Neutral Citation Number: [2019] EWHC 1376 (QB)

Case No: HQ18M01822

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/06/2019

Before :

THE HONOURABLE MR JUSTICE WARBY

- -

Between :

Quantum Tuning Limited	**Claimant**
- and -	
Sam White	**Defendant**

- -
- -

James Ramsden QC (instructed by **Filor Solicitors**) for the **Claimant**
Tom Carpenter-Leitch (instructed by **Aston Bond Law**) for the **Defendant**

Hearing dates: 2 - 3 May 2019

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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.

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THE HONOURABLE MR JUSTICE WARBY

MR JUSTICE WARBY:

1. This is an application for an order committing the defendant to prison for contempt of court. The allegation is that the defendant has failed to comply with an Order for delivery up made by Nicklin J on 17 May 2018 ("the Nicklin Order").

The background in summary

2. The background can be quite shortly summarised. The defendant ("Mr White") used to work for the claimant ("Quantum"), which is a provider of vehicle engine tuning services in the UK. Quantum specialises in the modification of electronic vehicle engine tuning ("VET") files for the units that control performance. This function is known in the trade as "re-mapping" or "chip tuning". Mr White worked for Quantum as a Senior Calibration Engineer, in which capacity he was responsible for creating, writing and editing Quantum's VET files.

3. In September 2016, Quantum came to the conclusion that, in pursuit of a plan to set up business in competition with Quantum, Mr White had covertly misappropriated a large number of Quantum's VET files. On 23 September 2016, Quantum started an action ("the First Action") in which it sought an injunction and financial remedies for alleged fraud and/or breach of contract and/or wrongful interference with goods. Quantum applied to the Court without notice to Mr White for various injunctions. Soole J granted an order ("the Soole Order"), prohibiting Mr White from dealing with any digital files or documentation the property of Quantum and from deleting any such material or any emails from any accounts he owned or controlled. The Soole Order required Mr White to deliver up all computer and electronic storage equipment on which he could have secreted files belonging to Quantum. It also froze Mr White's assets up to £25,000.

4. On 24 September 2016, the Soole Order was served on Mr White, who was then suspended on full pay. On 27 September 2016, Mr White wrote an email to the Directors of Quantum, admitting to wrongdoing, and apologising for it. On 5 October 2016 there was a meeting ("the October Meeting"), attended by Mr White and Quantum's Managing Director, Christopher Roberts, and its Operations Director, Tim McGing. At that meeting Mr White delivered up a Dell desktop computer, a Sony Vaio laptop, and a USB memory stick, and gave access to certain email and storage facilities.

5. The parties then reached an agreement to compromise the First Action, which was formalised in a written deed of agreement dated 19 October 2016 ("the Settlement Agreement"). By the Settlement Agreement, Mr White acknowledged that Quantum had sustained financial loss by his unlawful actions. He warranted and undertook that he had deleted and/or returned to Quantum any of its VET files (or any other digital data, hard copy data or documents) which had at any time been in his possession, control or ownership. As recorded and provided for in the Settlement Agreement, Mr White was summarily dismissed the same day.

6. The Settlement Agreement was incorporated in the Schedule to a "Tomlin" order made by consent on 19 October 2016 and sealed on 21 October 2016 ("the Tomlin Order"). This contained the usual provisions for a stay of all further proceedings in the First Action, on the terms of the Settlement Agreement, save for the purpose of enforcing the terms of that agreement, for which purpose the parties had liberty to apply.

7. In and after March 2018, Quantum came to the conclusion that Mr White had used deception at the October Meeting, and that he had thereby induced Quantum to consent to the Settlement Agreement and the Tomlin Order. The basis for this was a forensic examination carried out by Quantum of some VET Files provided to Quantum by a dealer, DK Tuning. The files had been worked on by Mr White. Having examined them Quantum was certain that Mr White had used Quantum's VET files. On 17 May 2018, Quantum applied to the Court, without notice to Mr White, seeking fresh orders for the preservation of its files and documents and any relevant emails, and for the delivery up "forthwith" of every electronic device capable of containing its VET files. The allegation was that Mr White had falsely and fraudulently represented that he had delivered up all of Quantum's digital vehicle engine tuning files and any copy files in his possession, custody or control, when in truth he had retained such files or copies on devices which he had not delivered up, the existence of which he had concealed. Accordingly, it was argued, the Settlement Agreement and Consent Order were liable to be set aside.

8. The application was made before the issue of a Claim Form, or Application Notice, but these were swiftly issued. The relief sought in this new claim ("the Second Action") was, firstly, rescission of the Settlement Agreement and Consent Order, and the lifting of the stay imposed by the Consent Order; secondly, Quantum sought essentially the same remedies, on the same grounds, as it had claimed in the First Action.

9. It was this without notice application that resulted in the Nicklin Order. Nicklin J granted all the relief sought, which included, critically, an order for delivery up of all devices that contained or could contain VET files. The Nicklin Order also included a freezing order in respect of Mr White's assets up to £50,000.

10. The Nicklin Order was served on Mr White over the weekend that followed its grant. On Monday 21 May 2018, at a meeting at the offices of Mr White's solicitors, Aston Bond, Mr White delivered up in purported compliance with the Nicklin Order three computers and five other devices: a desktop computer and two laptops, one external hard drive, two Samsung Galaxy phones, and two USB memory sticks. It is the laptop computers that are relevant to the present application. They were a Dell Alienware laptop, and an Acer.

11. Subsequently, Mr White provided further information about his dealings with Quantum's VET files. This included evidence contained in an affidavit dated 24 May 2018, in which he maintained that he had complied with the Nicklin Order. On that same date, he undertook to the Court that he had done so. That undertaking was recorded in a further Consent Order, sealed on 25 May 2018. On this occasion, however, purported compliance did not lead to settlement.

12. On 21 June 2018, Quantum served Particulars of Claim in the Second Action, and on 22 June 2018 Quantum served an affidavit of Mr Roberts, both documents alleging that there had been non-compliance with the Nicklin Order. Quantum claimed to have identified, by their digital footprints, five computers which had not been disclosed by Mr White on 21 May 2018, but which had been used by him to read, write or edit VET files until dates in and between February and June 2018. Quantum invited the inference that these machines contained its VET Files, and had been retained by Mr White and used by him to read or write such files, in breach of his obligations to Quantum and the

Nicklin Order. Quantum invited the further inference that Mr White had retained and used additional devices to carry out such illicit activities.

13. Quantum's position at this time was that Mr White was in contempt, hence the service of an affidavit. But it said it was willing to hold back from making a committal application if Mr White now complied with his obligations.

14. Quantum was not satisfied with Mr White's response, which consisted of two affidavits and a Defence and Counterclaim. In September 2018, Quantum served a Reply and Defence to Counterclaim and a further affidavit of Mr Roberts. Following a further (third) affidavit from Mr White, the present application was issued. That was done by means of a Part 23 application notice in the Second Action, issued on 30 November 2018 ("the Committal Application").

The terms of the Nicklin Order

15. The precise terms of the relevant paragraph of the Nicklin Order are these:

> "4. The Respondent must:
>
> (1) forthwith deliver to the Applicant's solicitor each and every electronic device in his ownership possession or control containing or capable of containing digital vehicle engine tuning files including but not limited to computer(s), laptops, tablets, external discs or hard drives, handhelds, phones, memory cards, (individually and collectively "the Devices");"

The pleaded allegations of contempt

16. The Committal Application seeks an order of committal for:

> "… contemptuous breach of the Order backed by a Penal Notice for delivery up of his computer and electronic storage media made on 17th May 2018 and thereby intentionally interfered with the administration of justice."

17. It is alleged that:

> "The Defendant's breach of the Order of 17th May 2018 is constituted by:
>
> (i) His failure to deliver up the computer and electronic storage equipment he was required to deliver up under that order;
>
> (ii) His concealment and/or destruction of the computers and electronic storage media which he has failed to deliver up as required by the Order; and
>
> (iii) His attempt to mislead the Claimant and the court in relation both to his failure to deliver up and his concealment of computers and electronic storage media that were covered by the Order."

18. In a departure from the prescribed procedure, the specific allegations of breach are not to be found in the Committal Application itself. By a case management Order made by HHJ Saggerson (sitting as a High Court Judge) on 8 March 2019 ("the Saggerson Order"), the scope of the issues was defined and limited, by reference to the Particulars of Claim. That was possible because the Particulars of Claim set out, among other things, the grounds on which Quantum claims rescission of the Settlement Agreement, and the setting aside of the Consent Order. The Saggerson Order provides that I am concerned only with the allegations contained in paragraphs 34 to 66 inclusive of the Particulars of Claim. It is those allegations that I have sought to summarise in paragraph 12 above.

The written evidence

19. The Committal Application asserts that committal should be ordered "for the reasons set out" in three affidavits of Mr Roberts: those of 16 May 2018 (served in support of the application to Nicklin J), 22 June 2018 (served in anticipation of the Committal Application), and 28 September 2018 (served in support of the Committal Application).

20. The Committal Application also states that Quantum:

> "wishes to rely on all the evidence (including the affidavits referred to …) contained in the 4 hearing bundles which have been lodged with this application".

21. The documents in those four bundles included further affidavits from Mr Roberts (19 September 2016), Tim McGing (16 May 2018), and Quantum's solicitor, Mr Filor (16 May 2018 and 21 June 2018). They also included other evidence which, by the date of the Committal Application, Quantum had served in the Second Action. There are witness statements from Axel Schroer (15 June 2018), and Simon Yates (21 September 2018), as well as an expert report from Jason Coyne (21 September 2018).

22. In response to the threat of contempt proceedings, and the Committal Application, Mr White served the three affidavits to which I have referred (24 May 2018, 28 June 2018 and 15 October 2018).

23. The Saggerson Order allowed for the sequential service of further evidence, if so advised, and in accordance with that order there are now in evidence a further (fourth) affidavit from Mr White, dated 5 April 2019, and another affidavit from Mr Roberts (his fourth) dated 18 April 2019.

24. One further piece of written evidence is contained in the four lever arch files that were before me at the start of this hearing: a witness statement of Adrian McDonald, served by Quantum (11 February 2019). In the course of the hearing, Mr White has produced two further affidavits, to which I shall refer: his fifth (26 April 2019) and sixth (1 May 2019, the eve of this hearing).

25. For convenience I shall use shorthand to refer to the various affidavits and witness statements as (for instance) "Roberts 1", "White 2" and "Schroer".

Some procedural issues

26. The application is made under Section II of CPR Part 81 (Committal for breach of a judgment, order or undertaking to do or abstain from doing an act). This is the Section that applies where the defendant is alleged to have interfered with the due administration of justice by failing to do something he is required by an order of the Court to do: see rr 81.4(1)(b) and 81.12(1).

27. CPR 81.10 prescribes "How to make the committal application". It includes the following provisions:-

> "(3) The application notice must
>
> > (a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
> >
> > (b) be supported by an affidavit containing all the evidence relied upon
>
> (4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent
>
> (5) The court may –
>
> > (a) dispense with service under paragraph (4) if it considers it just to do so; or
> >
> > (b) make an order in respect of service by an alternative method or at an alternative place."

28. CPR 81.28(1) provides that, at the hearing of any committal application, the applicant may not rely on any grounds other than those set out in the claim form or application notice unless the court otherwise permits. PD 81 para 15.5 requires the Court dealing with a committal application to "have regard to the need for the respondent to have details of the alleged acts of contempt and the opportunity to respond…"

29. Mr White's representatives have at various times raised procedural objections to the way in which this application has been made.

    (1) In correspondence, there has been criticism of a lack of clarity in the grounds on which reliance is placed. As I have explained, these are not set out in the Committal Application itself, in numbered counts. It is fair to say that Quantum's correspondence and evidence have at various times advanced criticisms which are not made in the Application Notice or in the Particulars of Claim.

    (2) In his skeleton argument for this hearing, Mr Carpenter-Leitch raised two further issues. First, he pointed out that the application notice had not been served personally. He did not present this as a fundamental objection, but as something which ought to be attended to. Mr Carpenter-Leitch's second point was pressed rather harder. He pointed out that the Committal Application sought to rely on a

number of witness statements. He submitted that under the rules the claimant was only entitled to rely on evidence given by affidavit. Witness statements are not a legitimate way to adduce evidence for this purpose. To the extent that Quantum sought a departure from the regime prescribed by CPR 81 that needed to be justified and, he submitted, no justification had been offered. The main target of this submission was the witness statement and exhibit of Axel Schroer.

30. Herr Schroer is the Managing Director of EVC electronic GmbH ("EVC"), a company based in Dinslaken near Dusseldorf which provides hardware and software products to the vehicle tuning industry. His evidence relates to a proprietary software product of EVC called WinOLS. The product is written specially to modify the memory contents of Engine Control Units ("ECUs"). WinOLS provides an interface between the data held on a vehicle's ECU and EVC's customers. Herr Schroer says that "WinOLS is the preferred choice of professional tuners and… the industry standard". Quantum is one of EVC's customers. The essence of Schroer is to give an account of how WinOLS works, and to provide, at the request of Quantum, details of the WinOLS account activity of a UK Company, Intune Performance (which Mr White admits is his), and of another account in the name of Added Automotive. Mr Schroer exhibits logs showing activity on WinOLS in relation to both accounts.

31. I myself had wondered about the legitimacy of reliance on Schroer, noting that it was not in affidavit form. I also asked myself whether it was on analysis expert evidence, and hence admissible only with the Court's permission, and/or hearsay in respect of which a notice should have been served if reliance was to be placed upon it. It seemed clear that the evidence of Schroer was central to the case against Mr White. Mr Ramsden's opening address reinforced that impression.

32. As a general rule, the Court has demanded strict compliance with the procedural requirements for committal applications, which exist to ensure that the alleged contemnor benefits from due process, and to guard against unfairness in proceedings which can lead to deprivation of liberty. As noted in the commentary to r 81.10:

> "Where an application is made to commit a defendant for contempt of court, it is obviously important that great care is taken by the applicant to ensure that all of the procedural requirements in this Section of Pt 81 are met."

33. It has, however, long been recognised that this does not require slavish adherence to the technicalities, regardless of the justice of the case. It must not be forgotten that an order for committal serves the vital purposes of upholding the Court's authority, and vindicating the rule of law. Dealing with a case justly includes "enforcing compliance with … orders": CPR 1.1(2)(f). A rigidly technical approach would be inimical to these imperatives. In *Nicholls v Nicholls* [1997] 1 WLR 314, 326, where the Court was dealing with an appeal against committal, Lord Woolf MR put it this way:

> "While the procedural requirements in relation to applications to commit and committal orders are there to be obeyed and to protect the contemnor, if there is non-compliance with the requirements which does not prejudice the contemnor, to set aside the order purely on the grounds of technicality is contrary to the interests of justice. As long as the order made by the judge

> was a valid order, the approach of this court will be to uphold the order in the absence of any prejudice or injustice to the contemnor as a consequence of doing so."

34. Naturally, the same approach applies when the judge at first instance is considering whether to insist on strict compliance with the procedural requirements laid down in the rules. This principle is now embodied in paragraph 16.2 of the Part 81 Practice Direction, which provides that:-

> "the court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect."

35. The issue of service was not addressed in the oral arguments of the parties. It is a pure technicality. To the extent necessary, I authorise pursuant to CPR 81.10(5)(b) service of the Committal Application and supporting evidence by the alternative method of service on the defendant's solicitors, and waive previous non-compliance.

36. The defendant's complaints or criticisms of a lack of clarity in the claimant's case on this application had some merit but they were not, in the event, material. It proved less than ideal for the Particulars of Claim to stand in place of the Schedule required by CPR 81.10(3)(a), and I would not recommend such a practice in future. A more convenient course would have been the conventional one: the provision of a numbered list of alleged breaches, with short particulars. But this was not a "procedural defect" or, if it was, it was something approved by the Saggerson Order. In any event, by the end of the hearing Quantum's case had been whittled down, as I shall explain. All the matters that are now relied on have been sufficiently clear at all material times, and there has been no question of a lack of clarity leading to unfairness.

37. As for the evidential points, Mr Ramsden made clear that his client would not seek to rely on any witness statement other than Schroer, and he would not rely on the expert report of Coyne. I concluded after argument that no injustice had been caused to Mr White by the failure to adduce Schroer in the form of an affidavit, and that I should apply PD81 16.2 in favour of Quantum. I accepted its offer to procure the verification of Schroer by way of affidavit, and waived any prior breach of CPR 81.10(3)(b) in that respect. The affidavit has since been provided. I also concluded that Schroer was not expert opinion evidence, and probably not expert evidence of fact either, but that if it was I would grant permission. Prominent among the reasons I gave in so ruling were the facts that Schroer had been served as long ago as June 2018, Mr White was sufficiently expert to deal with the evidence, and he had done so extensively in his own written evidence without raising objection.

38. Mr White himself applied for permission to adduce affidavit evidence that was not provided for by the Saggerson Order, in the form of White 5 and White 6. I granted that application, which was not opposed, on the basis that White 5 contained clarifications or corrections which it would have been proper to deal with in oral evidence in chief, and neither the late service of that nor White 6 was a serious or significant breach which ought to result in exclusion of the evidence.

Legal framework

39. The essential principles are clear, and there has been no disagreement about them.

(1) The burden of proving contempt of court rests on the party making the allegation.

(2) Although committal proceedings such as these are civil proceedings, the standard of proof is the criminal standard. This is a long-established common law principle, reflected, for instance, in *Masri v Consolidated Contractors International Company SAL & Others* [2011] EWHC 1024 (Comm) [144] and *JSC BTA Bank v Ablyazov* [2012] EWHC 237 (Comm) [7]. But PD81 para 9 reaffirms it expressly, within the CPR, in the following terms:

> "In all cases the Convention rights of those involved should particularly be borne in mind. It should be noted that the standard of proof, having regard to the possibility that a person may be sent to prison, is that the allegation be proved beyond reasonable doubt."

(3) For the purposes of an application to commit for contempt, any Order requiring a party to do or abstain from doing an act should be strictly construed, and any doubt as to its construction resolved in favour of the respondent. A respondent should not be found in contempt of an order which fails to make clear what it is that he or she must or must not do. This, again, is a long-established principle but illustrated (for instance) by *Pan Petroleum AJE Ltd v Yinka Folawiyo Petroleum Co Ltd* [2017] EWCA Civ 1525 [41-42].

(4) Where, as here, the applicant's factual case is a circumstantial one depending upon inference, the Court should not make a finding of contempt if there is at least one realistic inference consistent with innocence. In this context Mr Carpenter-Leitch has referred me to *JSC BTA Bank v Ablyazov* (above) [8] and *JSC BTA Bank v Solodchenko* [2013] EWCA Civ 829 [40]. Mr Ramsden has referred to the well-known passage in the judgment of Christopher Clarke J in *Masri* at [146]. I regard all those cases as helpful. But neither party has dissented from the way that I put the matter in *Liverpool Victoria Insurance v Yavuz* [2017] EWHC 3088 (QB) [20]:

> "… I should apply the established approach of the criminal law. I should decide which of the strands of evidence relied on I accept as reliable, and which if any I do not. I must then decide what conclusions I can fairly and reasonably draw from any strands of evidence I do accept. I should not engage in any guesswork or speculation. The ultimate question is whether I have been made sure of the defendant's guilt. To reach that point I must be persuaded that, on the view of the evidence that I take, I can reject all realistic possibilities consistent with innocence, and infer guilt: see, for instance, *R v G & F* [2012] EWCA Crim 1756 [2013] Crim LR 678 [36]-[37]."

40. I remind myself that I need to deal separately with each individual allegation of breach, and that (as highlighted by PD81 para 9), other fair trial rights which the common law and Article 6 of the Convention afford to those accused of crime also apply. These

include a defendant's right to silence. Mr White has not exercised that right, but by giving evidence he has not taken on himself any burden of proof. That remains on Quantum throughout.

41. Committal proceedings are not in all respects criminal in nature, however. Neither the procedural regime, nor the rules of evidence that apply in criminal proceedings, are applicable. Hearsay evidence is therefore admissible in principle, with its weight being a matter for evaluation by the Court: see the discussion in *Yavuz* (above), at [22-23].

The charges

42. This is a convenient term to apply to those allegations of contempt which, by the end of the hearing, remain live. Quantum's case, as spelled out by Mr Ramsden in his closing argument, can be stated as follows: in breach of paragraph 4(1) of the Nicklin Order, Mr White failed on 21 May 2018, or at all, to deliver to the claimant's solicitor the following computers that were in his ownership, possession or control:-

(1) A Dell Alienware laptop, to which Quantum refers as "AW1" (see paragraphs 45-48 of the Particulars of Claim);

(2) a Sony laptop (paragraphs 49-51);

(3) a computer registered on WinOLS as "SAM-PC" (Paragraphs 52-55);

(4) an HP laptop, serial no. ORQ5SLT6 (paragraphs 62-65).

43. These are allegations that fall within the scope of paragraph (i) of the Committal Application, and I can disregard paragraphs (ii) and (iii), which are either repetitive, superfluous or otherwise immaterial. All four charges relate to computers that are said to be, or to have been, physical items that were in the ownership, possession or control of Mr White at the time of the Nicklin Order. It is therefore unnecessary to address (a) the factual case advanced at one time by Quantum, that Mr White failed to deliver up certain "virtual computers" that were under his control on 21 May 2018; and (b) the related issue of construction advanced by Mr Carpenter-Leitch in his skeleton argument. This was that, applying the principles of construction identified above, the use of the words "deliver" and "device" as well as the definitional term "Devices" in paragraph 4(1) of the Nicklin Order shows that the obligation to deliver up applied only to items capable of being held and handed over physically; it did not capture any form of virtual computer or other database which contained or could have contained any VET files.

44. These points, or the gist of them, do however have some residual relevance. Mr Ramsden has invited me, on the issue of credibility, to attach weight to the evidence relating to a Dropbox account held by Mr White at the relevant times. Mr White concedes that he had such an account, and that it may have held some VET Files. His evidence to me was that he does not believe the Nicklin Order required him to deliver up anything held on Dropbox, and that on 21 May 2018 he did not believe so, but did mention his Dropbox account to Mr Roberts and Mr McGing. He further maintained that the contents of the account would have been apparent and accessible on any inspection of the Acer laptop which he handed over at that time, because this was fully synchronised to the Dropbox account. Quantum's case is that the Dropbox account is a

"Device" that falls within the scope of the Nicklin Order, but was never mentioned on 21 May 2018. It was first mentioned "in passing" in White 3 (at paras 65 and 124). This has never been pleaded as a breach, and there is no application to add it. But I am invited to conclude that this was in fact an example of deliberate non-disclosure. I shall return to this.

The witnesses

45. I have heard evidence from two witnesses only: Mr Roberts, and Mr White.

46. Mr Roberts is a man of mature years. His manner is sober and reserved. He impressed me as a careful and conscientious witness who was concerned to help the Court. He was ready and willing to concede fair points put to him in cross-examination, without quibbling or seeking to put counter-arguments. But he stood firm on the central aspects of his evidence, where he disagreed with the defence case. His honesty was not challenged. His technical knowledge was, but I do not consider the challenge was successful. I consider Mr Roberts to be a reliable source of evidence.

47. I do not say the same of Mr White. He appears to have a keen intelligence, and he presented as a self-possessed and quick-witted young man (he is only 23 years old); but his manner under cross-examination was at times evasive, and generally rather spiky and truculent. In his oral evidence he resorted repeatedly to standard forms of words, such as "as I have repeatedly stated in my evidence", or "I would welcome any evidence to support that". This combative and formulaic approach was unconvincing. It gave all the appearance of playing for time, whilst attempting to bolster his own credibility. Mr Carpenter-Leitch was wise to concede that his client's evidence was defensive, at times confused, and may have appeared arrogant. He suggested nonetheless that Mr White had been consistent on the substance of his case.

48. As will become apparent, however, Mr White's account of relevant events has changed in a number of significant ways over time. I agree with Mr Ramsden, that it is characteristic of Mr White's conduct in this case to respond to pressure by swiftly making apparently confident assertions which turn out on examination to be false or unreliable. Mr Ramsden was also right to observe that Mr White seemed surprisingly indignant at the (obvious) suggestion that changes in his story cast doubt on its veracity. He gave the appearance of thinking that the fact that he now had a new and different explanation was enough to make previous inaccurate accounts immaterial.

49. All of these points serve to undermine the reliability of Mr White's oral evidence, and his affidavit evidence. But a finding of contempt of court will not be made just because or even mainly because a witness is evasive, obstructive, or unconvincing on some points, or because some of his evidence appears to be improbable. I bear in mind that Mr White is only 23 years of age, and I am alive to the point stressed by Mr Carpenter-Leitch, that in assessing the plausibility of Mr White's evidence I should bear in mind that, unlike Quantum, he was operating a small business almost single-handed, with a relatively informal and unstructured approach. I need to look at the course of events from his perspective and not just that of Quantum. In addition, I bear in mind that witnesses and defendants sometimes tell lies to bolster a true story.

A narrative

50. There is no need to give much more detail of the First Action than I have already set out. But it is helpful to note the evidence of Mr Roberts, that inspection by him of the hardware delivered up and inspected in 2016 in response to the Soole Order showed that it contained or had formerly contained copies of VET files from Quantum's database. It is also helpful to recall that one of the devices delivered up was a Sony Vaio laptop. This machine was returned to Mr White after inspection.

51. After the Settlement Agreement and Consent Order, Mr White set up in business under the name "In-Tune Performance". He was living at his parents' home in Reading, but established an office at the premises of Big Yellow in Slough. Mr Roberts was monitoring what could be seen of Mr White's activities by looking at Facebook, and other social media and online forums. He says, and I accept, that the vehicle engine tuning industry is a small one, in which one is able by these means to obtain some sense of what is going on.

52. In January 2017, something seen on a Facebook group page led Quantum to instruct its solicitors to send a warning letter. Mr White responded denying any breach of duty and assuring Quantum that he intended to comply with all his obligations. Quantum kept the situation under scrutiny for the following 12 months. During that period, it found evidence that Mr White was using two computers for tuning work.

    (1) On 30 March 2017, Mr Roberts identified and reported aspects of Mr White's social media profile to Quantum's solicitors, pointing out that in some pictures he had posted Mr White was using an HP Laptop "that we didn't see during his disclosure."

    (2) On 30 November 2017, Mr White posted on his "Sam White" Facebook page a photograph of a Dell Alienware laptop apparently being used for file writing, in the 1st class cabin of a Virgin train. This machine had a US keyboard, with the 3 key having a # instead of a £ symbol, and other standard differences. It was running Windows 10, and could be seen to have WinOLS installed.

53. From January 2018 onwards, Quantum came to the firm view that there had been breaches of the agreement and order. Quantum had an established dealer called DK Tuning, which was using tuning tools "slaved" to Quantum. In late 2017, DK Tuning advertised its intention to start its own vehicle tuning business. In January 2018, DK Tuning started using Mr White to run its London sub-branch. It began to advertise a service of adding "pop-n-bang" effects to ordinary performance tuning. Between February and 13 March 2018, DK Tuning submitted 8 requests for VET files to be "unwrapped" by Quantum, so that they could have these effects added. "Unwrapping" by Quantum was necessary, because under the "slave" arrangements only Quantum had the right and technical facilities to enable its VET files connected to its "slaved" tools to be modified. The process thereafter would involve the files being downloaded by DK Tuning, which would modify the files then upload them for "re-wrapping" by Quantum so that the modification could be written into the vehicle. It was the defendant, Mr White, who carried out the modification on the files provided for unwrapping.

54. Quantum's evidence is that its forensic examination of 7 of the files provided by DK for unwrapping showed clearly that the defendant was in breach of the Settlement

Agreement and Consent Order. Mr Roberts has three main points. First, he maintains "without any doubt whatsoever" that the main structure of the files as sent back by DK Tuning for re-wrapping reflected the use of a Quantum VET file. Study of 7 of the 8 files supplied showed that between 79% and 100% of the changes made to these files were the same as changes made by Quantum to its corresponding files. There were minor errors in the files which could not be coincidence, either. Secondly, Mr Roberts points to the very short turnaround times for the files in question which he suggests is inconsistent with the changes being the result of original work by Mr White. One file took 20 hours, but four were turned around in less than 1 hour, two in less than 2 ½ hours. He suggests the longer time period is accounted for by the work being left overnight. Thirdly, Mr Roberts makes the point that this forensic examination relates to seven files, relating to seven completely different vehicles from a market size of 8,000 vehicles. He suggests it is "simply not possible" that by some good fortune Mr White happened to have copies of the Quantum VET files for those seven vehicles, and no others. He and his colleagues are "100% sure" that Mr White still has or had access to Quantum's VET files, and was using them for gain.

55. This information was not shared with DK Tuning or used by Quantum in the first instance. But when it learned that DK Tuning was planning to transfer most of its dealers' slave tuning tools to Mr White, Quantum arranged a meeting with DK Tuning. At the meeting, which took place on 23 April 2018, the representatives of DK Tuning were told that the reason for it was Mr White. They were asked for and gave promises not to speak about the matter to him. They were then advised that Quantum was considering a further application to the High Court, on the basis of "strong evidence" that the files supplied to DK Tuning by Mr White were stolen from Quantum's database. After the meeting, DK Tuning appeared to have put their plans on hold, and Mr Roberts was confident that DK Tuning had not tipped off Mr White.

56. Quantum obtained further evidence of laptops that were not delivered up being used for tuning activities during the period from January to May 2018.

(1) On 17 January 2018, the defendant posted in the "Professional ECU Tuning" Facebook group a photograph of a Sony laptop in use to programme a vehicle. The picture is captioned "Sitting in the sun waiting for this beast to read. Not a bad life." A posting on the Intune Performance website shows a Sony laptop being used to programme an ECU, and for file writing using WinOLS on 7 February 2018. Mr Roberts' evidence is that the same laptop appears in both pictures.

(2) On 25 February 2018, a Dell Alienware laptop was shown on a post on the DK Tuning London Facebook page, being used for programming and file-writing in two vehicles – An Iveco and a Nissan. This machine had a US keyboard, was running Windows 10 and had WinOLS installed.

(3) On 15 May 2018, Mr White posted on Facebook a photograph of a Dell Alienware laptop in use by him, apparently inside a Ford Transit. This machine had a US keyboard.

(4) Mr Roberts' evidence is that the Alienware laptop shown in these pictures is the same, and that it is the same machine as shown in the Facebook post of November 2017, referred to above.

57. It was on Thursday 17 May 2018 that the Nicklin Order was granted. The second affidavit of Mr Filor contains unchallenged evidence as to what happened over the following four days. It is corroborated by the evidence of Mr Roberts which, on the following points, was not challenged either. The evidence, and my findings, are as follows:

    (1) On Friday 18 May, Mr Filor and Mr Roberts sought to serve the Nicklin Order. They drove to Mr White's Slough office to find he was not there. They then attended his home address. Someone, assumed to be Mr White's brother, answered the door and said that Sam White was at his new house and would be back shortly. The defendant's car was in the drive. He did not return within the 40 minutes for which Messrs Filor and Roberts waited.

    (2) Another attempt at service was made early on Saturday 19 May 2018, again at the address of Mr White's parents. Mr White's car was again on the drive. His mother and father both said that he had been out the previous night, drinking with mates, and had not returned. The father said that Mr White was aware there had been a problem with some files. An attempt to contact Mr White by phone went to voicemail, and the Quantum representatives left. As they were travelling back to Quantum's offices, Mr White called Mr Filor. He claimed that he could not be served as he was driving up to Scotland, returning on Monday. He would then be very busy on business in the Midlands, returning again on Tuesday. Late on the Saturday evening, Mr Filor emailed Mr White setting out options for meeting on Sunday night or Monday morning.

    (3) At 08:22 on Sunday 20 May 2018, Mr White responded suggesting a meeting on the afternoon of that day. It was agreed that they would meet at the defendant's offices at 3pm. Mr White informed Mr Filor that he would have all his computers with him except for one laptop, held by a "chap who works for me", whom he had tried to contact without success. At 3pm Mr Filor attended with Mr McGing. Mr White arrived just after the appointed hour in his Mercedes car, with his father. He told the Quantum team that he was not prepared to hand over his equipment, based on legal advice he had received urgently. He maintained that position, though it was pointed out that the order required him to deliver "forthwith". The Order and associated documents were formally served. A meeting was arranged for the following day, at the offices of Mr White's solicitors.

    (4) Before the meeting, Mr White messaged Mr Filor to say that he now had the laptop he had mentioned, and thus had "all the equipment". Delivery up in purported compliance with the Nicklin Order then took place at Aston Bond's offices on Monday 21 May 2018, four days after the injunction was granted. The handover meeting was attended by Mr Filor, with Mr Roberts and Dave Guilford on behalf of Quantum. Mr White was attended by his solicitor, who had prepared a handwritten schedule of the items being delivered up.

58. The following aspects of the evidence about the handover meeting, all of which I accept, are important.

    (1) The Acer laptop delivered up on this occasion "looked brand new" (Mr Filor). Mr White said that he had had it for less than three months and that it had 120,000 of his VET files on it. (It later turned out that the Acer had been bought

on 15 March 2018, just over two months earlier). Mr White said that this and the Alienware laptop he also delivered up were his working laptops. Quantum sent the Acer for forensic imaging.

(2) As for the Alienware machine, Mr White told Quantum that this device "was only used for diagnostics and data logging". This is my emphasis, but otherwise this was the clear evidence of both Mr Filor and Mr Roberts. Mr Roberts was not challenged on this point in cross-examination. That is unsurprising, given that Mr White's fourth affidavit says the same thing. I reject his attempt in oral evidence to shy away from the term "only". Nor was Mr Roberts challenged on his description of this machine as "very old". Quantum did not request imaging of this Alienware machine, but it was photographed. It had a UK keyboard.

(3) Mr White was asked at the meeting about other laptops which Quantum believed he had been using, and said:-

a) of the Sony which he delivered up in 2016, that he had got rid of it because he was concerned that Mr Roberts had installed spyware on it, when he inspected the Sony in October 2016; and

b) of the HP, that "he had disposed of it because it had a cracked screen"; and

c) that he had had another Alienware laptop but "he had got it wet (dropped it into a puddle) … [and] thrown it away … smashed it a bit and put it in a bin." He said that the Acer which he delivered up was a replacement for this Alienware.

59. Immediately after the 21 May delivery-up meeting, Mr White went out and bought a new Lenovo laptop computer. On 24 May 2018, that laptop was registered on the EVC system. These are facts corroborated by documentary evidence, which Quantum accepts; but it suggests they are of no assistance to Mr White or to me.

60. Quantum does not accept the account of the history of the Sony, HP and "puddle" Alienware which was given by Mr White at the 21 May meeting, or the details given in correspondence later, by Mr White's solicitors on his behalf. The solicitors said that the Sony had not been used since 2016, the puddle incident affecting the Alienware was in early to mid-December 2017, and the HP was acquired in November 2016, damaged in January/February 2018, and disposed of a few days later.

61. Mr Roberts did not believe that the devices delivered up could have sustained the business which Mr White was running. Nor did he believe what was said about the other three laptops. His belief was that Mr White had been tipped off that Quantum were likely to come after him, and had deliberately sought to delay delivery up, and then to cover his tracks by producing "dummy" equipment. Mr Roberts contacted EVC, and in June 2018 he obtained the witness statement of Schroer, and its exhibit, containing relevant WinOLS logs. As I have noted, these logs are important evidence.

62. The logs relate to two accounts. One is Mr White's In-tune Performance account. The first activity on that account is as recent as 5 March 2018, with the majority of the activity taking place after Quantum's meeting with DK Tuning on 23 April 2018. In

particular, on 25 April 2018 a device was registered under the name "SAM-PC" (designated as "SAM-PC (No 1)" for the purposes of these proceedings); and on 26 April 2018 Mr White registered the Acer (QHQPR5RJ) that was delivered up on 21 May 2018.

63. The other log starts earlier on. It relates to a company called "Added Automotive Limited" ("AA"). This is a company incorporated in December 2016, with two directors. One of the directors is a friend of Mr White. Companies House records suggest that the company has not traded, but the EVC log records five computers as having been registered with EVC on this account. These include an HP (registered on 7 December 2016), and a Dell Alienware (registered on 8 June 2017). They also include a device of unspecified manufacture labelled "SAM-PC" first registered on 24 April 2018, the day after the DK Tuning meeting. This has been designated as "SAM-PC (No 2)" for the purposes of these proceedings. On 26 April 2018, an attempt was made to register the same Acer registration QHQPR5RJ on the AA account.

64. On the basis of the logs and the other evidence to which I have referred it was Quantum's case, in summary, that Mr White used the AA account with EVC as cover, to enable him to register the Sony, HP and Alienware computers that are known to have been in his possession before 21 May 2018, and to use WinOLS to write VET files, using Quantum's files, in breach of his obligations. I was invited to reject as incredible Mr White's evidence that he disposed of all three of those machines before the date for delivery up, and to find that he had them in his possession or under his control on 21 May 2018, but failed to deliver them up in accordance with the Nicklin Order.

65. Quantum's case has evolved in the light of further evidence given by Mr White, especially in relation to the Sony, and "SAM-PC (No 1)".

66. The central features of Mr White's case as it now stands, put shortly, are these.

(1) The Sony was a cheap machine which he did indeed throw away in 2016, for the reasons given: suspicion that Mr Roberts had installed spyware on the machine when inspecting it pursuant to the Soole Order. The photos relied on by Quantum do not depict this Sony, but another one belonging to a customer of Mr White.

(2) AA is a company that he did work for, helping it with the tuning of a BMW track car. The HP laptop was a machine provided to him by AA in 2017, for that purpose. As he explained at the delivery up meeting on 21 May 2018, it broke and he threw it away.

(3) AA then provided him with a replacement machine, a Lenovo. This is the machine that was registered with EVC and is known to us as SAM-PC (No 1). But shortly after that, Mr White's relationship with AA reached breakdown point, and in April 2018 he posted the Lenovo back to them by first class post.

(4) As for Dell Alienware machines, he had three of these. One was delivered up. Another Alienware laptop was indeed dropped in a puddle, and the motherboard was destroyed or rendered unusable. This was not in December 2017, as he initially stated, but in March 2018; he was mistaken about the date of that accident. A third Alienware machine was bought for his brother, with a view to

him using it to help Mr White; but it was then sold because the intended use did not materialise.

(5) Mr White is accustomed to swap components between machines, frequently, as technology changes and parts wear out. To him, computers are commodities with interchangeable components, which makes it hard for him or us to speak of the identity of any machine. The Alienware he delivered up with a UK keyboard is, or may be, the same machine as the one depicted in the online photographs with a US keyboard.

67. In the light of this account, and other evidence, Quantum's final position is that I should reject as incredible all of Mr White's evidence about throwing away one machine, dropping another in a puddle, damaging a third, and posting a fourth one back to AA; I should find that at the time of the delivery up meeting and thereafter Mr White had in his possession or control the machines referred to in paragraph [42] above: Alienware "AW1"; the HP laptop, or alternatively the Lenovo said to have been its replacement; and the Sony.

68. A significant aspect of the evidence relied on in relation to the Alienware consists of the conclusions drawn by Quantum from further, in-depth, study of the EVC logs. The logs record up to 25 fields of information about any computer being used to run WinOLS. Mr Roberts has examined these data, in relation to two registrations for what would appear on their face to be two different computers concluding that these in fact relate to the same machine. The logs show that the Alienware "AW1" was registered on 15 June 2017 and last updated on 18 March 2018, that being the last entry for that machine. This was on the AA account with EVC. On 25 April 2018, there was another registration, on the In-Tune account, of a computer designated SAM-PC. Because this is the second registration using that name, Quantum call it "SAM-PC No 2". SAM-PC No 2 was updated on 11 May 2018, then de-registered on 24 May 2018. Mr Roberts points out that seven key fields for the registrations of Alienware "AW1" and SAM-PC No 2 are identical, or near-identical. This cannot be coincidence. The contention is that they are one and the same computer. The fact that SAM-PC No 2 was registered two days after Quantum's meeting with DK Tuning and de-registered three days after the delivery-up meeting is no coincidence, it is suggested.

69. Quantum suggests that these conclusions are corroborated by the fact that another candidate for SAM-PC No 2 can be excluded, and (as Quantum suggests) Mr White has told lies about the matter. At one stage, in his affidavit of 22 June 2018, Mr Roberts was suggesting that SAM-PC No 2 was the Dell desktop which Mr White offered to Quantum at the meeting on 21 May 2018, and that it was introduced as a decoy. Mr White's response to this was to agree (in White 2) that SAM-PC No 2 was the Dell desktop. Mr Roberts now maintains that this is clearly untrue. He has examined the pictures of the Dell as delivered up, and concluded – for reasons explained in paragraph 79 of Roberts 2 - that it cannot be SAM-PC No 2. It would have had a different Mac address, CRC, CPU CRC and memory size.

Findings

70. As Mr Ramsden observed in closing, it is not easy to pick a clear and certain path through all the evidence in this case. But Mr Ramsden focused his submissions on the "missing" Dell Alienware machine: the one depicted in the social media posts of

February and May 2018. That was a prudent course of action. The evidence in that respect is compelling.

71. I am satisfied so that I am sure that the Alienware machine which Mr White delivered up on 21 May 2018 was an old machine with a UK keyboard; it was not the machine with a US keyboard shown in the photographs on social media; that machine was one that Mr White still had in May 2018, at the time of the handover meeting, but in breach of the Nicklin Order he withheld it; he actively concealed it; and he has continued to conceal and lie about that machine.

72. I am convinced, to the necessary standard, that between April and June 2018 Mr White had another laptop in addition to AW1, and continued to use it, and failed to deliver it up in accordance with the Nicklin Order. This was the laptop that was registered as SAM-PC on the AA account with EVC on 24 April 2018, the day after Quantum's meeting with DK Tuning (ie SAM-PC No 1). It is not necessary to make a finding as to the identity of this machine, but in my judgment it was the HP Laptop. I reject Mr White's evidence that this machine was damaged and disposed of. I also reject Mr White's claim that the registration of 24 April 2018 related to a Lenovo supplied by AA to replace the "damaged" HP. I reject his evidence that this Lenovo was posted to AA.

73. I suspect that Mr White also still had the Sony machine which he had previously delivered up in response to the Soole Order (but got back from Quantum after that); but the evidence in this respect is not so strong, and I cannot be sure that the Sony machine depicted in the photographs is the same machine.

Reasons

74. I find Mr Roberts' evidence that Mr White was editing Quantum VET files in February and March 2018 persuasive, and Mr White's attempt to explain away this evidence seems unconvincing. But this aspect of the case has not been explored adequately yet, to allow a finding at this stage. I do not place any reliance on those aspects of the case.

75. There are however several circumstantial factors which lend strong support to the conclusions I have stated.

(1) Mr White's behaviour, and that of his family members, on 18-21 May 2018, between the first attempt at service of the Nicklin Order and the delivery-up meeting. This all speaks of deliberate prevarication on Mr White's behalf, giving (and using family members to convey) implausible and mutually inconsistent accounts of his movements, and of the reasons for failing to comply promptly with the Nicklin Order.

(2) There are the many other, frequent changes in Mr White's story, over the past year, which are inadequately explained.

(3) There are also the falsehoods told by Mr White about what he said at the meeting on 21 May 2018. I have already explained that I reject his evidence that he did not tell Quantum that the Alienware he delivered up was "only" used for diagnostics and data logging. I have also reached the conclusion that Mr White's evidence to me, that he told Quantum about his Dropbox account on 21 May 2018, is untrue.

76. Mr White's evidence that he disclosed his Dropbox account on 21 May 2018 is contrary to that of the Quantum witnesses. Their evidence was not challenged. It was not until Mr White gave oral evidence at the hearing before me, nearly a year after the delivery up meeting, that he made this claim. The delivery-up meeting was a formal meeting at solicitors' offices, on a matter to which Quantum attached great importance. It is quite clear that for its part Quantum was intent on finding out about, and obtaining disclosure of, anything under Mr White's control that could store Quantum's VET files. I am sure that if Mr White had said anything about a Dropbox account at that point in time, it would have been noted and seized on by Mr Roberts, who would have followed up the matter, vigorously and swiftly. In the event, I have detailed affidavit evidence from Quantum about what was said and done at the 21 May meeting. None of it contains any reference to the Dropbox account. I am satisfied that Mr Roberts and Quantum did not know of the Dropbox account until much later, when it was mentioned by Mr White in his affidavit. He did not say even then that he had disclosed the existence of this account to Quantum already. The reason is that nothing was said about that account on 21 May 2018.

77. I do not uphold Quantum's contention that there was deliberate non-disclosure of the Dropbox account. Mr White's evidence is that he did not believe he was bound to disclose it. I cannot be certain that he is lying about that. The Order did not explicitly extend to virtual computers or data storage facilities. But I am sure that Mr White did not disclose the account, and that he has made up his evidence that he did.

78. I have attached weight to all these matters, as well as to the other credibility factors that I have already mentioned when dealing with Mr White as a witness. But ultimately, the weight of the objective evidence is the main driver of the adverse conclusions I have reached.

The Alienware computer labelled "AW1"

79. I accept the evidence of Mr Roberts, and the case advanced by Quantum. Mr White had three Alienware machines. He delivered up one such machine, saying that it had only been used for diagnostics etc. There are photographs of another machine, in his possession, that looks different from the one delivered up (with a US keyboard not a UK one), and which was plainly being put to other uses until shortly before the delivery-up meeting. This could not be the one that was bought for his brother, as that was sold. Mr White's attempt to explain the problem away as a consequence of "chopping and changing" of parts between different Alienware machines is not credible, given its timing, its delivery and its content. I reject it.

80. In cross-examination, Mr White attempted to fall back on the proposition that this could not be excluded as a possibility, demanding rhetorically of Counsel, "How can you say the keyboard wasn't swapped?" He told me that he would change parts for cosmetic reasons. He had changed the keyboard many, many times, perhaps as many as twenty. I find this was bluster. In the end, it is not in my judgment a realistic possibility that the Alienware machine shown in the photographs is the one delivered up, and that the differences can be explained on the basis that, by chance Mr White changed the keyboard between 12 May 2018 - the date of the last photograph - and 21 May 2018. This is a recent explanation, never offered before, and in my judgment, it is plainly an invention. There is no independent evidence to support it. Nor is there any credible explanation of why the keyboard should have needed replacement.

81. The puddle story is inherently implausible. On Mr White's own evidence, the original version of this story is wrong as to date. The claim that he was merely mistaken about the date the machine was dropped in a puddle lacks cogency. His new story as to the date of the puddle incident only came forward after service of the EVC logs. These showed that the Alienware was updated on the EVC system on 18 March 2018, demonstrating that his first account could not be right. He eventually accepted that it was the EVC evidence that made him realise that account could not be maintained. But he did not provide the new story for months (his new version of the timing of the puddle incident was not provided until October 2018.) Then, during the trial, he came up with a new, remarkable, and ultimately incredible explanation for how he had arrived at the revised timing.

82. In summary, this was that he identified the date of the puddle incident by looking at a journal he kept, recording his work activities. Challenged over this, he produced on Day 2 of the trial a written record of a visit to a customer on 22 March 2018. There was no reference in this record to dropping a laptop. But he explained that once he saw the EVC logs and realised that they showed his 'puddle' evidence was wrong, he had remembered that when he dropped the laptop he was working on a BMW 5 series. He had searched his journal and checked all the registrations, using an App. Having identified the vehicle, he went to the order number and invoice records giving the name and address of the customer, and the date. All of this was related at a speed normally reserved for horseracing commentators. I reject it as a far-fetched invention.

<u>*SAM-PC (No 1)*</u>

83. EVC records show that the HP machine was registered on AA's account on 7 December 2016. Mr White's evidence to me has been that the machine was given to him by AA, which paid for the registration and passed on the password and other details necessary to enable him to make use of it. He was the sole user of the machine until it was dropped on a patio, broke and was disposed of – the date of that being January/February 2018. The Lenovo machine was provided by AA as a replacement, and he posted this back to AA in late April 2018, when the business relationship broke down. This version of events has failed to withstand scrutiny.

84. There is no doubt that Mr White had an HP machine. He admitted this at the 21 May meeting. But he did not then give this version of events. He did not say that the HP had been provided to him by AA, or mention the Lenovo. He did not say that AA had provided him with a substitute device when the HP was damaged. In a section of a letter from his solicitors of 6 June 2018, which he drafted, he said he had "acquired" the HP machine in November 2016. He did not say that he had got it from AA. The letter accepted that he had used the HP to read, write and edit tuning files between November 2016 and January/February 2018. But it made no mention of AA. Cross-examined about these omissions, Mr White maintained that the reason was that he did not see either point as relevant, as these were machines that were no longer in his control, and hence outside the scope of the Nicklin Order. I reject that explanation.

85. This is at odds with his evidence that he did disclose the Dropbox account, despite believing it was outside the scope of the Order. He has tried to maintain two inconsistent lines of evidence. I do not believe that either is true. In June 2018, Mr White was being challenged and quizzed about the account he gave on 21 May. If what he now says is true, this was an obvious time to disclose the fact and nature of his involvement with

AA, and what had happened to both laptops. I add that the account given in the letter of 6 June contains a further inconsistency with his current evidence: he portrayed his file editing over this period as "building files to help launch a business once my restrictions had come to an end".

86. At the 21 May meeting, Mr White complained vigorously that delivery up of all his machines would leave him unable to carry on business. There is no doubt that he bought a second-hand Lenovo the same day. That is consistent with his professed concerns. But four days passed before he registered that machine with EVC, and when he did it was given the name "Backup PC". That, clearly, implies the existence of another PC at the time. Cross-examined about this, Mr White told me that he was able to carry on business without having a computer registered with EVC. "You can give advice… [and] sell files without having EVC." His explanation for the term "Backup" was that the machine was a backup to the stuff taken by the Order and the electronic files were on Dropbox. This was wholly unconvincing. The inference is that Mr White had another physical machine. My conclusion is that this was the HP, and that the story about damage to that machine and its replacement by a Lenovo supplied by AA is fiction.

87. Holes in Mr White's account of the relationship with AA and the laptops he used emerged under cross-examination. His evidence was that his relationship with AA was conducted via a Mr McDonald, who operated that business and others from premises in Doncaster owned by a company named Humac. The relationship prospered initially, and he visited five or six times, most recently in July 2017. But the relationship began to break down in September or October 2017. By December 2017, he was aware that Humac was in difficulties. In fact, as he accepted, Humac went into administration early in December 2017 and ceased trading. His response to the obvious suggestion that he would then have had no further business with AA was to maintain that "I was paid by Willowdale", another related company. He found it harder to explain his evidence about the Lenovo.

88. Asked why, in the circumstances, AA should have provided him with a new laptop as late as January or February of 2018 (that time when he claims the HP was damaged), he sought to maintain that the relationship with AA was still afoot at the time. This was a different company from Humac, and "the relationship was not *completely* broken down, it broke down over time". His account of the timing of the breakdown was highly unsatisfactory. He did not see Mr McDonald after February 2018, he said. Nonetheless, his second affidavit said that he posted the Lenovo back to AA "at the end of April 2018." On that version of events, the relationship must have limped on for months, until some time in late April.

89. There are other difficulties about the Lenovo story. Mr White's affidavit evidence was that SAM PC No 1 "was the Lenovo laptop that I once used and sent back to [AA] at the end of April". But SAM PC No 1 was registered on AA's account with EVC on 24 April 2018. That is hard to reconcile with it being a replacement for an HP that was broken in January or February 2018. It is also at odds with Mr White's account in other ways. The name given to the machine suggests that it was Mr White who registered it. He admitted that he did so. But if so, his story must be that he registered it, and then sent it back to AA within a matter of days. His claim that this is what happened defies belief. Asked why he posted the Lenovo back at all, when the relationship had broken down and he had been left out of pocket, he implausibly claimed that he thought it would have been theft to keep the machine. Asked about how he posted the machine,

he maintained that he put it in a Jiffy bag and posted it first class, without any form of insurance, or proof of posting, or requiring proof of delivery. I cannot accept that. Further, this machine was updated on 5 June 2018, well after the delivery-up date. Mr White claimed that this was not done by him, but by AA, after he posted it back. That too is incredible.

90. I find that Mr White had an additional computer in his possession or control that could be used to write VET files, between 24 April 2018 and at best 5 June 2018, and therefore at the time of the delivery-up meeting. The most likely candidate is the HP laptop that he was using in March 2017, when it was seen on social media posts. On his own account he still had that machine in early 2018, and was still using it for writing and editing tuning files. His claim that it was damaged, and that AA provided a Lenovo which he then posted back to them is unsupported by any independent evidence, and inconsistent with the documents and the realities. I reach the obvious conclusion: that on 24 April 2018 Mr White registered this HP Laptop on AA's account with EVC, under the name "SAM-PC" because he wished to use it, surreptitiously, for file writing or editing. If it was not that laptop it was another. It matters not. I am sure that he had a physical machine which corresponded to the username SAM-PC, when he registered, which was not delivered up. He registered that machine then because he was, deliberately or not, tipped off by DK Tuning that Quantum were after him. He believed that Quantum would not discover his use of the AA account. The computer was still in his possession or control when it was updated on 5 June 2018.

The Sony

91. The evidence about the Sony machine that was delivered up pursuant to the Soole Order does not provide me with its technical specifications. I do know that this machine was returned to Mr White after its inspection by Quantum. But it does not follow that he continued to use it after that. His claim that he disposed of it because of suspicion that spyware had been installed is improbable. The fact that photographs of a Sony in use by him at a later date have been found arouses suspicion. But I have not been provided with technical details about the machines shown in the photographs relied on by Quantum. The claimant has established to my satisfaction, indeed it is common ground, that the photos show training of the more complex variety being delivered on the earlier occasion, and the more basic training being delivered on a later date. This seems improbable if, as Mr White has told me, it was the same client being trained on both occasions. I agree with Mr Ramsden that Mr White's attempt to explain this was unconvincing. But again, it does not follow that the truth is as Quantum claim it to be. On a lower standard of proof, I might have upheld Quantum's contentions about the Sony, but in this respect, I must give Mr White the benefit of the doubt.

92. With that exception, however, I have upheld Quantum's case and will now need to consider what sanction should be imposed.