IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
[2024] EWHC 125 (Comm)

Rolls Building
Fetter Lane
London, EC4A 1NL

Tuesday, 16 January 2024

Before:

HIS HONOUR JUDGE PELLING KC
(Sitting as a Judge of the High Court)

B E T W E E N : No. CL-2021-000612

ALEXANDER NIX — Claimant

- and -

EMERDATA LIMITED — Defendant

A N D B E T W E E N : No. CL-2021-000321

(1) DYNAMO RECOVERIES LIMITED
(2) EMERDATA LIMITED — Claimants

- and -

ALEXANDER NIX — Defendant

EX PARTE

J U D G M E N T
(v i a M i c r o s o f t T e a m s)

A P P E A R A N C E S

MR S HACKETT (instructed by Griffin Law) appeared on behalf Dynamo Recoveries Limited and Emerdata Limited.

MR A NIX did not appear and was not represented.

JUDGE PELLING:

1 This is an application made without notice for what is now known colloquially as an imaging order. More particularly in the context of this case, what is sought is an imaging order against the respondent Mr Alexander Nix in relation to certain electronic data that inferentially he has stored on his phone, and in particular but not limited to text messages exchanged using the WhatsApp platform.

2 What is proposed is what is now basically the standard form of imaging order which will require the respondent Mr Nix to make available all his mobile or former mobile phones to be searched by an independent expert appointed by the claimant, referred to in the draft order as an independent computer specialist – CCL Solutions Group – working under the supervision of an independent solicitor of experience in relation to matters of this sort. What is anticipated is that the image will be taken by the independent computer expert, two copies prepared and retained by the independent computer expert and not revealed to anyone in any circumstances until after the return date. Furthermore, what is envisaged, since this is an application, as I explained in a moment, which is driven by unacceptable or allegedly unacceptable conduct in relation to disclosure and the preservation of documents, is that if the order is maintained at the return date, an electronic documents search will be carried out using the e-discovery platforms that have been established for the purpose of this litigation, and with the solicitors and the claimant not recovering any of the relevant information directly themselves, other than to the extent that documents are revealed using the search facilities provided by the e-disclosure platform when, of course, the documents revealed will be disclosable in the usual way.

3 There are, therefore, what are now the standard protections which are available in orders of this sort and what is proposed. That is to say that the work will be carried out by an independent expert. The independent expert will carry out his duties under the supervision of an independent supervising solicitor and the material obtained will not be available in any way, shape, or form to the claimants until after the return date when any submissions by the respondent as to why this material should not be released can be determined.

4 Against that background, I now turn to the circumstances of this dispute. In a judgment of this sort given on a without notice application, it is not appropriate for me, I think, to go into any detail in relation to the underlying claim. It is sufficient to say that the claimants are the assignees of various causes of action from the insolvency practitioners who have conducted ultimately the liquidation of a company of which the respondent to this application was a former director. Various directions were given in the usual way in relation to disclosure, including the disclosure of information contained on and by searching mobile phones. That much is apparent from the DRD document to which I was taken in the course of the submissions where question 3, within section 2, is precisely the same in each case, and yielded the answer a mobile phone in each case.

5 What then appears to have happened is that following the disclosure exercise, the solicitors who act for the claimants wrote to the solicitors who, at all material times, have acted for the respondent; that is RIAA Barker Gillette of London. The letter that I was taken to that is said to be relevant for present purposes is that of 6 September 2023, which, at para. 9 and following, refers to the disclosure exercise carried out by the respondent. It is critical of the disclosure which has been produced, in particular, noting at para. 10:

> "10. Given that your client stood to make (and made) the life-changing sum of $8,775,000 from the series of transactions that became known as '*Project Dynamo*', we would have thought

> that there would have been many more documents - including spreadsheets/Excel files, emails seeking advice/advices and relating to the solicitation of investment, valuations, and income, workflow and profitability projections - that your client would have commissioned, read, analysed, commented upon and retained in this regard. These documents, produced prior to completion of '*Project Dynamo*', when your client was one of four directors of the holding company ... and the sole director of its principal trading entity ... go to the very heart of the issue upon which the parties' experts are required to give evidence.
>
> 11. We would therefore invite your client, with your assistance and guided by your expertise, to look afresh at the documents he has disclosed and to consider (notwithstanding the zero filling of the laptop returned to the joint liquidators of the English subsidiaries of Emerdata Limited) where else he might have retained documents that ought to have been (and ought now to be) disclosed, including in hard copy form and digital copies held on his current/former iPhone(s), iPad(s), laptop/desktop computer(s)/tablet(s) and as may have been sent/received by him using work and/or personal email accounts, SMS text message, WhatsApp, Facebook Messenger, Telegram, Signal and/or other such means of communication."

6 That resulted in a response from RIAA Barker Gillette in a letter dated 18 September 2023. The relevant part of what is quite a long letter is at para. 6 where they said this:

> "For the purposes of this response to your letter, we have taken our client's further instructions and he has reaffirmed that there are no additional sources of documentation to disclose or search. As we assume you are aware, our client was locked out of the companies' servers after his suspension as director, and we would suggest that it therefore ought not to be surprising to you that the documents available to him are limited. We can also reconfirm, for the avoidance of doubt, the matters set out in the PD57AD disclosure statement. Our client will, however, of course continue to comply with his ongoing disclosure obligations and in the event further disclosable documents are discovered they will of course be disclosed and provided."

7 What then happened was that there was a public examination of the respondent in the context of the insolvent liquidation of the company or companies of which he was a director. The insolvency practitioners concerned were represented by leading counsel, Miss Catherine Addy KC, and the respondent to this application was represented by junior counsel. The examination took place before an experienced Deputy Insolvency and Company Courts Judge with, I am told, and I have no reason to doubt, significant and firm resistance by counsel instructed by the respondent as to what questions could and should be asked.

8 Before turning to the relevant questions, I should perhaps refer, at least in passing, to what was referred to in the exchange of correspondence I quoted from a moment ago in relation to the zero filling of a laptop. Unsurprisingly, the respondent had a work laptop provided to him for the better performance of his duties as a director of the companies. Following a severance of the relationship between the companies and the respondent, he retained the

relevant computer and ultimately it was returned. However, when it was returned it was found that its contents had been deleted, and a process known as "zero filling" had taken place by which any data which has been deleted was rendered practically impossible to retrieve by technical means that might otherwise have been available if only deletion had taken place. I return to that issue below because of the excuses and exonerations offered by the respondent in relation to that activity. It is sufficient to note at this point that two alternative explanations were offered, each of which is inconsistent with the other, and that it would appear that the zero filling took place after litigation was in contemplation and therefore after, it is to be inferred, advice was given by the solicitors who act for the respondent to the respondent concerning his obligations to preserve documentation.

9 Returning to the transcript of the public examination, an exchange took place between Miss Addy on behalf of the insolvency practitioners on the one hand and the respondent on the other, which appears at pp. 125-126 in the transcript and was in these terms:

> "Q. Did you use WhatsApp for any communications in relation to the business of the companies?
>
> A. That's a good question. I was thinking about that and when WhatsApp became introduced. The answer is, I don't know. I certainly-- it wasn't-- WhatsApp wasn't an app that was in, as it is today, that was commonly used for messaging. I don't know when it became a popular messaging app. Certainly I'm going to say, what, 2017, maybe? So again, I would have to check that. I really don't know the answer to that."

10 It will be appreciated that that is inconsistent with the promise to carry out effective searches identified in the letter from his solicitors in response to the letters from the claimant's solicitors quoted a moment ago.

11 The evidence which is filed in support of this application is the affidavit of Mr T W Donal Blaney who, as I have said, is the claimant's solicitor. He says in his statement that he found the exchange between Miss Addy on the one hand, and the respondent on the other, perplexing and that caused him to make some further enquiries of another director of the relevant companies, a Mr Julian Wheatland. The long and the short of that enquiry was that by an email dated 13 December 2023, Mr Wheatland supplied to Mr Blaney some WhatsApp messages under cover of the email which said this:

> "Please find attached a copy of my WhatsApp messages with Alexander Nix [the respondent] from June 2016 to date. These have been reviewed by Rob Lawrie as discussed and he has made no redactions."

12 There is then attached to the email a relatively long list of WhatsApp exchanges between Mr Wheatland and Mr Nix. The point which is made by the claimants and which I accept for the present purposes is that if, upon proper analysis, WhatsApp messages were exchanged between Mr Wheatland and Mr Nix which were disclosable, contrary to what had been asserted by him, or on his behalf in the correspondence to which I referred a moment ago, then it is to be inferred that there is at least a realistic possibility that there will be other WhatsApp messages relevant to the issues that arise in this claim and responsive to the questions and other criteria identified in the DRD which have not been disclosed, as they should have been, and which, if they remain at all, remain on the mobile phones that the respondent currently uses, or has in the past used, or in the cloud storage facility of the app.

13 In order to test out whether that might be a realistic prospect, the solicitors who act for the claimant, with the experts who run the e-disclosure platform being used by the claimants in this litigation, carried out a test using the search facilities developed for this litigation in order to see whether any of the WhatsApps produced by Mr Wheatland responded to those searches. The results are in evidence starting in the bundle at p. 565. They are set out in a spreadsheet format with the issue being identified by reference to the issues for disclosure identified in the DRD, the relevant search terms being identified in the next column, whether the WhatsApp messages were responsive within date range, responsive to the words in date range, and therefore disclosable. The right hand column headed "Disclosable" is the column that matters for present purposes and a perusal of that document shows that there are a number of the messages, quite a large number of the messages, that were searched by or on behalf of the claimant that are described as responsive to the relevant search terms. Thus it is that the claimants maintain that there is a strong *prima facie* case that notwithstanding the confident assurances given on behalf of Mr Nix, by his solicitors, that in material respects, the disclosure exercise that is relevant to this litigation has not been carried out as it should have been.

14 It is now necessary for me just to return shortly to the computer issue that I identified a moment ago which is relevant because of what happened in relation to it. It is necessary to start by noting that the letter before action relevant to this claim was sent to Mr Nix, the respondent to this application, on 12 July 2019. About a year earlier, on 27 June 2018, Underwood, the solicitors then acting for the administrators, had written to Mr Nix saying, amongst other things, the following.

> "The Joint Administrators have requested that data held for the Companies, being those they are appointed over be immediately returned. Additionally, requests were made to return the Companies' assets, comprising but not limited to, computer equipment, mobile phones, memory sticks, any intellectual property, together with access codes and/or passwords and accounting information.
>
> Information on how to return data was given together with an instruction not to copy, tamper with or delete data, being in accordance with notices and communications issued by the Information Commissioner's Office..."

15 That letter culminated with a paragraph saying this:

> "Should you still be in possession of the Companies' assets/equipment, please immediately contact the Joint Administrators' office to arrange a suitable method of delivery."

16 Against that background, as I have already said, a laptop was ultimately returned which had been zero filled so as to preclude any attempt being made to recover deleted information from it. This was the subject of a question from Miss Addy at the public examination to which I referred earlier in this judgment when the following exchange took place:

> "Q. To the best of your recollection, what was your specific reason for asking Mr Tayler to zero fill the laptop?
>
> A. I believe-- I believed and I believe-- that the administrator is working hand-in-glove with Emerdata and DRL in order to procure evidence to help them further their claims against me. And I didn't want my legally privileged material to be passed

> across to DRL. Or any other personal information that might give them an unfair advantage."

17 The points which arise from this exchange include the fact that, of course, if that had been the genuine concern of Mr Nix then it might have been possible, or might have been more straightforward, I should say, for Mr Nix to have simply declined to return the laptop saying that it contained privileged or personally confidential information, and seeking a means by which the machine with the material on it could be preserved or held by a third-party pending further court orders in the context of the litigation. It is not an appropriate response, as I see it, to delete the information that then zero filled the machine, then send it back, and do so without offering any explanation for so doing.

18 I understand, and counsel tells me for the purposes of this exercise, that Mr Nix maintains that the material that was on the machine that was, at any rate, relevant to the litigation was transferred to another electronic storage device, I think a memory stick, and has been preserved. The point which counsel makes in relation to that is a similar one to the one I have made concerning how it was appropriate to deal with the computer in the first place which is that the transfer of information from the laptop to the electronic storage device was carried out by Mr Nix without any supervision or even observation by any relevant third party and therefore, there is no evidence that all the material on the machine was downloaded, or downloaded successfully, or has not been tampered with following the downloading of that material, or even remains extant following its downloading.

19 That brings me to the present application. It will be necessary for me to refer to some of the legal principles that have been applied and the lead case which is referred to in this area is an authority called *TBD (Owen Holland) Ltd v Simons & Ors* [2020] EWCA Civ 1182, [2021] 1 WLR 992. A judgment of the Court of Appeal reported as a practice note in relation to imaging orders decided, and this is important in light of the contents of various other authorities to which I have to refer in a moment, at a hearing which took place between 22 and 24 July 2020 and disposed of by a judgment which was delivered on 8 September. In sanctioning the use of image orders as a matter of principle as a more palatable alternative to search orders formally known as *Anton Piller* orders, the Court of Appeal, by Arnold LJ, cited with approval at [184] a statement of principle by Tugendhat J in one of the earlier authorities referred to by Arnold LJ, which was in these terms:

> "In my judgment, an order which would deprive the defendants of the opportunity of considering whether or not they shall make any disclosure is (in the words of Hoffmann J...) an intrusive order, even if it is made on notice to the defendant. It is contrary to normal principles of justice, and can only be done when there is a paramount need to prevent a denial of justice to the claimant. The need to avoid such a denial of justice may be shown after the defendant has failed to comply with his disclosure obligations, having been given the opportunity to do so (as in [*Mueller Europe Ltd v Central Roofing (South Wales) Ltd* [2012] EWHC 3417 (TCC)])..."

20 The point which is made on behalf of the claimants in this case is that this case falls fair and square within that category of case identified by Tugendhat J, and a point approved by the Court of Appeal in *TBD (Owen Holland) Limited v Simons* as being the sort of situation which may, in principle, justify the making of an imaging order.

21 It has to be said, however, that not every failure to deal with disclosure obligations satisfactory is likely to trigger the making of an imaging order of this sort and there has to

be, as it seems to me, other aggravating factors before such an order is made, not least because although these orders are less intrusive than search orders, they are nonetheless intrusive, exposing the respondent to the possibility that private and irrelevant information will be downloaded as part and parcel of the exercise.

22 It seems to me, therefore, that if there has been a failure to comply with disclosure obligations when an opportunity to comply with them has been given, then there needs to be aggravating factors before a court should consider making an order of this sort. The aggravating factors in this case, which are relied upon by the claimant, are two in number. The first is that following the completion of the disclosure exercise, fairly, the claimants' solicitors wrote to the respondent's solicitors drawing attention to what they considered to be a failure to comply with disclosure obligations, and making an open invitation to the respondent to reconsider the disclosure exercise and to produce any documents which should have been, but had not been, disclosed as part of the document production process that had already taken place. As I have explained, that was greeted with disdain on the basis that the disclosure exercise had been carried out properly but that, nonetheless, the respondent would comply with his continuing obligations as to disclosure.

23 We now know by reference to the material I have set out above that perfectly plainly, the disclosure exercise had not been carried out properly because a search of mobile phones was required to be carried out and either a search had not been carried out, or, if it had, the WhatsApp messages had not been considered for the purpose of disclosing messages which were responsive to the search terms that have been agreed or ordered by the court.

24 Tugendhat J continued in the statement of principles to which I referred a moment ago as follows:

> "...it is not sufficient for a claimant such as the employer in *Lock v Beswick*, or the claimant, to show no more than that the defendant has misused confidential information or otherwise broken his employment contract. The position is *a fortiori* where the claimant has not even shown that much. What a claimant must show is substantial reasons for believing that a defendant is intending to conceal or destroy documents in breach of his obligations of disclosure under the CPR."

25 As I have already said, there is strong evidence available to the claimants which demonstrates that the disclosure exercise has not been properly carried out, to put it no higher. There is also evidence from which it can be inferred that there is at least a realistic risk that documents will be concealed or destroyed. Concealment is likely to be the option which most obviously applies in this case. The material which supports such an inference is that which I have already referred to in relation to the non-disclosure of WhatsApp applications. It is also most strongly to be inferred from the behaviour of the respondent in relation to his laptop with the deletion of information from it, the backfilling of it, and the backfilling of it in circumstances where litigation was already under contemplation, and in circumstances where it could reasonably be inferred that someone dealing properly with the material would have approached his solicitor for the purpose of obtaining advice as to how the machine was to be dealt with, as I have explained, but no such attempt was made, or, at any rate, it is not suggested that any such approach was made.

26 My attention was drawn, and it is right I should refer to it, to the decision of Ms Caroline Shea KC sitting as a Deputy Judge of the Chancery Division in *Garofalo v Crisp & Ors* [2023] EWHC 2625 (Ch). I should refer to that because the general thrust of what Ms Shea said in that case was to suggest that the approach that a court should adopt when considering

whether to grant an imaging order in the current environment should be essentially to approach it as if it were a search order or *Anton Piller* order (see [61]-[62] of that judgment). I make no criticism of that judgment if it is looked at as a fact-sensitive decision that depends upon its own particular circumstances. That at least is, I think, how Ms Shea intended the judgment to be read having regard to her reference in [62] to be what she considered to be "nuance and a certain elasticity in the application of the test" where imaging orders were being sought.

27 Nonetheless, for reasons I explain in a moment, there were earlier cases decided by other courts in which a much more flexible approach was taken than that which Ms Shea adopted. No criticism can be made of Ms Shea for the way she decided the case because those authorities could have been but were not cited to her. So that is a general reason for treating with caution the decision made by Ms Shea. There is another reason for being cautious which is that on the facts of that case, it would appear that a significant number of very wide ranging orders were being sought, which appears to have exercised the judge in a way that caused her to adopt a very strict approach to the way in which the orders should be approached.

28 So it is necessary, finally, to refer to the decision of Pepperall J in *Hyperama PLC v Poulis & Anor* [2018] EWHC 3483 (QB). This is one of those decisions which, in my judgment, could have been but was not referred to Ms Shea when she was deciding the *Valorem*. The authority is important because the judge undertook a comprehensive review of all the relevant authorities in this area, including, in particular, those authorities relevant to the grant of mandatory interlocutory orders and the approach which was required in those circumstances, which is to balance the injustice likely to be experienced by each of the parties if the order is respectively granted or refused (see, in particular, *Films Rover International v Cannon Film Cells Ltd* [1987] 1 WLR 670, a decision of Hoffmann J (as he then was).

29 Having carried out a review of the relevant authorities, the Judge referred to the decision of Chadwick J (as he then was) in *Nottingham Building Society v Eurodynamics Systems plc* [1993] 468 and noted the points made by Chadwick J in that decision, in which he identified four principles that applied when deciding whether to make the order being sought in that case, which was an order for delivery up of computer software. He identified the four considerations as being, first, that which was described as overriding, namely to make the order which:

> "...involve[s] the least risk of injustice if it turns out to be 'wrong'..."

Secondly, that:

> "...the court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage, may well carry a greater risk of injustice if it turns out to have been wrongly made than [a prohibitory order]..."

Third, that:

> "...it is legitimate, where a mandatory [order] is sought, to consider whether the court does feel a high degree of assurance that the [claimant] will be able to establish his right [at trial]..."

Finally, where the court is unable to feel a high degree of assurance in that way, to acknowledge that there may still be circumstances where it is appropriate to grant a mandatory injunction at an interlocutory stage depending on the particular circumstances.

30 He then set out at [23] the approach that Pepperall J said the would adopt in the case that was before him, which was follows:

> "...I approach this application on the following basis:
>
> 23.1 First, I apply the elevated standard of whether I have a high degree of assurance that Hyperama will be able to establish its claims at trial in view of the strength of the order that is sought. Such standard is not significantly different from the 'extremely strong prima facie case' required to justify a search order but, given that the order is less invasive, I accept that it may be that less is required to justify [what was described in that case as] a doorstep order.
>
> 23.2 Secondly, I consider whether Hyperama has established that the damage, potential or actual, to its business interests is very serious.
>
> 23.3 Thirdly, I consider whether there is clear evidence that the Defendants have incriminating documents in their possession.
>
> 23.4 Fourthly, I consider whether there is a real possibility that the Defendants might destroy such material before any inter partes hearing can take place.
>
> 23.5 Fifthly, I consider whether the relief sought is proportionate to its legitimate aims."

31 So far as the first of these criteria are concerned, it was submitted on behalf of the claimant that what I was concerned about in the context of this case was that I had a high degree of assurance that the claimant in this case would be able to establish that disclosure had not taken place as it should have done. I am dubious as to whether or not that is the necessary test, although given the material that I have referred to in the course of this judgment, plainly, if that was the correct test, it would be satisfied. However, as the quotation from Chadwick J (as he then was) makes clear, the presence or absence of such a high degree of assurance is not the determining factor.

32 The determining factors in the circumstances of this case are likely to be those identified in subparas. (3) an (4) of Pepperall J's summary. That is whether there is clear evidence that the defendants have incriminating documents in their possession. As to that, it is, in my judgment, close to obvious that the respondent will have or has had in his possession WhatsApp messages which will be responsive to the disclosure requirements that have been agreed or ordered in this case. See the evidence from the claimants' solicitor by reference to the material supplied by Mr Wheatland.

33 The other factor which is likely to be highly material in the circumstances of this case is the fourth criteria identified by Pepperall J, namely whether there is a real possibility that the defendants might destroy such material before any inter parties hearing can take place. As to that, and as I have already emphasised, there are two good reasons for thinking that that is at least a real possibility. First, the way in which the respondent has conducted himself in

relation to the laptop computer, with deletion of information and then backfilling in order to prevent the recovery of the information without taking any of the steps which someone acting legitimately, to protect his own interests, might have taken in relation to a machine containing such material. The second factor is the failure to disclose the existence of the WhatsApp messages and to instruct his solicitors to give the clear and unqualified assurances referred to in the correspondence when, to the knowledge of the respondent, he had either not searched his mobile phones as he should have, or, having searched them, discovered the presence of WhatsApp messages which he then chose not to disclose, or was reckless, not caring whether or not there were relevant WhatsApp messages on his mobile phone which would have been responsive to the search terms that have been agreed.

34 The claims which are being advanced in this case are for substantial sums of money. They may be materially affected by the failure to give appropriate disclosure in relation to the search terms that have been agreed and, to that extent, the very serious risk of damage, potential or actual, to the claimants relevant commercial interests is, in the circumstances of this case, made good.

35 The final question which Pepperall J identified as material is whether the relief sought is proportionate to its legitimate aims. Proportionality in this context, as is well known, means that the order must do only the minimum necessary to achieve the legitimate aim, the legitimate aim in this exercise being to ensure that all relevant WhatsApp and other messaging services messages relevant to the issues that arise in this litigation are firstly preserved and then disclosed. If this order were not qualified in the way it is qualified, I might have concluded that there was an element of disproportionality in what is being sought. However, in that context:

(1) An imaging order has been sought rather than a search order. which, itself, is evidence of proportionality in the circumstances of this case.

(2) Secondly, the imaging order does not seek anything more of the respondent than that he provides his mobile phones together with the relevant access information in order that an imaging record can be taken by an independent computer specialist.

(3) There is no risk of private information which is immaterial to this litigation coming into the hands of either the claimants or the claimants' solicitors because the order contemplates that the images, once taken, will be held by the independent computer specialist, in effect, until further order of the court and, at the very least, until after a return date in order to ensure that access is not obtained to material that is either irrelevant, or personal, or privileged, or otherwise confidential, whilst at the same time ensuring that material which is potentially relevant is preserved against a background where there is, as I have concluded, a real risk that otherwise the material will be concealed.

(4) Because it is not contemplated even after the return date that the images will be simply handed to the claimants' solicitors, the respondent has the added protection of knowing that all ultimately that is sought by the claimants and their solicitors is that the images obtained be then subjected to the search parameters that have been used for the purpose of generating disclosure in this case with the result that the claimants' solicitors ultimately will never gain access to all the material that is imaged but will only gain access to the documents which, by definition, are material to this litigation because they are identified as responsive when tested against the criteria identified in the DRD.

36 In those circumstances, it is in principle appropriate that an order should be made. In reaching this conclusion, I have taken account of all of the full and frank disclosure and fair

presentation points that have been made, both by the claimants' solicitor in his affidavit and by counsel in his skeleton submission. Of those points, there is one I should make mention of, not least because it is a point that is similar to a point that the respondent made at an earlier stage and in relation to his laptop computer. Counsel rightly refers to the doctrine in *Atlantic Computers,* and to the point that where litigation is on foot or contemplated between someone against whom an order of this sort is sought by an insolvency practitioner bringing such a claim, care must be taken to ensure that the orders sought are not being used, or are capable of being used for a collateral purpose, namely to obtain information which would not otherwise be available in the litigation process in order to further the officeholder's claims against the respondent.

37 I am entirely satisfied that the respondent is protected in the circumstances of this case because of all the points that I have already made. That is to say that the claimants and their solicitors will not get access to the information in any form ahead of the return date. The information will be held by independent computer specialists over until the return date and, ultimately, if the order that I am proposing to make is upheld on the return date, all that will happen is a search will be carried out in using the parameters identified by the parties in this litigation to reveal disclosable documents which will mean that anything which is private, confidential, privileged, or immaterial will simply not be revealed as part of the disclosure search exercise.

38 In those circumstances, I am satisfied that, in principle, it is appropriate to make an order and I will now hear further submissions from counsel concerning the terms of the order.

CERTIFICATE

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