Neutral Citation Number: [2021] EWHC 2524 (Ch)

BL-2021-001155

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 September 2021

Before :

DEPUTY MASTER BRIGHTWELL

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Between :

Willow Sports Limited	**Applicant**
- and -	
(1) SportsLocker24.com Limited	
(2) Nigel Tatlock	**Respondents**

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Rowan Pennington-Benton (instructed by **Pinder Reaux & Associates Ltd**) for the **Applicant**
Michael Duggan QC (instructed by **Rotheras**) for the **Respondents**

Hearing date: 1 September 2021

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Approved Judgment

I direct that this approved judgment, sent to the parties by email on 23 September 2021, shall deemed to be handed down on that date, and copies of this version as handed down may be treated as authentic.

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Deputy Master Brightwell:

Introduction

1. This is an application for disclosure before proceedings start pursuant to CPR Part 31.16, as preserved by para 1.10 of CPR Practice Direction 51U, being the Disclosure Pilot in operation in the Business and Property Courts. The application was issued in the Commercial Court, but transferred for hearing in the Business List by order of HHJ Pelling QC dated 10 July 2021.

2. The application relates to a licence agreement made on 20 December 2019 between the Applicant and the First Respondent ("SL24"), and signed by the Second Respondent on behalf of SL24 as its director ("the License Agreement"). It is supported by draft particulars of claim drafted by Mr Rowan Pennington-Benton, who appeared on the application on behalf of the Applicant. Mr Michael Duggan QC appeared for the Respondents.

3. It is alleged in the draft particulars of claim that the Applicant owned the licensing and broadcasting rights to certain sporting events, including the British Touring Car Championship and Porsche Carrera UK. The Applicant alleges that, under the License Agreement, it granted to SL24 a licence and sub-licence to use on its own platform the Applicant's broadcasting rights in these events and in consideration of this, SL24 agreed to pay 100% of its net revenue to the Applicant. A further entity, Team-Up Labs Inc ("Team-Up"), a Delaware company, was made a party to the License Agreement, apparently so that it could receive US-source revenues derived from or related to the agreement. There appears to have been discussion about the purchase of Team-Up by the Applicant, but this did not in the event take place.

4. The draft particulars of claim go on to allege that the License Agreement was made on the basis that the onward sale or licensing of the broadcasting rights mentioned above would be made under contract with the US Federal Bureau of Prisons ("FBP"). It is said that Mr Tatlock told Mr Stewart Mison of the Applicant in October 2019 that an agreement was already in place with the FBP under which SL24 or another company owned by Mr Tatlock, SEE-Engagement Ltd, provided broadcasts for a fee of USD1 per prisoner and that the services were used by around 2 million prisoners. The Applicant asserts that Mr Tatlock confirmed that, pursuant to the License Agreement, the content would be licensed to SL24 and then fed into the FBP system or directly, or under an existing agreement with SEE-Engagement Ltd and a back-to-back agreement with the Applicant.

5. The Applicant then alleges that Mr Tatlock represented that the content was 'passported' into FBP prisons in or around December 2019 or January 2020, and that an invoice was said to have been sent by Team-Up to the FBP in the

sum of USD2m, and then subsequently represented on 8 February 2020 that the invoice had not been paid but that this was nothing more than an administrative issue, as a Chase bank account had not been registered on the payment profile for the FBP. On 28 February 2020, Mr Tatlock confirmed that SL24 had received a cheque from the FBP, but then "*the farce continued, with various excuses being raised including that the cheque in fact had not been received after all but was lost in the postal system*".

6. These allegations are further described in the second witness statement of Mr John Spyrou, the Applicant's solicitor, dated 31 August 2021. As Mr Spyrou explains, and as Mr Pennington-Benton has summarised, the Applicant is considering bringing three categories of claim against the Respondents:

   i) A claim for damages or debt for sums received by use of SL24's use of the licensed rights, whether from the FBP or otherwise;

   ii) Damages for a failure to exercise reasonable care and diligence in the collection of gross revenue from the FBP;

   iii) Insofar as the agreement with the FBP was a ruse and false, damages for (fraudulent) misrepresentation and/or conspiracy in respect of various statements of fact pleaded in the draft particulars of claim. The draft particulars of claim in fact pleads liability in unlawful means conspiracy, inducing breach of contract, breach of trust and dishonest assistance with a breach of trust, as well as in deceit.

7. The Respondents rely on a witness statement of Mr Tatlock, dated 24 August 2021, which disputes some of the relevant factual allegations, but does not address all of them. It is the Respondents' case that no payments have been made under the License Agreement and that this is determinative of the Applicant's rights. Mr Tatlock says that the business and assets of SEE Engagement Ltd were sold to SL24, and that the business and assets of SL24 were, to the Applicant's knowledge, sold on 12 December 2019 (i.e. before the License Agreement was made) to a Seychelles company known as SportsLocker24.com Corporation ("SL24 Corp"). Mr Pennington-Benton indicated at the hearing that the Applicant's position is that Mr Mison had not been aware of this.

8. Mr Tatlock also says that the FBP dealt with an entity known as Fox Media or Nello Consulting, acting through a Mr James Dodd. He says he (Mr Tatlock) was removed from office with SL24 Corp because he had not carried out proper due diligence on Mr Mison or on the Applicant. Furthermore, the Applicant was in breach of contract having failed to pay for works carried out pursuant to another agreement, which led to their works being "*removed from the platform*".

9. In its application, the Applicant seeks an order that the Respondents disclose a long list of documents, which can be summarised as follows:

   i) all relevant correspondence between the Respondents and the FBP;

   ii) all documents concerning the FBP and the licensed content;

   iii) any documents relating to the alleged agreement between SEE Engagement Ltd and the FBP;

   iv) any documents relating to the use etc of the licensed content, to the FBP or to any other person;

   v) documents recording payments by the Respondents or any third party from any person as a result of the use of the licensed content;

   vi) documents concerning Team-Up's involvement in and apparent agreement to the License Agreement, together with those concerning its role as collection agent and problems with payment;

   vii) documents and correspondence concerning six alleged statements in the draft particulars of claim, which form the basis of claims in deceit, unlawful means conspiracy, inducing breach of contract, breach of trust and dishonest assistance with a breach of trust.

   viii) documents and correspondence between the Respondents and Team-Up concerning the Applicant, the License Agreement or the licensed content.

10. Some of the requests are expanded to refer also to entities, documents or other factual allegations mentioned in the draft particulars of claim. As I mention below, Mr Pennington-Benton revised the Applicant's requests and, at my request, filed a revised draft order after the hearing, although the majority of the requests are intact. It seems to me likely that the list of requests was formulated as an attempt to seek almost every document that might be available by way of standard disclosure based upon a large part of the draft particulars of claim.

11. CPR Part 31.16(3) provides that an order for disclosure before proceedings start may be made when the following jurisdictional requirements are satisfied:

   i) the respondent is likely to be a party to subsequent proceedings;

   ii) the applicant is also likely to be a party to those proceedings;

   iii) if proceedings had started, the respondent's duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and

iv) disclosure before proceedings have started is desirable in order to –

a) dispose fairly of the anticipated proceedings;

b) assist the dispute to be resolved without proceedings; or

c) save costs.

12. Mr Duggan relies on the following summary of the principles derived from the leading case of *Black v Sumitomo Corp* [2002] 1 WLR 1562, in the judgment of HHJ Waksman QC (as he then was), in *ECU Group plc v HSBC Bank Plc & Ors* [2017] EWHC 3011 (Comm) at [17] to [19]:

> '17. The leading case is *Black v Sumitomo*. The following propositions may be derived from the judgment of Rix LJ:
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> (1) The requirements in sub-paragraph (3) (a) and (b) are simply about the likely parties to any claim, not its underlying merits and "likely" in this context means "may well"; see paragraphs 71 and 72;
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> (2) Requirement (c) will raise the question of the clarity of the issues which would arise once the litigation has started, without which such clarity it will be difficult to say if the documents now sought would fall within standard disclosure; see paragraph 76;
>
> (3) Requirement (d) with its three possible variants constitutes both a jurisdictional threshold and also a set of factors which are required to be considered in more detail when the question of discretion is dealt with; see paragraphs 81 and 82;
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> (4) The jurisdictional threshold is not intended to be a high one and the real question is likely to be the exercise of discretion which will not be much assisted by the simple fact that the jurisdictional threshold is met; see paragraph 73; if it were otherwise, that would tend to suggest that orders would be made much more frequently under this provision than they are; see paragraph 85;
>
> (5) The discretion itself is not confined and will depend on all the facts of the case; important considerations will include the nature of the injury or loss complained; the clarity and identification of the issues raised by the complaint; the nature of the documents requested; the relevance of any protocol or pre-action enquiries and the opportunity which the complainant has to make his case without PAD; see paragraph 88;

(6) In addition, if there is considerable doubt as to whether the usual disclosure staged would ever be reached, the court can take this into account as affecting discretion; see paragraph 77. This must be a reference to practical or legal obstacles which the putative claim may face;

(7) At paragraph 92 Rix LJ stated "unless there is some real evidence of dishonesty or abuse which only early disclosure can properly reveal and which may, in the absence of such disclosure, escape the probing eye of the litigation process and thus possibly all detection, I think that the court should be slow to allow a merely 6 prospective litigant to conduct a review of the documents of another party, replacing focused allegation by a roving inquisition". This observation was made in the context of Rix LJ having found that the complaint in that case was factually and legally "speculative in the extreme" see paragraph 91. Context is important because it is otherwise hard to see why it must be shown that in the absence of early disclosure the evidence would (later) escape the eye of the legal process;

(8) The more focused the complaint, and the more limited the disclosure sought in that connection, the easier it is for the court to exercise its discretion in favour of PAD, even where the complaint might seem somewhat speculative or the request argued to be mere fishing. The court might be entitled to take the view that transparency was what the interest of justice and proportionality most required. But the more diffuse the allegations and the wider the disclosure sought more sceptical the court is entitled to be about the merit of the exercise; see paragraph 95.

18. There was a certain amount of debate before me, and in the cases, as to whether it was also necessary for the applicant to show (a) that without the disclosure it could not properly plead a case at all and/or (b) that even without the disclosure, the case had at least a real prospect of success, or had reached some other merits threshold. In fact, of course, there is a degree of tension or inconsistency between those requirements if both had to be made out, as noted in paragraph 28 of the judgment of Underhill LJ in *Smith v Energy Secretary* [2014] 1 WLR 2283. Since the view of Rix LJ at paragraph 68 of his judgment was that the provision was addressed to situations where disclosure (a) would help the applicant who could plead a cause of action to improve it or (b) was necessary as a vital step in deciding whether to litigate at all or (c) necessary to provide a vital ingredient in the pleading, it seems to me that questions of underlying merit of the claim should be dealt with in the context of discretion. As Underhill LJ put it in Smith "If there were

a jurisdictional requirement of a minimum level of arguability the question would necessarily arise of how the height of the threshold is to be described…It is inherently better that questions about the likelihood of the applicant being able in due course to establish a viable claim are considered as part of a flexible exercise of the court's discretion in the context of the particular case."; see paragraph 24.

19. The potential width and focus of the classes of documents sought is a further matter for discretion. See paragraph 72 of the judgment of Rix LJ. I can see that in an extreme case, where the documents sought were hopelessly wide, that might even militate against the jurisdictional thresholds being achieved. In any event, as Morison J put it in *Snowstar v Graig* [2003] EWHC 1367 "… Every action for pre-action disclosure should be crafted with great care, so that it is properly limited to what is strictly necessary.". In the case before him where the disclosure sought was "wide and woolly" he did not regard it as a satisfactory suggestion that any flaws in the application notice could be dealt with after judgment. I accept that where the categories of disclosure sought are extremely wide or unclear, the Court is unlikely to be prepared to rescue the application by, in effect, redrafting them. However, in my judgment that does not mean that the Court has no power to adjust the categories of disclosure sought so as to deal with any particular problems, whether in terms of scope or availability, which may become apparent in the course of the application. The extent to which the Court would, as part of its discretion, consider it appropriate to vary the disclosure sought obviously depends on the facts and circumstances of each particular application. See the observations of Marcus Smith J at paragraph 34 of his judgment in *Attheraces v Ladbrokes* [2017] EWHC 431.'

13. Mr Duggan also draws my attention to judicial statements to the effect that, in commercial disputes, an order for disclosure before proceedings is outside the normal run: see *First Gulf Bank v Wachovia Bank* [2005] EWHC 287 at [24] (Christopher Clarke J). I note, though, that HHJ Waksman QC in the *HSBC* case considered that, whilst such applications are by their nature unusual, each case should be determined on its own facts, with regard to the overriding objective and in particular proportionality: see at [20].

14. I was addressed on the effect of the Disclosure Pilot on applications made under CPR Part 31.16 in the Business and Property Courts. This was considered by Knowles J in *A v B* [2019] 10 WLUK 65, at [10] to [11]. In exercising his discretion to refuse to grant an application for disclosure before proceedings started on the facts before him, he compared the position as it would be if no order was made and disclosure was then to be given in accordance with the Pilot, and the position if an order was made on the application. The judge did,

however, hold that he would have jurisdiction to make an order, holding that the particular application turned on the question of discretion.

15. The preliminary question of jurisdiction itself refers to the respondent's duty by way of standard disclosure set out in rule 31.6, and that is so as the rule is reproduced in section II of the Disclosure Pilot itself. I consider accordingly that when considering whether there is jurisdiction to make an order, the court should ask whether the documents sought would be available in subsequent proceedings on the assumption that standard disclosure applied, i.e. without regard to the Disclosure Pilot.

16. The range of documents in relation to which an order under rule 31.16 may be made necessarily extends to all those to which standard disclosure would apply. This must be so not only because of the express wording of rule 31.16(3)(c), but also because the court cannot before proceedings have begun pre-empt the Initial Disclosure which will be provided by the parties, or the scope of any orders for Extended Disclosure. When moving on to consider the discretion whether to make an order and, if so, what order, however, the court should take into account the fact that if subsequent proceedings are brought they will be subject to the provisions of the Pilot.

17. In *A v B* Knowles J also confirmed that, in the Commercial Court, where an order for disclosure is made the applicant will generally pay for it (which is the general rule, see CPR Part 46.1(2)(b)). The Applicant accepted during the hearing that if an order is made on the application, then it must pay for any disclosure granted, the costs of the application itself to be determined after judgment in the usual way.

Jurisdiction

18. I first consider whether the court has jurisdiction to make an order under CPR Part 31.16, by reference to rule 31.16(3).

19. The first requirement is that the respondent is likely to be a party to subsequent proceedings. The draft particulars of claim plead claims against both respondents. I note, however, that the only claims intimated against Mr Tatlock are claims based on dishonesty or conspiracy.

20. Secondly, the applicant must also be likely to be a party to those proceedings. This requirement is plainly satisfied.

21. Thirdly, the respondents' duty by way of standard disclosure must extend to the documents or classes of documents of which the applicant seeks disclosure. As I have indicated above, I consider that this test is to be considered on the assumed footing that the duty of standard disclosure would apply. Mr Duggan did not suggest this requirement was not satisfied, and given that the list of

documents sought largely mirrors the draft particulars of claim I consider that he was correct not to do so.

22. Fourthly, disclosure must be desirable in order either to dispose fairly of the anticipated proceedings, to assist the dispute to be resolved without proceedings or to save costs.

23. Mr Pennington-Benton submitted that an order for disclosure now could entirely dispose of the claim in debt, one way or the other. It might also reveal whether revenue was due from the FBP under an agreement made on the basis of the License Agreement, and thus payable when collected pursuant to the License Agreement. If so, this might disclose whether there is a claim for a failure to exercise care in the collection of revenue from the FBP. He also said that the lack of documents concerning allegedly false statements made by Mr Tatlock would reveal whether an inference could be drawn that the alleged agreement with the FBP was a ruse.

24. I agree with Mr Duggan that the Applicant evinces a clear intention to litigate, evident both from the application and from the extensive pre-application correspondence. I do not consider that an order will assist the dispute to be resolved without proceedings, perhaps unsurprisingly where suspicion of fraud explicitly permeates all the allegations. In circumstances, however, where the Applicant appears at the least to have a good argument that it was led to believe that sums would be payable under the License Agreement with the position then having changed, I consider that disclosure may enable to focus its allegations more precisely, beyond a mere refinement of the pleadings, and I recognise that the draft particulars of claim are only in outline. This might also, at least if disclosure was focused, well lead to a saving in costs.

25. Accordingly, I consider that the court has jurisdiction to make an order under rule 31.16. I bear in mind the threshold is a low one.

Discretion

26. The disclosure sought by the Applicant falls, broadly, in line with the three types of claim intimated, into three categories:

    i) Disclosure going to the question whether any payments have in fact been received, such that there is an existing obligation on SL24 pursuant to clause 3 of the License Agreement to pay sums to the Claimant.

    ii) Disclosure showing whether there was in fact any agreement with the FBP, which might disclose a cause of action for a failure to take care in the collection of revenue from the FBP.

iii) Disclosure relating to the six alleged misstatements made by Mr Tatlock as pleaded in the draft particulars of claim.

27. As I have already noted, Mr Pennington-Benton after the hearing filed a revised draft order. The main amendment was to remove a request specifically connected to the allegedly dishonest statements made by Mr Tatlock. This was no doubt with an eye to the comments of Rix LJ in *Black v Sumitomo* as the limitations on the desirability of ordering disclosure where allegations of fraud are made. The requests concerning Team-Up have also been narrowed but not removed entirely. Mr Pennington-Benton in his submissions identified four key issues: (a) was there a relevant contact pursuant to which licensed content was streamed, (b) was it streamed into US prisons, (c) was a cheque received, and (d) were funds paid to Team-Up, SL24 Corp or SL24? The Applicant's draft order is not so circumscribed.

28. Analysis of the subsisting requests shows that the disclosure relating to the allegations of dishonesty is still sought, but is displaced into the other document requests. For instance, the fourth statement allegedly made by Mr Tatlock (see draft particulars of claim at paragraph 23) is that an invoice said to have been sent by Team-Up to the FBP (itself part of the third statement), had not been paid due to an administrative issue, to which end the shareholders needed to have their passports notarized. The fifth statement (at paragraph 25) is then that Chase was able to make payments only up to a maximum of USD15,000 per day.

29. Consideration of the revised draft order shows that the Applicant seeks disclosure of correspondence relating to the invoice, the delay in payment by the FBP, the alleged administrative and other difficulties experienced in obtaining payment from the FBP, and documents informing the basis of the fourth statement. I consider that the Applicant maintains its request, in very wide form, for disclosure of documents relating to the allegedly dishonest statements by Mr Tatlock.

30. Furthermore, it is clear that the allegation of dishonesty is not in fact limited to the claims which depend upon actual dishonesty, conspiracy or similarly serious conduct. Mr Tatlock was clear in his witness statement and Mr Duggan equally clear in his submissions that there has been no payment received by SL24 from the FBP or from any other person or entity as a result of the use of the licensed content subject to the License Agreement. Mr Tatlock thus says there are no documents under the relevant request in the application notice (1(e)) because "*no payment has been received by SL24*". He denies that Team-Up was intended by SL24 to be a collection agent, but rather to be acquired by the Applicant, and says that neither he nor SL24 have any document in their possession or control relating to matters concerning Team-Up.

31. The Applicant describes Mr Tatlock's assertions about the documents available to the Respondents as "*impossible to believe*" (skeleton argument, paragraph 13). In the hearing, Mr Pennington-Benton submitted that Mr Tatlock's evidence could not be trusted. It is clear that all of the Applicant's requests are based upon a disbelief in anything said by or on behalf of the Respondents. Mr Pennington-Benton submitted that if certain documents were not available, it would lead to the inference that Mr Tatlock created a ruse in order to get hold of the Applicant's valuable rights, and allowed the unauthorised use of media to go unchecked. Yet, this argument proceeds from an assertion that "*the available evidence suggests that Mr Tatlock has lied about the agreement(s) with the FBP*" (paragraph 18).

32. I consider it to be necessarily the Applicant's case that if Mr Tatlock's evidence that no payments were received by SL24 is wrong, it is deliberately false. In his opening submissions, Mr Pennington-Benton said that the Applicant could not rely on Mr Tatlock's witness statement, and therefore required a disclosure statement, or other statement made pursuant to an order under rule 31.16. However, as I pointed out, Mr Tatlock's witness statement is verified by a statement of truth which confirms that he understands that proceedings for contempt of court may be brought against any person who verifies a witness statement without an honest belief in its truth. A further statement saying the same thing would not give the Applicant any advantage.

33. In his reply, Mr Pennington-Benton submitted instead that Mr Tatlock's statement is vague and does not indicate what searches were carried out before it was made. I see the force of this point, but when it is realised that the allegation against Mr Tatlock is that he is dishonest, clarification of the searches made are not the relevant point. It is not the Applicant's stated concern that Mr Tatlock might be honestly mistaken as to whether any payments had been received by SL24 which might lead to an obligation to make payment to the Applicant under clause 3 of the License Agreement, which mistake might be rectified through carrying out searches. It is the Applicant's concern that Mr Tatlock is deliberately lying in his statement.

34. I consider the same to be the case with the disclosure sought in relation to a potential claim for a failure to take care in the collection of gross revenue from the FBP. The Applicant is already able to assert on the basis of the evidence available to it that it strongly suggests that Mr Tatlock has lied about the absence of an agreement with the FBP. Mr Pennington-Benton submits that Mr Tatlock's assertion that there are no agreements with the FBP sits uneasily with his statement that during the Covid-19 pandemic "*the FBP stopped using any content*". Again, however, the Applicant's allegations assume dishonesty, either when the relevant events in 2019-2020 took place, or now, or on both occasions.

35. With this assessment of the nature of the allegations made in mind, I have come to the conclusion that it would not be desirable to make an order for disclosure under rule 31.16. I take into account the following factors:

i) The Applicant explicitly asserts that Mr Tatlock's evidence appears to be dishonest. The level of distrust is apparent as the Applicant seeks additional orders micro-managing the disclosure process in advance. No authority in support of such wide orders has been cited. There must be a very real likelihood that the Applicant will be dissatisfied with whatever results from an order (as it is with the disclosure already provided) and that the Respondents' compliance with it will not further assist the Applicant in articulating its claims, or will generate satellite litigation about compliance with any court order.

ii) The breadth of the allegations pursued by the Applicant suggests to me that there is no serious risk that any dishonesty might escape the probing eye of the litigation process and thus possibly all detection in the absence of an order. The Applicant did not submit that there was any such risk.

iii) The disclosure sought is very wide and, despite the Applicant being given an opportunity to focus it more narrowly, the application remains framed in extremely wide terms. This makes me sceptical of its merits, and concerned that the Applicant in fact seeks to replace focused allegation with a roving inquisition (see *Black v Sumitomo* at [91] and [95]). Paragraph 30 of Mr Spyrou's second witness statement, to which my attention was specifically drawn on behalf of the Applicant, reads more like a cross-examination script rather than a simple request for documents.

iv) Where an allegation of fraud is made with specificity, and the request for disclosure is appropriately focused, it may support an application (*Black v Sumitomo* at [18]). In this application, however, the allegation of dishonesty is wide ranging and to allow the application may well allow dishonesty "*to spread its cloak over the means by which it can be detected and revealed*" (see *Black v Sumitomo* at [54]).

v) This is a case where the Applicant says expressly that it does not know which cause of action it is able to pursue, and seeks disclosure in order to make that decision. Even though concerns with Mr Tatlock's evidence have been lucidly expressed, I am left with the sense that to an extent the Applicant is fishing for material in order to work out how to put its case.

vi) Applicants for disclosure before proceedings start, especially in commercial cases, are warned by the authorities to limit their requests to those which are strictly necessary. The Applicant in the present

application has not complied with this exhortation. I do not consider that I am in a position to undertake the task of attempting to prune it myself.

vii) Even if pre-action disclosure enabled the Applicant to plead a claim against the Respondents omitting one or more causes of action, about which I am sceptical, any costs saving could well be marginal. A clear outline of the particulars of claim has already been prepared. Given the allegations made, and the responses already provided in a witness statement, the likelihood of disclosure satisfying the Applicant that no claims alleging dishonesty should be brought seems to me to be minimal.

viii) The potential future application of the Disclosure Pilot does not weigh heavily in my decision. I do however bear in mind that an order for Extended Disclosure will not generally require disclosure in relation to all pleaded issues, and the process will not mirror standard disclosure. The factors mentioned above, however, are the factors I consider to be relevant in the circumstances of the present case.

Conclusion

36. For the reasons I have given above, I will dismiss the application.

Postscript

37. Finally, I should make some comment about the hearing of the application, which was beset by technical difficulties, given that after the hearing I received a note from Mr Duggan commenting on these difficulties. He has subsequently confirmed that this was not intended to be a complaint. Mr Duggan lost his connection part way through the Applicant's opening submissions and was unable to rejoin the Teams hearing by video, despite new hearing links being distributed. He accordingly attended the remainder of the hearing by telephone. I checked with him both when the problem first arose and after lunch when he began his submissions that he was content to proceed by telephone and he indicated that he was. In those circumstances, and where I had no difficulty in hearing him, I did not consider that the interests of justice required an adjournment.

38. An already difficult hearing was not made any easier by the failure of the parties to comply with the straightforward hearing directions sent to the parties with the notice of hearing on 21 July 2021, the bundle and skeleton arguments all being filed late. I should therefore make clear that I have carefully considered in the preparation of this judgment all of the documents to which I was referred in both counsel's helpful written and oral submissions.