must identify the medical practitioner who is giving the evidence; (iii) the familiarity of that practitioner with the party's condition, providing reference to all relevant recent consultations; (iv) the evidence must identify the features of the medical condition in question which prevent participation and (v) must contain a reasoned prognosis. The court should be satisfied that it has confidence in the status of the evidence as that of an independent expert.

17. In the case of Mr. Mason, as I say, there is evidence from his hospital notes showing that he had an appendectomy on 13th March. The discharge records that he is now on oral antibiotics and:

> "You are now deemed for discharge. Your recovery period will be 12 weeks from discharge. It is advised that you avoid heavy lifting, stairs, or any strenuous or stressful work for six to eight weeks. If you become unwell, your pain deteriorates or you develop fevers, please seek medical attention." (Quote not checked. Document not provided)

18. There was also put before me this morning a further letter from someone who I think is a private GP by the name of Dr. Chun Tang from Pall Mall Medical which is headed "Private Sick Note" and is dated 19the March and concerns Mr. Mason and explains that the doctor has assessed Mr. Mason after his recent surgery and says:

> "The patient is experiencing lack of sleep, lack of appetite and confusion. He is also experiencing pain. His ability to walk is limited. I have been informed that the patient is involved in civil litigation proceedings. It is my opinion that he will not be well enough to engage in the proceedings. It is important for him to recover fully before he is involved in any stressful situations. This is to certify that Jack Mason is unfit for work for six weeks. He will be unable to engage in any stressful activities until he has recovered. He should attend to be reassessed again in six weeks."

19. In the case of Scott Dylan, the evidence before the court are the three exhibited documents from January of 2024. That medical evidence is necessarily and obviously out of date. What is known is that there is more up-to-date evidence being the evidence obtained pursuant to the joint report process ordered by Meade J of an expert who is obliged to report in compliance with CPR 35. Yet no party, either Scott Dylan or David Antrobus, in making this application has sought to rely on that evidence.

20. In neither case is the standard set out in GMC v Hayat satisfied. Jack Mason's appendectomy is clearly primarily a physical problem and there is nothing in the discharge note which suggests anything other than physical consequences of that operation. As regards Dr. Tang's evidence, the evidence is in the form described as sick note and its conclusion concerns a period of absence from work. It records a consultation with Jack Mason on 19 March. It does not engage in any detail with how Jack Mason's operation, which evidently will have physical effects might be causative of a reported lack of sleep, lack of appetite and confusion. It does not deal with how any such symptoms prevent participation in this particular hearing with any appropriate accommodations, for example by relying on Mr Antrobus and/or direct access counsel to represent him. It does not deal in proper detail with the question of a reasoned prognosis in relation to conditions relevant to the conduct of this hearing. I cannot have confidence in the report as one of an independent expert reporting for the purposes of the court. I do not suggest that Dr. Tang is doing other than what he was asked to do and reporting appropriately. It is just there is no indication that Dr. Tang had explained to him the level of detail and the type of evidence he would need to give in order for a court to be satisfied that Jack Mason was unable to participate in the the present hearing.

21. In relation to Mr. Dylan the difficulty is that the evidence relied upon is out of date and it is known that there is more up-to-date evidence, more focussed on the relevant questions, in existence and yet it has not been put before the court.

22. Thus both the applications in respect of Scott Dylan and Jack Mason face the difficulty that they are not adequately supported by sufficient medical evidence. That is in both cases against a background of being involved in these proceedings, in which the importance of providing medical evidence in support of an application to adjourn has already been made abundantly clear, by the manner in which Meade J gave his directions in January, in particular in relation to Scott Dylan's mental health conditions.

23. There are further points. The evidence in relation to Scott Dylan was considered by Meade J, and although Meade J expressed views about it raising serious issues, he did not conclude that those issues necessarily warranted an adjournment. It was for that reason that he made the directions that he did, that the matter be further investigated.

So one judge has already looked at that evidence at a time when it was current and determined that it was not necessarily such as to warrant the adjournment. That was the adjournment of a trial in which Mr. Dylan was going to need to be cross-examined, as opposed to what is effectively a directions hearing which will, when it proceeds, proceed on submissions.

24. In addition, it is plain that Scott Dylan has been able to participate in these proceedings at various stages. I accept that he has done so in a sense out of necessity, but when he has felt it was absolutely necessary, he participated in person on 17th January to secure an adjournment and, on 24th January he participated in the discussion and decision as to the process by which his mental health was to be assessed by counsel who he had instructed.

25. There is evidence also that in February Mr. Scott Dylan has taken some part or offered to take some part in Supreme Court of New York proceedings relating to third party disclosure. That is perhaps slightly less weighty evidence in the matter but it is part of the background.

26. Again, on 13th March 2024 Scott Dylan wrote to Eversheds about the hearing that is before me, and although that required, as the letter says, securing help from a paralegal, the letter undoubtedly engaged with the issues.

27. In Jack Mason's case, it is apparent from a letter that he wrote dated on its face 10th March that he was able to deal with disclosure issues, that was before the onset of his appendicitis Mr. Knott has pointed out that there are some oddities about the letter, as its meta data suggests that it was in fact created on the evening of 13th March. I cannot resolve that timing issue today, but Jack Mason has sufficiently engaged with the process that that letter recording his position was written. It is also apparent from David Antrobus's first witness statement that he was communicating with Jack Mason on an hourly basis, save when he was in surgery, which again does not indicate that Jack Mason was unable, through agents, if necessary, whether counsel or otherwise, to engage with the process, the preparation for this hearing and indeed the hearing. Also, it is inevitably and obviously the case that the individual defendants have engaged direct access counsel and between them provided sufficient instructions that Ms. Mattu has been able to present their application for an adjournment here today.

28. The wider background is the length of time for which these proceedings have been ongoing and the fact that, as long ago as June of last year, Deputy Master Henderson made orders in relation to the defendants about progressing the disclosure process. The individual defendants were all themselves represented by solicitors from the beginning of the proceedings and it is evident from correspondence shortly after the close of pleadings that the solicitors acting at that stage did engage with Eversheds in the beginning of the disclosure process, as required by the Practice Direction.

29. It is true that Mr. Dylan has not been represented since approximately the beginning of the year, save as I have explained by counsel on occasion, and it is also true that the other individual defendants have not been represented since 15th May last year by solicitors, but again, have been able to instruct direct access counsel as it has seemed necessary to them to do.

30. There is nothing in the evidence to suggest that by adjourning this hearing the adjournment will mean that the individual defendants will during the period of the adjournment engage properly and appropriately with the process of agreeing how to

take forward the matter of disclosure. There is also nothing to suggest that they are imminently about to instruct lawyers who would take up engagement in the process on their behalf.

31. Ms Mattu referred me to two cases mentioned in the notes to 3.1.3 in the White Book: Bowden v Homerton University Hospital [2012] EWCA Civ 245 and Solanki v Intercity Telecom. [2018] EWCA Civ 101. Both of those cases concerned adjournment of a trial. In the Bowden case the solicitors had come off the record and the claimant sought an adjournment for the purpose of obtaining fresh representation. The Court of Appeal decided that the judge was wrong not to have acceded to the application because the claimant was in a dilemma which was not his fault.

32. In the Solanki case the refusal to adjourn was again held to be unfair. The discussion in the note explains that the point is that where a litigant needs to be present and is unable to be so, either because he is to represent himself or he is give evidence, an adjournment will usually be granted. The notes also refer to the possibility of the court giving directions to enable any doubts in the medical evidence to be resolved.

33. Such a process has been undertaken here pursuant to Meade J's directions as to the provision of a joint report as to Scott Dylan's mental health. That was an appropriate course in relation to the trial of the contempt proceedings. For the purposes of this interim hearing where there is no need for the presence of all the defendants personally and where they have managed to instruct counsel for the purposes of applying for an adjournment and to take a note of the balance of the hearing (should it proceed) it is in my judgment not unfair for an adjournment to be refused. There is nothing in the evidence to suggest that the individual defendants will be differently and better equipped to engage at an adjourned hearing.

34. The final point is the one about Eversheds' offer of an adjournment of this hearing. That offer was made on 30th January. It was time and other condition limited. It was not accepted in time. By the time the defendants purported to accept the offer which had by then expired on 29th February matters had moved on, not least because preparations by Eversheds for this hearing were underway. It is also the case that on 6th March Eversheds made a pragmatic offer to dispose of the current hearing in a way that would move matters forward, but that offer was not properly engaged with.

35. For all those reasons, I am not prepared to adjourn the hearing. Even if I had been satisfied that either one of Mr. Dylan and/or Mr. Mason were medically unable to participate appropriately in this hearing, which as my judgment explains, I am not, I would not adjourn the hearing against the other defendants, given the history of the matter. It is undoubtedly the case that individual defendants to these proceedings have their own disclosure obligations and it is not right for them to attempt to hide one behind the other in relying on the coincidental occurrence of to others of them illness or mental health difficulties.

JUDGMENT ON DISCLOSURE

36. I gave a judgment as to why I was not going to adjourn this disclosure guidance hearing at the end of the first half of the court day.

37. I am now asked by the claimant in the two actions before me to make an order for extended disclosure. The hearing proceeds in the absence of anyone actually representing the individual defendants. Their direct access counsel is in court simply

to take a note but handed up some written submissions put in on behalf of Gareth Dylan, Sally Ann Glover and David Antrobus in the event that the adjournment application was not successful. I will deal briefly with the content of those submissions which I have read and which counsel for the claimant has had the opportunity briefly to deal with.

38. The position of the defendants on whose behalf the written submissions are put in is that they do not agree that the event described as the "third purported restructure" should not be the subject of any issue for disclosure in these proceedings. The third purported restructure refers to what occurred after the proceedings were started and after freezing orders had been obtained. It involved transfers of shares and directorships which had, in very brief summary, the effect of moving assets said to be subject to the freezing injunction to the BVI.

39. These defendants say that, although it is apparent from the transcript of the hearing before Deputy Master Henderson that their then counsel agreed the issues for disclosure then in draft DRDs including the third purported restructure, they are not bound by that agreement because no order has yet been made. Accordingly, I should consider anew whether or not the third purported restructure is properly the subject of disclosure.

40. Their next point is that they should not be put in a position where their right not to self incriminate should be put in any sort of jeopardy. They point out also that they are going to make an application to stay the contempt proceedings that are due to be heard at the end of April. It seems that it is their position that the disclosure exercise should not take place until after the contempt proceedings have occurred. The defendants also say that they have been accused of failing to comply with the disclosure practice direction and that that is not in fact the case.

41. There is a further point, which is that they would like, in particular David Antrobus would like certain raw data in relation to transactions the subject of the proceedings from the claimant by way of disclosure.

42. There is also an objection to dates for disclosure searches but that essentially goes to the question of the third purported restructure; is it within or without the date ranges?

43. As regards the keywords, they say that the additional keywords proposed will substantially increase costs. In relation to one company referred in those keywords they say, in so far as I can see wrongly, it was formed over a year after the proceedings were initiated, whereas in fact it was in existence at the time of the third purported restructure.

44. I will bear those submissions in mind in deciding how matters are to progress.

45. My short preamble is that disclosure is a fundamental part of civil litigation in this jurisdiction. Practice Direction 57AD exists in order to ensure that parties have a structure by which all relevant documents necessary to fairly determine the issues in proceedings are to be disclosed to the other side. There are obligations on parties to both co-operate in the disclosure process to take proper and regular steps to preserve and find documents.

46. These defendants were represented by solicitors at the outset of the proceedings and must be assumed to have had explained to them the disclosure obligations that being involved in proceedings entail.

47. The allegations in these proceedings are about transfers of money as between corporate entities. As is submitted by counsel, if they were regular transfers, properly conducted in the course of any company's business, there should be substantial documentation evidencing those transactions.

48. Mr. Knott also points out that the way in which the pleadings read David. Antrobus and Jack Mason, despite being directors of a number of the companies involved, say in brief that they had no knowledge or involvement with the transactions, which is at least a surprising conclusion.

49. Mr. Knott also points to a number of contradictions in the defendants' cases, for example, whether or not David Antrobus knew a person called Stephen Linchel. In one of the pleadings he denies knowledge of that gentleman whereas in another of the pleadings his knowledge of that gentleman is referred to. The statements of truth on both are signed by David Antrobus. There is also an inconsistency about what is said about the control of the financial affairs of various of the companies involved between what is pleaded by David Antrobus and Jack Mason and by Scott Dylan says as to the derivation of his authority.

50. Without going any further into the issues but having read the pleadings this is clearly this is a case in which a careful and full disclosure exercise must be undertaken. Why we have not got to an agreed position on disclosure today is probably really not here or there. What is here and now is that there is a trial in the court diary for January of next year and the time has come for an order for extended disclosure to be made.

51. The defendants are not here or represented today but what is being proposed, and I will discuss in more detail, by the claimant is what is described as a pragmatic form of order to take matters forward by building on the DRDs that the individual defendants have put in but to include within the order particular paragraphs making abundantly clear what the obligations of the parties to litigation are pursuant to Practice Direction 57AD.

52. The issues for disclosure are essentially agreed, apart from the question of the third purported restructure. I do not see anything in the correspondence which should cause me to say that anything other than the list of issues which has been in existence for nearly a year should govern the position. The only question is whether the third purported restructure should be included. I accept that until that matter is actually ruled upon, an agreement as between counsel at the last CCMC will not be determinative of the question.

53. The third purported restructure is an issue on the pleadings. The claim was pleaded, a defence was pleaded and then the third purported restructure happened. So, it is inevitable that it could not be pleaded until after it had happened and therefore arises only in the reply. The form of the replies to the defences of the individual defendants, is to plead that the facts and matters about the third purported restructure are further matters upon which the claimant will be asking the court to rely in drawing inferences in support of its claim in conspiracy. That evidence is plainly relevant to the claim that is made in conspiracy and therefore it is an issue on which disclosure ought to be given.

54. It is also the case that in the context of a third party disclosure application, Mr. David Mohyuddin KC sitting as a Deputy Judge of this division concluded, without objection having been made or any submission having been made by Scott Dylan who was present, that the application for documents concerning the third purported restructure was not a fishing expedition and that they were documents which were likely to or might well support the claimant's case or adversely affect the defendants' defences. I, therefore, conclude that the third purported restructure is properly included as an issue for disclosure.

55. To the extent that there is any issue about privilege against self-incrimination, that is a matter which is expressly dealt with by paragraph 14 of the Practice Direction, which provides that privilege as a potential reason for withholding the production of documents. It is not an issue which should prevent an order for disclosure.

56. The proposed date for compliance with paragraph 12 of the Practice Direction is a date in mid-August which if as things stand the contempt trial takes place in April is well after that trial. Accordingly by that time any issues relating to self-incrimination in those proceedings will have been determined. Mr Knott rightly recognises that, if for some reason the trial has not occurred, the parties would be at liberty to apply as to timetabling.

57. My order for extended disclosure will be by reference to a DRD part 1 which includes issue 29 which concerns the third purported restructure.

58. The next issue that arises is section 2s of the DRDs, which if the correspondence that has very recently been put in by the defendants were to be analysed line by line, would require the court to sit for some days teasing out individual issues as between the parties. Instead of asking me to do that, what Mr. Knott proposes is that the individual section 2s of the DRDs are to be taken as the starting point but that overarching provisions are included in a disclosure order about the date ranges, the searches to be undertaken, and the databases and devices which may contain relevant documents that are to be searched. The aim being to ensure that the defendants are clear as to what they should do. That in the circumstances of this case seems to me indeed a pragmatic solution to get this matter moving forward.

59. As to the overarching provisions, the first that I need to deal with is the date range provision. In that case, it is suggested, as was suggested by Mr. Scott Dylan himself in his own section 2, that his search period should be the period from 1st November 2020 to 31st May 2022 which is a date shortly after the third purported restructure. In relation to the other defendants, it is proposed to be the period 1st May 2021, which is the beginning of the relationship between the bank and the defendant parties also to 31st May 2022. In the case of Barclays the date range will be 1st May 2021 to 31st May

    2022, save in the case of one employee who had contact with Scott Dylan from as early as 1st November 2020.

60. The next overarching provision is as to each defendant's search of databases and social media accounts and similar to which they had access, but also with a provision for identifying any account that they no longer have access to and when and what manner that access ceased.

61. There is also a provision about devices, mobile phones, laptops, desktops and so on with a similar provision for identifying those devices and explaining if any such device no longer exists or is no longer accessible what the position is there. There is a particular reference to two heavily configured custom Apple MacBooks which a letter from the administrators of the companies refer having been sold in the early part of 2022.

62. There is a further overarching provision which is to add some proposed keywords to those that each of the defendants have proposed in their own DRDs. The keywords I am told, and it seems consistent with what I have read, are ones which relate to the third purported restructure.

63. There is aloso proposed to be included a pragmatic and helpful provision that the directions as regards disclosure will be without prejudice to each party's right to seek further extended disclosure in due course and involve no admission as to the adequacy of any other party's disclosure search generally or as to the section 2 of the DRDs specifically.

64. In relation to the raw data request made by Mr Antrobus it is the claimant's position that documents that exist in this connection will be provided as part of the disclosure process but that what Mr Antrobus appears to be asking for is data converted to a format in which it does not presently exist and which is not therefore the proper subject of disclosure.

65. There is a consequential direction sought as to witness statements service for which is proposed to take place now in November of 2024, which should still enable the original trial date to be kept.

JUDGMENT ON COSTS

66. There is a costs schedule before me for the claimant's costs. Included within it are elements which can be clearly attributed to the adjournment application. Those elements are the work on the responsive evidence of Dominic de Bono and Mr. Knott says on a broad-brush basis one third of his brief fee. He also fairly says that it is not possible to strip out from the other elements in the schedule those parts of which are attributable to the adjournment as opposed to the disclosure question. He accepts that normally case management conferences are dealt with on a costs in the case basis, but that I should take note of the fact that such a substantial hearing could have been avoided if the defendants had engaged more cooperatively with the disclosure process

    at an earlier stage, and could have been avoided if the defendants had accepted a pragmatic offer to proceed, essentially as I will now order.

67. On behalf of the defendants Ms Mattu says that they had to make the adjournment application because of their position as litigants in person. I do not consider that that argument has merit. The defendants could have avoided making the adjournment application if they had engaged properly with the litigation process and the disclosure process earlier.

68. In those circumstances and acknowledging the difficulty of completely separating the adjournment costs and the disclosure costs and which costs by way of disclosure would have been incurred anyway and which would not, it seems to me that the suggestion by Mr. Knott that I make an order for the defendants to pay on a joint and several basis 30% of the claimant's costs of today is a fair one.

69. I will then summarily assess what the total bill is to be of which the 30% is to be paid by the defendants and as to the balancing 70% should be costs in the case.

JUDGMENT ON SUMMARY ASSESSMENT

70. The overall bill does not seem to me to be excessively high, given the complexities of the matter as a whole and the difficulties of dealing with five litigants in person. There are no proper submissions to be made on the charging which are within close striking distance of the guideline rates.

71. Doing the best I can to arrive at a reasonable and proportionate figure and taking all matters into account I propose to do is to assess the bill in the sum of £58,000, inclusive of the VAT figure. I will order that the defendants jointly and severally pay 30% of that figure, which is £17,400 inclusive of VAT. The balance of the bill as summarily assessed will be costs in the case,.

(Proceedings continued, please see separate transcript)

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