



Neutral Citation Number: [2022] EWHC 2714 (Ch)

Claim Nos: CR-2022-BRS-000017

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS IN BRISTOL**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

Bristol Civil Justice Centre  
2 Redcliff Street, Bristol, BS1 6GR

Date: 27 October 2022

**Before :**

**HHJ PAUL MATTHEWS**  
**(sitting as a Judge of the High Court)**

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**Between :**

**EMMA FAIRCLOUGH**

**Petitioner/**  
**Applicant**

**- and -**

**(1) TOSI LIMITED**

**Respondents**

**(2) 99 HIPPOS LIMITED**

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**Charlotte Mallin-Martin** (instructed by **JMW Solicitors LLP**) for the **Applicant**  
**Simon Perhar** (instructed by **Direct Access**) for the **Respondent**

Hearing date: 11 October 2022  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 1:30 pm on Thursday 27 October 2022.

## **HHJ Paul Matthews :**

### **Introduction**

1. This is my judgment on an application made in an unfair prejudice petition by the petitioner by notice dated 22 September 2022. The second respondent is the company whose affairs are in contention in the petition, and it played no part in the application. The first respondent (which is wholly-owned by Robert Tillett) is a 50% shareholder in the second respondent, just like the petitioner. At the hearing before me on 11 October 2022, both the petitioner and the first respondent were represented by counsel. Although the application was listed for one hour, it lasted twice that, to the point where I was obliged to adjourn the remainder of the hearing because of other pressing commitments. The parties however agreed that, rather than submit to the expense of a further hearing, they would be satisfied with my deciding the rest of the application on the papers before me. In this judgment I set out my decisions on the remaining points arising in the application.
2. The application is one for further information under CPR Part 18. As I say, it arises in an unfair prejudice petition concerning the affairs of the second respondent, presented on 11 February 2022. In fact it is a cross-petition, because on 12 November 2021 the first respondent had issued a petition against the present petitioner also concerned the affairs of the second respondent. The two petitions are being managed together. The first respondent also wholly owns another company called Jambo Ltd. The petitioner and Robert Tillett also co-own other companies. Jambo Ltd provides management and back-office support services to the second respondent and the other companies. It charges the other companies for those services. Jambo Ltd and the other companies have been described collectively as the Jambo Group, although Jambo Ltd is not a holding company.

### **The Request for Further Information, and the response**

3. On 25 May 2022 the first respondent served Points of Defence (“POD”) in the petition. An initial request for further information (“RFI”) of the POD was made to the first respondent on 15 June 2022, at the same time as the petitioner’s Reply (“RPOD”). Time for responding to the RFI was extended by agreement to 13 July 2022, and a response was in fact served on that day. The responses to the individual requests were all in substance refusals to provide the information sought. The reasons given in each case were one or more of (a) that the petitioner by serving her reply had already provided an extensive response to the allegations in the POD, (b) that the allegations were self-explanatory and/or self-evident (so the petitioner should know which documents to try to locate for the purposes of disclosure), and (c) that further information would be provided in giving disclosure or in the witness evidence on behalf of the first respondent.
4. The petitioner’s position is that she needs the further information sought in order to make progress on the disclosure review document (“DRD”). Accordingly she makes this application for that information. I will set out the relevant provisions of the POD, in each case followed immediately by the request and then the response. In those requests, “Jambo” refers to Jambo Ltd, and “99H” refers to the second respondent.
5. *POD paragraph 30(i):*

“30. Furthermore, in regard to any entitlement that the Petitioner had to any profit share this has already been accounted for up to 2018. However, her eligibility in regard to receipt of any profit share after 2018 would have been under review in any event given the discovery of extensive wrong doing that would have amounted to gross misconduct had it been known at the time and/or was in breach of her statutory and fiduciary duties as a director. Such action included, but is not limited to EF:

(i) inducing the resignation of Jambo Staff members Zoe Richards, Dave Stading and Lachlan Brace so that they could be employed by Otto Associates Ltd, a company belonging to the Petitioner's boyfriend and former Jambo Group employee, Jack Walsh ... ”

6. Request:

“Of paragraph 30(i) of the Points of Defence:

(1) Please confirm when Zoe Richards, Dave Stading and Lachlan Brace resigned from Jambo and the reasons given by each of them for resigning.

(2) Please explain what actions/steps it is said that the Petitioner took to induce each of the three individuals identified in (1) above to leave Jambo's employment.”

7. Response:

“In regard to points (1) and (2) your client has provided an extensive response to these allegations in their [sic] RPOD. Your client is clearly aware of the allegations that have been made in this regard, that are, in any event, self-explanatory. Any further information that we have in this regard will be provided in our witness evidence.”

8. *POD paragraph 30(v):*

“30. Furthermore, in regard to any entitlement that the Petitioner had to any profit share this has already been accounted for up to 2018. However, her eligibility in regard to receipt of any profit share after 2018 would have been under review in any event given the discovery of extensive wrong doing that would have amounted to gross misconduct had it been known at the time and/or was in breach of her statutory and fiduciary duties as a director. Such action included, but is not limited to EF:

[ ... ]

(v) interviewing potential staff for Jack Walsh's rival businesses ... ”

9. Request:

“Of paragraph 30(v) of the Points of Defence:

(3) Please specify: (a) The name of Mr Walsh's business. (b) Whether it is said that Mr Walsh's business competes with 99H? If so, why? If not, why the

Petitioner should not have assisted with the interviews? (c) The date on which, or period during which, the Petitioner is said to have interviewed potential staff for Mr Walsh's rival business. (d) Where these interviews are alleged to have taken place. (e) How many potential staff the Petitioner is said to have interviewed. (f) What role(s) the potential staff were interviewed for. (g) Why it is alleged that this would have amounted to gross misconduct and/or was in breach of her statutory and fiduciary duties as a director of 99H. (h) When Tosi/Mr Tillett became aware of the matters set out above.

10. Response:

“In regard to point (3) your client has provided an extensive response to these allegations in their RPOD. Furthermore, these allegations relate to her partner's (Jack Walsh) firm and are self-evident. Any further information that we have in this regard will be provided in our witness evidence.”

11. *POD paragraph 39:*

“39. Furthermore, it is averred that it is the Petitioner who has regularly engaged in rude and abusive behaviour towards numerous members of staff within the Jambo Group. Such behaviour includes, the abuse of her power to intimidate junior staff members and talking to employees in a condescending and aggressive manner.”

12. Request:

“Of paragraph 39:

(4) Please particularise each and every occasion when it is said that the Petitioner engaged in rude and aggressive behaviour towards members of staff within the Jambo Group. The Petitioner seeks confirmation of: (a) The individuals towards whom it is said the Petitioner behaved in a rude or aggressive way. (b) The identify [sic] of each individual's employer within the Jambo Group. (c) The date(s) on which the Petitioner is said to have engaged in this rude and aggressive behaviour. (d) Why any of the Petitioner's behaviour would amount to an alleged ‘abuse of her power’. (e) Whether the individuals concerned raised a formal complaint in the workplace pertaining to the Petitioner's alleged behaviour.

13. Response:

“In regard to point (4) these allegations are self-evident and further information will be provided in our witness evidence”.

14. *POD paragraph 44:*

“47. The Petitioner has been trading as 99H since September 2020.”

15. Request:

“Of paragraph 44:

(5) Please explain what is being averred in this paragraph (which appears to be incomplete).”

16. Response:

“In regard to point (5) this is self-explanatory.”

17. *POD paragraph 47:*

“47. During this time the Petitioner also had a significantly overdrawn director loan account of £232,317.70. In September 2020 when the Petitioner withdrew the proceeds from the £350,000 CBILS loan from 99H's bank account and paid it into her personal bank account. After this, her total debt to 99H would have been in excess of £500,000. Therefore, it is clear that it is the actions of the Petitioner that rendered the shareholding in 99H worthless and not any actions on Mr Tillet's part.”

18. Request:

“Of paragraph 47:

(6) In respect of the Petitioner's Directors Loan Account, please provide: (a) A full running account statement of the Petitioner's DLA from 2017 to-date; and (b) Copies of the invoices/bank statements confirming each of the transactions purportedly recorded by the running account?”

19. Response:

“In regard to point (6) your client has had full control over 99 Hippo's [sic] and denied her co-director any access or visibility to company accounts and records. We would expect this information to be provide by your client during her disclosure. Any information that we have in this regard will provide as part of our disclosure.”

20. *POD paragraph 60:*

“Paragraphs 30 above are repeated. The payment was in respect of a historic and overdue debt to Jambo in the sum of £242,123.10. At the time, Jambo was the biggest single creditor to 99H, followed by the Petitioner's director loan account.”

21. Request:

“Of paragraph 60:

(7) Please specify: (a) Why 99H owed Jambo the sum of £242,123.10. Please provide a full breakdown as to how this figure has been arrived at. (b) Whether this sum accounts for the sums owing to 99H as pleaded at paragraph 20 of the Petition. (c) When the debt to Jambo allegedly became overdue (to include when it is said that the debt was due by and why). (d) The dates on which invoices were raised by Jambo demanding payments from 99H. Please also provide copies of the invoices Tosi proposes to rely upon. “

22. Response:

“In regard to point (7) it does not appear to be in contention that centralised procurement costs had been incurred by Jambo for the benefit of 99H. What appears to be in dispute by your client is the amount of these charges. Your client has provided no evidence as to why these charges have been challenged. Our position [sic] in this regard will be further clarified in our witness evidence and disclosure.”

23. *POD paragraph 62:*

“Paragraph 33(ii) is denied. Jambo is owed significant money, currently circa £182,000, by 99H;”

24. Request:

“Of paragraph 62

(8) Please explain how the figure of £182,000 is reached by Jambo. Please provide with your response a full breakdown of all relevant inter-company transactions.

(9) Please confirm whether this figure accounts for the sums which Jambo owes to 99H as pleaded at paragraph 20 of the Petition. If not, why not?”

25. Response:

“In regard to point (8) it does not appear to be in contention that centralised procurement costs had been incurred by Jambo for the benefit of 99H. What appears to be in dispute by your client is the amount of these charges. Your client has provided no evidence as to why these charges have been challenged. Our position [sic] in this regard will be further clarified in our witness evidence and disclosure.”

“In regard to point (9) it does not appear to be in contention that centralised procurement costs had been incurred by Jambo for the benefit of 99H. What appears to be in dispute by your client is the amount of these charges. Your client has provided no evidence as to why these charges have been challenged. Our position [sic] in this regard will be further clarified in our witness evidence and disclosure.”

26. *POD paragraph 101:*

“The Petitioner has run up a significant Directors Loan Account, transferred, funds, data, staff and goodwill to other companies owned by her and her associates. She has accrued significant debts in the name of 99H, such as 42 119 as the CBILS obtained from IWOCA, and then transferred those funds to fund third party entities owned by her and her associates.”

27. Request:

“Of paragraph 101 :

(10): (a) What is meant by the ‘transfer’ of staff? (b) The names of the staff whom the Petitioner is said to have ‘transferred’ to other companies owned by her and her associates. (c) The companies to whom it is alleged that each member of staff has been transferred. (d) The date(s) on which the alleged transfer(s) is/are alleged to have taken place. (e) The paragraph(s) of Tosi's Petition (claim no. 2021-BRS-000104) which plead to this allegation.”

28. Response:

“In response to point (10) these allegations are self-evident. Your client is fully aware of who these members of staff are and the companies that they now work for. The Petitioner and her boyfriend own those companies. However, further information will be provided in our client’s written evidence.”

### **The evidence**

29. The witness statement of Oliver Wright, dated 22 September 2022, was made in support of the application. Mr Wright is a partner in the petitioner’s solicitors. The statement makes submissions as to how the failure to supply the information requested makes it more difficult (for example) to identify appropriate search terms for the DRD. These specific submissions are set out below:

“12.1. Paragraph 30(i) of the POD: In circumstances where Ms Fairclough does not know why Zoe Richards, Dave Stading and Lachlan Brace left Jambo's employment, or what steps she is alleged to have taken to persuade them to leave Jambo, she cannot identify search terms to use in order to demonstrate why she did not take such steps.

12.2 Paragraph 30(v) of the POD: Mr Walsh owns several businesses, some of which do not compete with 99H. Tosi has made no attempt to identify which of the business it is alleged my client was involved with and when it is said that she assisted with interviews. In circumstances where this allegation is denied (paragraph 33(3)(v) RPOD), it would not be proportionate for this firm to review documents containing the word " interview" with all and any of Mr Walsh's business over the six-year period in which she has been in a relationship with Mr Walsh.

12.3 Paragraph 39 of the POD: Tosi's allegation is denied, and our client does not know the names of the “numerous members of staff” to whom she has allegedly been rude and abusive. The names of staff members would, plainly, need to be included as a keyword search terms, and a sensible date range needs to be attached to any search considering Ms Fairclough worked for the Jambo Group for some 12 years.

12.4 Paragraph 44 of the POD: this standalone line does not appear to make sense. Plainly, Ms Fairclough has not been trading as 99H since September 2020. Further, 99H stopped trading in June 2021. Tosi will need to confirm what is being alleged in this paragraph.

12.5. Paragraph 60 of the POD: Our client requires further information from Tosi in order to search for documents which could speak to the issue of 99H's -

allegedly -historic debt to Jambo. Our client cannot say when this historic debt is said to have accrued to the sum alleged by Tosi, and as such cannot identify sensible date ranges in which to search for documents. Equally, Tosi has not pleaded why such debts were accruing, and as such our client cannot include sensible key words in her search.

12.6. Paragraph 62 of the POD: it is not clear to our client how the sums pleaded by Tosi at paragraphs 60 and 62 of the POD relate to one another. For the reasons set out above, our client needs confirmation as to why 99H accrued such significant debts in Jambo's favour, and the period over which these debts are said to have accrued.

12.7 Paragraph 101 of the POD: as pleaded at paragraph 85 of our client's Reply to the POD, paragraph 101 of the POD contains broad and generalised allegations of serious wrongdoing, and are simply not capable of sensible response by our client. For present purposes, our client is asking for clarification on the allegation she 'transferred' staff. Our client does not know what 'transfer' is said to mean. Further, without the information requested, our client cannot conduct a proportionate search for documents connected to the 'transfer' of unknown staff to unknown companies over an unknown time period. Date ranges and keyword terms cannot, as yet, be identified in the DRD."

30. Jason Libby, the respondent's in-house lawyer, made a witness statement in answer dated 3 October 2022. Unfortunately, it became apparent at the hearing that the respondent considered that the original requests made by the petitioner, and now included in the form of order sought, had been reduced in scope or focus by reason of the terms of Mr Wright's witness statement. For example, the first request (relating to paragraph 30(i) of the POD) asks for information about when Zoe Richards, Dave Stading and Lachlan Brace resigned from Jambo, as well as other information. But the relevant submission in Mr Wright's statement, although it mentions the other points, does not mention that one. So the respondent has erroneously assumed that that point is no longer pursued. Yet the form of the order sought accompanying the application makes plain that it is. This was one reason why the matter took so long at the hearing.

### **The law**

31. CPR rule 18.1(1) provides:

“(1) The court may at any time order a party to –

(a) clarify any matter which is in dispute in the proceedings; or

(b) give additional information in relation to any such matter,

whether or not the matter is contained or referred to in a statement of case.

(2) Paragraph (1) is subject to any rule of law to the contrary.

[ ... ]”

32. The Practice Direction to Part 18 provides in part:



“1.1 Before making an application to the court for an order under Part 18, the party seeking clarification or information (the first party) should first serve on the party from whom it is sought (the second party) a written request for that clarification or information (a Request) stating a date by which the response to the Request should be served. The date must allow the second party a reasonable time to respond.

1.2 A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet.”

Paragraph 1.1 thus introduces a preliminary stage in seeking an order under rule 18.1. In *King v Telegraph Group Ltd* [2005] 1 WLR 2282, CA, Brooke LJ (at [63]) emphasised the admonition in paragraph 1.2.

33. Returning to the terms of rule 18.1(1), sub-paragraphs (a) and (b) confer two quite different powers on the court. They correspond to the powers that formerly existed under the previous Rules of the Supreme Court (a) to order further and better particulars of a pleading (Ord 12 r 12), and (b) to require a party to answer an interrogatory (Ord 26). The first of these involved explaining more precisely what a party’s case was. The other was a form of pre-trial disclosure (then called discovery).
34. Now they are combined in a single part of the CPR. But whereas paragraph (a) focuses on making clear what a party’s case actually is, paragraph (b) is more focused on obtaining admissions and clearing the ground of matters that are not really in dispute, as well as (in some cases) obtaining evidence useful, or even vital, to the success for the requester’s own case. It is therefore no objection to a request under paragraph (b) that the other party’s case requires no further particularity, and likewise none to a request under paragraph (a), in the case of an unclear pleading, that the party for some reason could not be required to provide information under paragraph (b).
35. Historically, an interrogatory could not be used to obtain information by way of “fishing” for a different case than that in question (*Hennessy v Wright* (1885) 24 QBD 445n, 448), or going merely to cross-examination or credit (*Thorpe v Chief Constable of Greater Manchester* [1989] 1 WLR 665, 669A, 673C-D, 674E). The same must be true of a request under sub-paragraph (b). Interrogatories were not permitted in relation to the names of the other party’s witnesses (*Rockwell Corporation v Serck Industries* [1988] FSR 187, 206), unless they were material facts in the claim (*CHC Software Care Ltd v Hopkins & Wood* [1993] FSR 241, 251). Again, I consider that the same would be so in relation to a request under sub-paragraph (b).
36. In my judgment, it is not an answer in itself to say that the information sought will be provided later, whether on disclosure or in witness statements. If information falls within the scope of the rule, and it is reasonably necessary and proportionate to have the information provided at this stage, then the court may so order, even if it is clear that it would be supplied later.

## Discussion

37. At the hearing on 11 October 2022, I dealt with the first two requests, those arising under paragraph 30(i) and (v) of the POD. In substance I allowed them both, for reasons given at the time.
38. I turn therefore to **the third request**, under paragraph 39 of the POD. That paragraph alleges regular rude and abusive behaviour by the petitioner against unspecified members of staff, amounting to an abuse of her power. The request asks for particulars of the occasions of such alleged behaviour and the identity of the staff members concerned. It also asks why it would amount to an abuse of her power and whether any staff members made complaints. The respondent submits that “there is no further information to provide which is either reasonably necessary or proportionate”. It goes on to say that this is an allegation of “the breakdown of the working relationship with Mr Tillett and ... will be detailed in wittiness [sic] evidence and [the petitioner] will be cross-examined on this”. Moreover, it “is not a direct issue which is attributable to the unfair prejudice caused to the company”.
39. I have to say that I do not understand the final submission set out above, The unfair prejudice complained of is (if established) that of the petitioner, not of either of the two respondent companies. In any event it seems to me that the allegations of rude and abusive behaviour are very much in issue. What the petitioner wants is more precision as to what she is accused of doing. This is a serious allegation and I think she is entitled to know in any event when this is alleged to have happened and in relation to which members of staff. These fall under rule 18.1(1)(a). Moreover, the members of staff are not mere witnesses, but material facts. I think also that it would either clarify or reduce what is in dispute here if the respondent answers the questions why such behaviour would amount to an abuse of power and whether there were any complaints, under rule 18.1(1)(b), and I will so order.
40. **The fourth request** is made under paragraph 44 of the POD, which alleges that the petitioner “has been trading as 99H since September 2020”. The petitioner says she does not understand the allegation, and wonders if it is incomplete. The respondent seems to say in written submissions that it means that the petitioner “was running 99H as de facto Managing Director and Mr Tillett was not involved.” But, if that is what it is intended to mean, then the respondent must confirm it, because that is not at all the natural meaning of the words. “Trading as” the name of a company is quite different from “running” a company. The petitioner is entitled to know now which of those two different things the respondent means. The respondent must answer the request.
41. **The fifth request** arises under paragraph 60 of the POD. This alleges that there was an “overdue debt to Jambo in the sum of £242,123.10”. The petitioner seeks information as to how the debt arose and was made up, and details of its becoming overdue. The respondent refuses to give those details until disclosure and witness statements have been given. This is surreal. The respondent asserts an overdue debt in a large sum. It must explain the circumstances in which the debt arose, became due, and how it is made up. Paragraph 12 of the POD (relied on by the petitioner) does not do so. Until this is done, the petitioner will not be able to formulate sensible key word searches and a date range.
42. **The sixth request** arises from paragraph 62 of the POD. That alleges that Jambo is owed about £182,000 by the second respondent. The petitioner says that it is not clear how the debts in paragraphs 60 and 62 relate to each other, but in any event needs

more details of the alleged debt, for much the same reasons as set out before. The respondent says that it does not have the information, and that it should be sought from Jambo, However, the respondent has chosen to plead a debt owed by the company to Jambo, and must give relevant particulars. If the allegation cannot be made sufficiently specific, it should not be made at all. The respondent must answer the request.

43. **The seventh request** arises from paragraph 101 of the POD. This alleges that the petitioner owes the company a significant sum on Loan Account, has transferred, funds, data, staff and goodwill to other companies owned by her and her associates, and caused the company to borrow money which she has diverted to other entities. These are serious allegations, tantamount to allegations of dishonesty and illegality, and they need to be clear: *cf* the Chancery Guide 2022, paragraph 4.8. But the use of the word “transfer” is unclear. It is entirely reasonable for the petitioner to seek to know what the respondent means by that, and for full particulars of the alleged transfers of staff and funds. In my judgment the respondent must answer the request.

### **Conclusion**

44. I will order that the respondent answer the requests within 14 days from today, that is, by 4 pm on 10 November 2022.