



Neutral Citation Number: [2020] EWHC 312 (QB)

Case No: QB/2019/004168

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17/02/2020

Before :

**MR JUSTICE NICOL**

Between :

**Pharmagona Ltd.**

**Claimant**

- and -

**(1) Sayed Mostafa Taheri**  
**(2) Bahareh Mohammadi**

**Defendants**

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**Geraint Jones QC** (direct access) for the **Claimant**  
**1<sup>st</sup> Defendant in person**  
**2<sup>nd</sup> Defendant did not appear and was not represented**

Hearing date 30<sup>th</sup> January 2020  
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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.

.....  
MR JUSTICE NICOL

**Mr Justice Nicol :**

1. This is an application for an interim injunction and for delivery up, although I shall have more to say about the terms of the draft order attached to the application notice.
2. The Claimant is a pharmaceutical company selling its products in the UK and abroad. The Defendants were formerly employees of the Claimant. They are husband and wife. The 1<sup>st</sup> Defendant was the Claimant's IT and telecommunications planner/manager. The 1<sup>st</sup> Defendant's employment began in October 2015 and continued until 2<sup>nd</sup> February 2018. The 2<sup>nd</sup> Defendant was an office manager of the Claimant from August 2016 until 2<sup>nd</sup> February 2018.
3. The claim is for an injunction to restrain the Defendants from using or disclosing the Claimant's confidential information and for damages. The Claim was issued on 22<sup>nd</sup> November 2019. Particulars of Claim were served with the claim form or shortly afterwards.
4. The application notice which I am considering was also issued on 22<sup>nd</sup> November 2019.
5. There are also linked proceedings issued in the Manchester Business List (Pharmagona Ltd v Taheri and Mohammadi Case No. E30MA106 'the Manchester action') in which the Claimant sought substantial damages against these Defendants.
6. The Manchester action had come on for trial before HHJ Stephen Davis (sitting as a Deputy High Court Judge) on 25<sup>th</sup> October 2019. He adjourned the trial and made orders for disclosure. In particular, by paragraph 3 of his order he required the Defendants to produce specified bank statements. By paragraph 10 of his order, he required the Defendants to provide particulars of the unlawful activities which they alleged the Claimant had been engaged in.
7. There was a further hearing in the Manchester action before HHJ Halliwell (sitting as a Deputy Judge of the High Court) on 13<sup>th</sup> December 2019. He found that neither Defendant had complied with the disclosure orders of 25<sup>th</sup> October 2019. He set a new date (19<sup>th</sup> December 2019) by which the Defendants were required (a) to provide letters of authority to various banks at which they held accounts and (b) to provide the particulars required by paragraph 10 of HHJ Stephen Davis's order. Judge Halliwell further provided that in default the Defendants would be debarred from defending the Manchester action.
8. The Claimant in the Manchester action alleged that the Defendants had not complied with Judge Halliwell's order. The Defendants maintained that they had. On 10<sup>th</sup> January 2020 Judge Halliwell had a trial of that issue or rather of the alleged failure to comply with paragraph 3 of the order of HHJ Stephen Davis of 25<sup>th</sup> October 2019 (failure to provide letters of authority to the banks). He heard oral evidence from the 1<sup>st</sup> Defendant and from Ms Hanaee. He reserved judgment.
9. On 17<sup>th</sup> January 2020 Judge Halliwell handed down a reserved judgment [2020] EWHC 66 (Ch). He subsequently made consequential orders on 23<sup>rd</sup> January 2020. By those orders Judge Halliwell

- i) Found the defendants to be in breach of the previous ‘unless’ order (which had been made on 11<sup>th</sup> December 2019), since, in breach of that order the Defendants had not provided authorisation to their banks to disclose certain of their bank statements.
  - ii) Ordered that judgment should be entered against both defendants for £454,112.58.
  - iii) Refused to grant a stay of the unless order or to reconsider the same.
  - iv) Ordered that earlier freezing orders should continue.
  - v) Vacated the trial of the Manchester proceedings which had been due to take place in February 2020.
  - vi) Set a timetable for written submissions on costs and for any application for permission to appeal.
10. It seems that the Defendants have also brought claims in the Employment Tribunal in Manchester (Sayed Taheri and Barareh Mohammadi v Pharmagona Ltd. Case No 2411463 and 2411458/2018) alleging unfair dismissal, detriment for ‘whistleblowing’ and, in the case of Mrs Mohammadi, discrimination.
11. On 28<sup>th</sup> January 2020 the 1<sup>st</sup> Defendant made a witness statement objecting to the present application being heard on 30<sup>th</sup> January 2020. He said that the defendants had had only one day’s notice of the hearing of the application and that this was in breach of CPR r.23.7(1)(b) which requires an applicant to serve an application notice at least 3 days before the application is to be heard. He said that the Defendants had not had the opportunity to instruct counsel. He also said that he and his wife lived in Manchester. They had a child who was 1 ½ years old and had been ill. In the time available they had not been able to make appropriate arrangements to attend a hearing in London at such short notice.
12. The Claimant became aware of Mr Taheri’s witness statement on 29<sup>th</sup> January 2020 and, on that date, Somaiyeh Hanaee, the Claimant’s head of finance, made a witness statement in reply. She exhibits a certificate of service dated 9<sup>th</sup> December 2019 to show that various documents (including the application notice) were sent by post to the Defendants at 2 Boddens Hill Road, Heaton Mersey, Stockport, SK4 2DG. She also exhibits a certificate of service on 27<sup>th</sup> November 2019, to show that service was effected on 29<sup>th</sup> November 2019. She says that the documents were also sent by ‘signed for’ post and she produces the receipt of Mr Taheri on 26<sup>th</sup> November 2019. Ms Hanaee therefore disputes that the Defendants have had insufficient time to prepare their evidence for the hearing on 30<sup>th</sup> January.
13. The application notice had said on its face that the application would be placed in the warned list for the week commencing 9<sup>th</sup> December 2019. Plainly, the application was not heard in that week. Ms Hanaee also exhibits an email from the court dated 19<sup>th</sup> December 2019 to her counsel’s clerk to say that the case would instead be listed on 30<sup>th</sup> January 2020. In a subsequent email in which the date was confirmed and which enclosed an amended version of the application notice with the new date, the Court said to the Claimant’s counsel’s clerk, ‘Please can your solicitors ensure that the

Defendants are served with a copy.’ Counsel’s clerk responded on 20<sup>th</sup> December 2019, ‘There are no solicitors on record. The Claimant is in person but engages counsel on a public access basis as and when needed. We can’t contact the defendants – please could the court inform the defendants of the hearing date? Litigants in person do not use the CE filing system.’

14. While counsel’s clerk may have felt inhibited about serving the Defendants, that could not apply to the Claimant itself. It plainly did have an address for the Defendants (as Ms Hanaee’s witness statement showed, the Claimant had served the claim form, the particulars of claim and the original application notice at that address). The Defendants were entitled to know the revised date of the hearing and it was plain from the email from the court to counsel’s clerk that the court was not going to provide that notice.
15. In the event, the 1<sup>st</sup> Defendant was able to and did attend the hearing. The absence of formal notice of the revised hearing date was of limited relevance (save perhaps in relation to costs).

### **The pleadings in the present claim**

16. The Claimant pleads that both defendants were subject to implied and express terms of their contracts of employment to preserve the confidentiality of any confidential information which they encountered in the course of their work and an implied term not to access use or disclose confidential information of the Claimant after their employment ceased. Paragraph 5 of the Particulars of Claim lists various categories of confidential information relevant to the action. The Defendants were summarily dismissed on 2<sup>nd</sup> February 2018 when, it is alleged, it was discovered that they had been stealing money from the Claimant. Paragraph 5 of the Particulars of Claim alleges that the 1<sup>st</sup> Defendant criminally hacked into the Claimant’s computer system using a facility called ‘Team-viewer’ on 5<sup>th</sup> or 6<sup>th</sup> February 2018 and again on 26<sup>th</sup>/27<sup>th</sup> April 2018. It is said that he then did a ‘down-load dump’ of the Claimant’s electronically stored records including the confidential items listed in paragraph 5. It is alleged that his access to the Claimant’s computer system left an electronic trace. When the 1<sup>st</sup> Defendant realised this, it is alleged that he admitted in the course of his 9<sup>th</sup> witness statement in the Manchester action that he had downloaded various materials from the Claimant’s computer system. It is alleged that the 1<sup>st</sup> Defendant has disclosed information which he obtained by these hacks to his wife, the 2<sup>nd</sup> Defendant and she therefore knew or ought to have known that she had received confidential information.
17. In the Manchester action the Defendants had been required to specify any alleged breach of the law which they alleged the Claimant had been involved in, but, paragraph 15 of the present Particulars of Claim alleged that the Defendants had failed to do so. The Claimant alleges that the allegations (by the Defendants in the Manchester action) that the Claimant had acted unlawfully was intended to deflect attention from the Defendants’ thefts of the Claimant’s money. The prayer sought an injunction to restrain the disclosure of confidential information, delivery up or destruction of any copies still in the Defendants’ possession and damages.

18. The Defendants have filed a defence on 30<sup>th</sup> December 2019. They drafted this themselves and it does not follow the conventional format of responding to each of the allegations in the Particulars of Claim.
19. In summary, though, the Defendants allege that the Claimant has engaged in a number of unlawful and criminal activities. These include exports to Iran in an improper manner and/or without the requisite export documents. The Defendants alleged that they raised their concerns with Dr Ghasemi Fairouzabadi ('Dr Ghasemi'), the Managing Director of the Claimant, but he threatened them with dismissal. Because they feared that evidence would not be believed, they started to download relevant evidence.
20. Dr Ghasemi (as he was referred to at the hearing) returned to the UK and, the Defendants allege that he made allegations against the Defendants to discredit and silence them. The Defendants, however, say that they that the police investigation of their own activities led to nothing. They allege that the Manchester action was intended to pressurise them. They refer to their Employment Tribunal proceedings, but say these have been stayed pending the conclusion of the Manchester action.
21. The Defendants say that they have had numerous meetings with the authorities including the anti-terrorism unit of the police, the Civil Aviation Authority, Her Majesty's Revenue and Customs, HM Treasury Office of Financial Sanctions Implementation and the Border Force among others. They say that in July 2019 Dr Ghasemi was stopped and questioned after his arrival from Iran.
22. The Defendants claim that their position is protected by the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996. They deny that they have acted for private gain.
23. Attached to the Defence were a number of documents. They include a letter from the Civil Aviation Authority dated 2<sup>nd</sup> December 2019 saying that Dr Ghasemi was currently under investigation for offences under the Air Navigation (Dangerous Goods) Regulations 2002. The letter said that Dr Ghasemi had been stopped at Manchester Airport on 24<sup>th</sup> July 2019 when Border Force officials had found in his hold luggage what were suspected to be dangerous goods. The investigation of Dr Ghasemi was due to be completed in the near future.
24. There was also attached to the Defence a list of provisions, which Mr Taheri said was his response to the Order in the Manchester action that he particularise the provisions which he alleged the Claimant had violated.
25. As of the hearing before me, there had been no Reply to the Defence.
26. I have said above that I was considering an application for an interim injunction. That indeed appeared to be the understanding of Geraint Jones QC, counsel for the Claimant, since his skeleton argument was headed 'Skeleton argument for the Claimant – Interim Injunction hearing'.
27. I note, though that the draft order attached to the application notice, seeks an injunction against the defendants not to use or disclose etc the Claimant's confidential information without limit of time. The application was supported by two witness

statements from Dr Ghasemi (dated 14<sup>th</sup> and 21<sup>st</sup> November 2019). Neither witness statement specifies the nature of the application which it is intended to support. If indeed the Claimant was seeking a final order, the nature of the application would be different. It would, in effect, be an application to strike out the defence or for summary judgment. However, Mr Jones did not seek to justify either of those orders. He could not have done so. An application for summary judgment must be clearly identified as such (see 24PD paragraph 2(2)) and it must be supported by a witness statement which says that the maker believes the respondent has no real prospect of defending the claim (*ibid* paragraph 2(3)(b)). Neither of those conditions was satisfied. While CPR r.3.4(2) does not contain similar provisions for a strike-out application, I consider that fairness to the Defendants would have required the Claimant to make it unambiguously clear if the application was seeking to strike out the defence.

28. I shall, therefore, assume that the Claimant's intention was, as Mr Jones' skeleton argument indicated, to seek an interim injunction.
29. That raised the issue as to what test the Court should apply in deciding whether to accede to the application.
30. As is well-known, ordinarily the Court applies the principles in *American Cyanamid Co v Ethicon Ltd. (No1)* [1975] AC 396 in deciding whether to grant an interim injunction. However, I raised with Mr Jones whether this was not a case where the Claimant had to meet the more demanding test in Human Rights Act 1998 s.12 which says,
- ‘(1) This section applies if a court is considering whether to grant any relief which, if granted might affect the exercise of the Convention right to freedom of expression.
- ....
- (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.’
31. The ‘Convention right to freedom of expression’ is a reference to all or part of Article 10 of the European Convention on Human Rights which says,

‘(1) Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the

reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

32. In *Cream Holdings Ltd v Banerjee* [2004] UKHL 44, [2005] 1 AC 253 the House of Lords considered the meaning of ‘likely’ in s.12(3). Ordinarily, it should be taken to mean that the Claimant is more likely than not to restrain publication at trial. That was not to be rigidly applied since a more flexible approach might be needed if, for instance, the Court did not have a proper opportunity to consider the competing arguments and the need for relief was urgent.
33. Mr Jones submitted that s.12 had no application in the present context since the Claimant had a proprietary right to its confidential information. Article 10(2) of the Convention recognised that freedom of expression could be curtailed to protect ‘the rights of others’ and to prevent the disclosure of confidential information. That was what the Claimant was seeking to do. Furthermore, Mr Jones submitted in *Imerman v Tchenguiz* [2010] EWCA Civ 908, [2011] Fam 116, there had been no reference to the Convention or s.12.
34. I disagree with Mr Jones. In my view s.12 does apply to this application. My reasons are as follows:
  - i) I recognise that Article 10 gives a qualified right of freedom of expression. The limits are defined by Article 10(2). Broadly speaking, a restriction must satisfy three criteria: (a) it must be lawful; (b) it must be in pursuit of a legitimate aim i.e. one of those set out in Article 10(2); and (c) it must be ‘necessary in a democratic society’ (see for instance *Sunday Times v UK* (1979) 2 EHRR 215). The last condition is important. It is through this criterion that any restriction on freedom of expression must be proportionate. Thus, it is not sufficient for the Claimant to say that it is seeking to curtail the Defendants’ rights in order to protect its own rights. That will indeed be a legitimate aim, but, even so, the third requirement must still be satisfied (as must the first).
  - ii) In my view when s.12(1) speaks of the ‘Convention right to freedom of expression’ it must be referring to the right in Article 10(1). The contrary position would be that it applied to Article 10(1) and (2) read together. But, if that were the case, the section would make no sense. The whole purpose of the Human Rights Act 1998 was to incorporate the European Convention (or defined parts of it) into the law of the UK. If the term ‘the Convention right of freedom of expression’ referred to both parts of Article 10, there could never be a restriction that was compatible with the Convention. Yet, as the House of Lords held in *Cream Holdings*, the whole purpose of s.12 was to buttress the right of freedom of expression.
  - iii) The European Court of Human Rights was particularly sensitive to the risks to freedom of expression posed by prior restraints i.e. restrictions which apply in advance of publication or dissemination – see e.g. *Observer and Guardian v UK* (1991) EHRR 153. In my view, s.12(3) was part of Parliament’s response to that concern. It intended the bar to be set higher than the *American Cyanamid* test where pre-trial injunctions were sought which might impinge on freedom of expression (in the Article 10(1) sense). Parliament was there

acknowledging that such restrictions might indeed be justified, but the Claimant must assume the burden of showing that he was likely to succeed in his action at trial and succeed at trial in obtaining injunctive relief.

- iv) With respect to him, Mr Jones is not right to say that there was no mention of the Convention in *Imerman*. On the contrary, the Court expressly acknowledged that Article 10 was engaged. It said at [7],

‘While these issues involve domestic points of equity, common law, civil procedure, and statutory construction, articles 6, 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (in summary terms, the right to a fair trial, the right to respect for privacy, and *the right to freedom of speech*, respectively) *are also engaged*’ [my emphasis].

- v) While it is right that the Court in *Imerman* did not expressly refer to s.12 of the Human Rights Act 1998, I note that the Court did say at [154],

‘In explaining our reasoning, we have concentrated on domestic law, although we have mentioned the Convention, and in particular, Articles 6, 8, and 10 are engaged. It has been authoritatively said that, once the Court has to carry out a balancing exercise between competing Convention rights “an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary” and that “the justification for interfering with or restricting each right must be taken into account” per Lord Steyn *In re S (A child) (identification: Restrictions on Publication)* [2005] 1 AC 493 [17]. While we may not have expressly discussed the impact of those articles in the course of this judgment, we have had them well in mind (not least because they reflect domestic rights to a fair trial, to confidence, and to rely on evidence), and we believe that we have subjected the parties’ respective rights to an appropriately intense focus, and have made an appropriate assessment of any justification for encroaching on those rights. We add that neither in the present case, nor in the general run of case, does the need to carry out such a balancing exercise require that the case has to go to a full trial, it does not: *HRH Prince of Wales v Associated Newspapers Ltd* [2008] Ch 57.’

It was thus clear that the Court considered that the Claimant in *Imerman* was likely to succeed at trial and so the s.12(3) test would have been satisfied.

### **The relief sought by the Claimant on this application**

35. The substantive relief against each Defendant is in two parts:

- i) An injunction preventing disclosure etc of the confidential information. For the reasons I have explained, I am treating this as an application for injunction until trial or further order; and
- ii) An order for delivery up of any documents or material and an order that the defendants destroy any electronic copies.



***The Application for injunctive relief: the risk of disclosure***

36. In support of the Claimant's application for an injunction, Mr Jones relied heavily on *Imerman v Tchenguiz* (see above). He referred me in particular to the following passages in the Master of the Rolls' judgment,

'[72] If a defendant looks at a document to which he has no right of access and which contains information which is confidential to the claimant, it would be surprising if the claimant could not obtain an injunction to stop the defendant repeating his action, if he threatened to do so, The fact that the defendant did not intend to reveal the contents to any third party would not meet the claimant's concern: first, given that the information is confidential, the defendant should not be seeing it; secondly, whatever the defendant's intentions, there would be a risk of the information getting out, for the defendant may change his mind or may inadvertently reveal the information.

[73] An injunction to restrain passing on or using the information would seem to be self-evidently appropriate – always subject to any good reason to the contrary on the facts of the case. If the defendant has taken documents, there can almost always be no question but that he must return them: they are the claimant's property. If the defendant makes paper or electronic copies, the copies should be ordered to be returned or destroyed (again in the absence of good reason otherwise). Without such an order, the information will still be "out there" in the possession of someone who should not have it. The value of the actual paper on which any copying has been made will be tiny, and where the copying is electronic, the value of the device on which the material is stored will also be tiny, or where it is not, the information (and any associated metadata) can be deleted and the device returned.

[74] A claim based on confidentiality is an equitable claim. Accordingly, the normal equitable rules will apply. Thus, while one would normally expect a court to grant the types of relief we have been discussing, it would have a discretion whether to refuse all or some of the relief on familiar equitable principles. Equally, the precise nature of the relief which would be granted must depend on all the circumstances of the particular case: equity fashions the appropriate relief to fit the rights of the parties, the facts of the case and, at least sometimes, the wider merits. But, as we have noted, where the confidential information has been passed by the defendant to a third party, the claimant's rights will prevail as against the third party, unless he was a bona fide purchaser of the information without notice of its confidential nature.'

37. Mr Jones also submitted that, by accessing the Claimant's computer system after his summary dismissal, the 1<sup>st</sup> Defendant had committed an offence under the Computer Misuse Act 1990 s.1
38. At the hearing, I explored two issues in particular with the parties:
- i) The evidence that the Defendants intended to disclose confidential information.

- ii) Whether the Claimant would be likely to succeed at trial in the face of an anticipated public interest defence.

39. I shall take first the evidence of likely disclosure. I raised this issue in view of the chronology, the significant stages in which were as follows:

2 <sup>nd</sup> February 2018	Defendants summarily dismissed by the Claimant.
5 <sup>th</sup> and 6 February	Claimant alleges that 1 <sup>st</sup> Defendant first hacked into its computer system
About March 2018	Claimant begins Manchester action
26 <sup>th</sup> and 27 <sup>th</sup> April 2018	Claimant alleges that 1 <sup>st</sup> Defendant again hacked into its computer system
April and July 2018	Claimant alleges that 1 <sup>st</sup> Defendant sent 'derogatory and quite possibly defamatory materials to some of the Claimant's suppliers and customers'
3 <sup>rd</sup> April 2019	Claimant says it was able to identify the 1 <sup>st</sup> Defendant as the hacker
5 <sup>th</sup> April 2019	1 <sup>st</sup> Defendant's 9 <sup>th</sup> witness statement in the Manchester action in which he says that he had downloaded certain documents from the Claimant's computer and produced them during standard disclosure in that action.
22 <sup>nd</sup> November 2019	Claim Form issued in the present action and application notice for injunction.

40. On this chronology there was an allegation that the Defendants had sent materials to suppliers or customers of the Claimant in April and July 2018. Although Dr Ghasemi asserts that the material came from the Defendants, the reasoning for that conclusion is unclear. In any event, even if Dr Ghasemi is correct, this episode occurred over 18 months before the hearing before me and over a year before the present claim form was issued. Despite Dr Ghasemi's fear that the incidents in April or July 2018 might be repeated, he has not given evidence of any further incidents which have come to the Claimant's attention.

41. Mr Jones argued that, since confidential information was effectively a form of property, any delay by the Claimant in seeking to assert its rights were of little consequence.

42. I found this hard to accept. I am at this stage examining the Claimant's case for an injunction to prevent disclosure of the confidential information. Unless the Claimant can show objective grounds for fearing disclosure, it is difficult to see why the Court should intervene.

43. I did not find Mr Jones's reliance on *Imerman v Tchenguiz* assuaged my concerns:
- i) The Court of Appeal was there concerned with a case where there had never been a justification for the defendant to have access to the confidential information in question. That was not the case here since, at least during his employment, the 1<sup>st</sup> Defendant was entitled to have access to the information in question.
  - ii) It was the premise for the Master of the Rolls' observations that the defendant was threatening to disclose the information (see [72]). I am examining the evidence for there being such a threat in this case.
  - iii) In any event, the Court was careful to recognise that everything depended on the facts of the particular case and that ordinary equitable principles (of which delay by the claimant is one) and even the wider merits may justify a different course.
44. The 1<sup>st</sup> Defendant does acknowledge that he has passed some information to the Civil Aviation Authority and some other public bodies. Disclosures of that nature, however, raise discrete public interest issues and it is convenient to defer consideration of them.
45. When I asked Mr Jones whether the Defendants had been asked to give an undertaking regarding further disclosure, he at first said that the Defendants had not been asked for any undertaking. A little later he corrected himself and he referred me to an exchange of emails, which was not in evidence. I agreed to consider them on his undertaking on behalf of the Claimant that the Claimant would exhibit them to a witness statement by Monday 3<sup>rd</sup> February 2020.
46. In an email to the 1<sup>st</sup> Defendant on 28<sup>th</sup> October 2019 the Claimant wrote,
- ‘Please let us know whether you are prepared to give your written confirmation and undertaking that you will destroy all and any data which you accessed and obtained by your now admitted criminal conduct, that is, hacking this company's computer on a wholesale basis. We do not give any undertaking regarding any material from any mobile phone.’
47. I was shown an email from the 1<sup>st</sup> Defendant of the same date that appears to be a reply to the Claimant's email. It takes issue with the language which the Claimant had adopted. It gave no undertaking.
48. I observed at the hearing that the undertaking which the Claimant had sought had been destruction of the confidential material, rather than an undertaking not to disclose it.
49. It is fair to say that, at the hearing before me, the 1<sup>st</sup> Defendant's position appeared to be that he should be free, not simply to keep the material in question but to use it. And the use which he seemed to have in mind was not just disclosure to various public authorities.
50. Taking these two matters together, albeit with some hesitation, I am prepared to find that there is a risk that, unless restrained, the Claimant is likely to succeed at trial in

showing that the 1<sup>st</sup> Defendant would be likely to make use of its confidential information.

51. What then of the 2<sup>nd</sup> Defendant? The Defendants are husband and wife. The 1<sup>st</sup> Defendant did not suggest that his wife was in a different position to him. Through him, she, too, has had access to the Claimant's confidential information. For the same reasons, I accept that, as against her, the Claimant would also be likely to establish at trial a real risk that, unless restrained, she, too, might make use of its confidential information.

***The application for an injunction: the potential public interest defence***

52. It is the Defendants' case in their defence that the Claimant has engaged in unlawful, indeed in criminal, conduct.
53. The letter from the CAA of 2<sup>nd</sup> December 2019 and which was attached to the defence shows that the Defendants' allegations are not fanciful. The CAA records the stop of Dr Ghasemi and its on-going investigation. I have no further information as to whether that will lead to a criminal prosecution. Apart from this investigation by the CAA, the 1<sup>st</sup> Defendant says that he has been in contact with other public authorities regarding the Claimant's activities. There is no evidence to contradict that claim.
54. As Mr Jones acknowledged, the public interest defence is no longer confined to 'iniquity' referred to in *Gartside v Outram* (1857) 26 LJCh (NS) 113. Yet, there is a public interest in the preservation of confidential information and so, to justify disclosure, there must be a greater public interest in the disclosure in question - see *Initial Services Ltd v Putterill* [1968] 1 QB 396 CA.
55. There are occasions when the public interest in disclosure is so great that the public interest in disclosure to the world at large trumps the public interest in the preservation of confidence. In other situations, disclosure of only a more limited kind is justified – see for instance *Francome v Mirror Group Newspapers Ltd*. [1984] 1 WLR 892 CA.
56. In my judgment, the evidence which the 1<sup>st</sup> Defendant has produced is not yet of a kind which would allow the Defendants to override the confidential character of the Claimant's information and publish it to the world at large. However, in my view, the Defendants have persuaded me that they should be free to continue to co-operate with the CAA or any other public authority investigating the Claimant's activities. That means that any injunction should contain a proviso that allows them to answer questions from such authorities or provide documents which those authorities request, either of a generic or a specific kind.
57. Mr Jones argued that the CAA and other public authorities already had ample investigatory powers of their own. They may have wide powers, but it would be naive to consider that they provide the authorities with all the information which they need to carry out their duties. Whistle-blowers continue to play a valuable role. The CAA appears to have acknowledged the assistance which the 1<sup>st</sup> Defendant has already given. If the authorities require further assistance from the Defendants, I consider that they should not be restrained from providing it.

58. Putting this in terms of s.12(3), I consider that it is likely (on the material presently available to me) that the Claimant will be able to show at trial that its claim will succeed regarding publication to the world at large notwithstanding the public interest defence, but it has not shown that it will be likely to do so insofar as disclosure to relevant public authorities is concerned.
59. I emphasise that this is the position on the evidence and material presently before me. The parties will be at liberty to apply for the terms of the injunction to be discharged or varied if the position changes.
60. Mr Jones reminded me of the principles of the public interest defence summarised by Cockerill J. in *Saab v Dangate Consulting Ltd* [2019] EWHC 1558 (Comm). She emphasised that the public interest in disclosure had to be related to particular documents or disclosures. As she put it at [137],
- ‘A disclosure which attracts a public interest defence must have a focus and a utility.’
61. However, in my view (so far as future disclosures are concerned) that will be catered for by limiting the proviso to disclosures which the authorities themselves request.
62. Mr Jones also submitted that the Defendants had been given the opportunity in the Manchester action to specify the particulars of the criminal offences which they alleged that the Claimant or Dr Ghasemi had committed, but they had failed to do so. I did not find this a convincing argument:
- i) There is attached to the defence in the present action a document which sets out some legislative provisions which the Defendants allege have been infringed. That may or may not be an adequate level of particularity, but, as Mr Jones accepted, there never was in the Manchester action any judicial determination of that question.
  - ii) In any case, the letter from the CAA shows that its investigation is ongoing (or at least it was as of 2<sup>nd</sup> December 2019).

### ***Delivery up or destruction***

63. Mr Jones argued that the Claimant should not have to depend on the co-operation of the Defendants with an order of the court. The information which the Defendants had obtained was the property of the Claimant and, like other property which it owned, it should be able to control it.
64. Besides, Mr Jones submitted, Judge Halliwell had heard the 1<sup>st</sup> Defendant give oral evidence and had disbelieved him.
65. I do not accept the Claimant’s arguments in relation to the application for an order of delivery up or destruction.
- i) I recognise that Judge Halliwell disbelieved the 1<sup>st</sup> Defendant’s evidence, but it does not follow from this that the Defendants would disobey an order of the Court.

- ii) There is an on-going investigation by, at least, the CAA and possibly other authorities. The proviso which I will include in the injunction will allow the Defendants to respond to requests from those authorities for further information or documents. Of course, if those investigations lead to a prosecution, it will be open to a defendant in such criminal proceedings to argue that evidence should be excluded e.g. as a result of Police and Criminal Evidence Act 1984 s.78 because of the means by which it was obtained, but a decision on any such application will be a matter for the judge conducting the criminal proceedings.

### **Conclusion**

- 66. I will grant an injunction restraining the use which the Defendants may make of the Claimant's confidential information, but it will include a proviso which will allow them to respond to requests from the CAA or other public authorities for information or documents (whether identified specifically or generically).
- 67. I will refuse the application for orders of delivery up or destruction.
- 68. I will invite the parties to try to agree an order which embodies appropriate terms. If the parties cannot agree, they should make submissions in writing as to the terms for which they contend.