Neutral Citation Number: [2019] EWHC 2458 (Comm)

Claim No. CL-2019-000370

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice. Rolls Building
Fetter Lane, London, EC4A 1NL

Wednesday 25 September 2019

BEFORE:

MR ADRIAN BELTRAMI QC
Sitting as a Judge of the High Court

BETWEEN:

ABC

Claimant

and

SHULMANS LLP

Defendant

Mr Spencer Keen (instructed by Clarke Wilmott LLP) appeared on behalf of the Claimant/Applicant

Mr Jamie Smith QC (instructed by BLM) appeared on behalf of the Defendant/Respondent

Hearing date: 16 September 2019

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Approved Judgment

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

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Introduction

1. This is an application by the Claimant, by notice dated 12 June 2019, for various orders said to be accordance with CPR Parts 5 and 39, section 11 of the Contempt of Court Act 1981 and Articles 8 and 10 of the European Convention on Human Rights (**ECHR)**. The orders, which I consider in more detail below, include an order that the names of the Claimant and certain other parties be anonymised on all court papers, that various redactions be made to statements of case, orders and other documents, that restrictions be placed on the rights of third parties to access court documents and that there be reporting restrictions on certain information.

2. A request was made at the outset by Mr Keen, on behalf of the Claimant, that the hearing be conducted in private. This was not opposed by Mr Smith, on behalf of the Defendant. Given the nature of the application, I acceded to that request, whilst noting that, depending on the outcome, my Judgment might well be in open court. In the event, I dismiss the application and this Judgment is, indeed, in open court. That said, I have retained the anonymised heading under which the case was listed, and have refrained from making explicit references to names, as this is unnecessary for the resolution of the issues before me.

The action

3. I understand that the Claim Form has been issued, albeit that there is no copy in my file of the document in its issued form. There is a set of Particulars of Claim, settled by Counsel. I believe that neither the Claim Form, nor the Particulars of Claim, has been formally served on the Defendant, though the documents have been provided. The Claimant has also produced a draft amended Claim Form and draft amended Particulars of Claim which are said to show proposed redactions so as to give effect to the relief sought.

4. In this action, the Claimant seeks damages from the Defendant for alleged professional negligence in the conduct of certain legal proceedings commenced in 2014 and 2015. These proceedings, comprising a claim in the Employment Tribunal, a petition under section 994 of the Companies Act 2006 and a further claim for

damages in the High Court, were for the purpose of resolving disputes between the Claimant, his former corporate employer, and the individual who owned that corporate employer. The individual is a prominent businessman, whose name is well known. I shall refer in this Judgment to **the company** and **the owner** respectively.

5. In the event, the claims were compromised on the terms of a Global Settlement Deed dated 2 February 2016 (the **Deed**), which was said to be in full and final settlement of all claims that each party might have against the other (certain other companies in the corporate group were also parties to the Deed). I do not need to refer to the terms of the Deed, save for the confidentiality provision at clause 21:

"*The terms of this Deed are confidential to the Parties who shall keep its terms, the negotiations between the Parties and their representatives leading to its terms, and the facts and matters and allegations which were in dispute in the Tribunal Proceedings and Court Proceedings (except to the extent that any of the foregoing are already in the public domain at the date hereof) confidential and not disclose them to, or otherwise communicate them to, any third party other than….*

(c) pursuant to an order of a court of competent jurisdiction…"

6. At all material times, the Defendant represented the Claimant in connection with these disputes. It is now said that the Defendant gave negligent advice, or failed to give proper advice, in respect of the litigation, as a result of which, in substance, the Claimant was compelled to accept a settlement under the Deed amounting to a fraction of his true entitlements. Specifically, it is alleged that the Claimant ought to have been advised to persist with his claims in the Employment Tribunal and that he has suffered the loss of a chance of success in those claims, which are estimated at "*at least 80%*" in respect of the claim for unfair dismissal and "*at least 45%"* in respect of a whistle blowing claim.

7. Damages are claimed in the sum of just under £4 million.

The application

8. By this application, the Claimant seeks an order in the following terms:

"*1 There be substituted for all purposes in this case, in place of references to the Claimant by name, and whether orally or in writing, references to the letters "ABC".*

2 Likewise the other parties to the settlement deed dated 02 February 2016, in place of references to their names, references to "XYZ" or where a corporate entity, "XYZ Ltd".

3 To the extent necessary to protect the Claimant's identity and the identity of the other parties to the settlement deed dated 02 February 2016, any other references, whether to persons or to places or otherwise, be adjusted appropriately, with

permission to the parties to apply in default of agreement as to the manner of such adjustments.

4 So far as the claim form, or any judgment, order (including this order), or any other document to which anyone might have access pursuant to CPR 5.4B-CPR 5.4D at any time does not comply with the above, the Claimant's solicitor has leave to file with the Court copies of such documents adjusted so as to comply therewith. Such copies are to be treated for all purposes as being in substitution for the relevant originals, and the originals are then to be retained by the Court in a sealed envelope, marked 'Not to be opened without the permission of a Judge or Master of the Queen's Bench.'

5 A non-party may not inspect or obtain the copy of any documents from the Court file without the permission of a Master. Any application for such permission must be made on notice to the Claimant (the Court will affect service).

6 A non-party may not obtain any copy statement of case or document from the Court file unless it has been edited (anonymized) in accordance with this direction.

7 Reporting restrictions apply to the disclosing of any information that may lead to the subsequent identification of the Claimant or any other party to the settlement deed dated 02 February 2016.

8 The Claimant has permission to file a further copy of the claim form with the above initials in place of his name with the address of his solicitors. The copy of the claim form filed at Court with the Claimant's full name and address is to be placed in a sealed envelope marked 'Not to be opened without the permission of a Judge or Master of the Queen's Bench.'"

9. In setting out the basis on which his client opposed the relief being sought, Mr Smith made two introductory observations. The first was that the application is for very far reaching relief. Right at the outset, the Claimant is seeking to throw a broad blanket of anonymity over the proceedings, by excising the names of the principal participants and by imposing a regime of (in all probability) significant consequential redaction going forward. He suggested also that, although this was not part of the application, an order in the terms sought would lay the groundwork for a more general order in the future that all other hearings and, ultimately, the trial, be heard in private, once the principle was accepted that important elements of the case should be kept secret. Without necessarily forming a view on what might or might not happen in the future, I certainly agree that the form of relief sought is of a very wide ranging nature, especially at this stage of the proceedings.

10. The second introductory point made by Mr Smith was as to the purpose of the relief being sought by the Claimant. The application was, he suggested, a "*wolf in sheep's*

clothing". This was a matter which I had also noticed and considered it necessary to explore at some length with Mr Keen.

11. The only evidence in support of the application was, at least initially, the witness statement of Peter Brewer, a partner in the Claimant's solicitors (**CW**). In that statement, Mr Brewer explained his client's concern in the following terms (at [10]):

"*The Claimant is concerned that [the owner] and/or [the company] may regard the disclosure, in the course of these proceedings, of the terms of the Deed and the circumstances of its execution, as a breach of the Deed (see for example Clauses 21, 22 and 25). There is therefore a very real risk that the settlement might be unravelled in a Claim brought by [the owner] and/or [the company] against the Claimant. The risk of a Claim being brought for breaches of the Deed would act to deter the Claimant from bringing this Claim and would jeopardise his right to bring an action for negligence and breach of contract against his former solicitors."*

12. As I read this paragraph, the concern, fairly and squarely expressed, is the fear that news of the proceedings might leak to the owner or the company, with the result that a claim, of some nature, might in turn be made against the Claimant for breach of the confidentiality provision in the Deed. Following that through, the purpose of the order would therefore be to prevent the owner or the company from finding out that this action had been brought by the Claimant. This is consistent with the terms of the draft order, which are focused on the need for anonymity.

13. Furthermore, the correspondence between the parties' solicitors in connection with the application also supports the same conclusion. In their letter of 9 July 2019, CW said:

"*The Application for Confidentiality is not to be regarded as a tactical move on behalf of our client. It has been pursued on the basis that an Order for Confidentiality is required to protect our client from any potential proceedings (and the resultant media interest) that would result if it became apparent that this case involved [the owner]. …. If the proceedings as currently sealed are served, then they become a public document and the risk of [the owner] finding out about the proceedings are heightened. There is a high risk our client would then face litigation from [the owner] in relation to the settlement."*

14. Another feature of this correspondence is that CW appeared to have envisaged that, should an order be made in the terms sought, the Defendant would be precluded from contacting the owner or the company in connection with the action, even if the Defendant considered that this was necessary for the preparation of its evidence. Indeed, in a subsequent letter, CW raised the spectre of contempt of court:

"*… We cannot understand what risk the parties are exposed to as matters stand, unless it is your intention to disclose the current proceedings to [the owner]. Such a move would clearly be extremely unwise where there is a current Application before the Court that seeks to deal with the issue of confidentiality. Indeed, it is our view that such a disclosure would be in contempt of Court and a breach of privilege. Our client (who is a party to the deed) would have further claims in damages against your client."*

15. In the light of this evidence and correspondence, I asked Mr Keen whether (a) it would be an appropriate use of the Court's machinery to make an order which was aimed at ensuring that a party to a settlement agreement might not find out about a possible breach of its terms; (b) he was indeed seeking an order which would prohibit the Defendant from contacting the owner or the company. Mr Keen confirmed that his client was not in fact seeking such an order. As I understood it, he also accepted that it would not be appropriate to make an order for the purpose of ensuring that any potential breach of the Deed did not come to the attention of the owner or the company. At all events, this was not one of the "*Article 8 rights*" that he relied upon in his submissions. He told me instead that the primary purpose of the application was in fact "*to ensure the confidentiality of the agreement."*

16. I proceed below to deal with the case as presented before me, by reference to the alleged Article 8 rights ultimately relied upon. Nevertheless, I do express some disquiet about this because it does appear to me that the origin of the application, and at least its principal perceived purpose, was something different, namely to keep the action away from the glare of the owner and so prevent him from exercising any rights he might have in respect of actual or potential breach of the confidentiality provisions in the Deed. And, to the extent that there has been a change of position, this does appear to have been a very recent event. I was handed during the course of the hearing a witness statement from the Claimant dated 15 September 2019. At [24], he states:

"*I therefore also seek an order in the form of the draft annexed to the application that the parties to the [Deed] be anonymized in these proceedings to protect me against the clear risk of [the owner] reacting adversely to me taking these proceedings, and therefore taking action against me."*

17. At the very least, this ambiguity about the true purpose of the application underscores the need (a) to be especially vigilant when considering the substance and reality of the rights now said to underpin the application and (b) to test the relief being sought against the rights in question.

Open Justice

18. Both parties, understandably, set the principle of open justice as the launchpad for their submissions. There was no dispute as to the principle itself; it was described

most recently by Baroness Hale, in giving the Judgment of the Court, in *Dring (on behalf of the Asbestos Victims Support Group) v Cape Intermediate Holdings Ltd (Media Lawyers Intervening)* [2019] UKSC 38; [2019] 3 WLR 429, especially at [1], [2], [42] and [43]. However, the parties then set off in different directions.

19. The Claimant's position was summarised at paragraph [14] of his skeleton argument:

"*To give proper effect to the principle of open justice the Court must ask whether there is a sufficient general public interest in publishing a report of proceedings, that identifies the party, to justify curtailment of a person's rights under the ECHR."*

What this means, as developed orally, is that the principle of open justice does no more than lend itself to an open balance of competing rights and interests. On one side of the balance sheet, it is necessary to ask whether the public might have an "*interest*" (in a very generalised sense) in any particular fact or matter arising in the litigation, such as, in this case, the identity of a party. If not, then the pull towards open justice is weakened. On the other side of the balance sheet are countervailing rights, including, as in this case, rights under Article 8 ECHR. If, ultimately, there are countervailing rights and little public "*interest*", then the Court should be amenable to placing appropriate privacy protections so as to give effect to those rights.

20. The Defendant contended that this inverted the correct approach. As Mr Smith submitted, the principle of open justice was entirely generic and at large. It is a fixed, given starting point, rather than something which is case sensitive. From that starting point, the question is whether, on the particular set of facts, there are countervailing rights which justify a derogation from the principle. Furthermore, the question whether the public might or might not be interested in any specific factual element of a case was (a) subjective and irrelevant; and (b) not something that a Judge could in any event sensibly assess.

21. I agree with Mr Smith on this point. As is apparent from the cases, the principle of open justice is not simply a gateway to a balancing exercise but a fundamental aspect of our judicial system and the rule of law. In *Dring*, at [42-43], its principal purposes were said to be (a) to enable public scrutiny of the way in which courts decide cases – to hold judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly; and (b) to enable the public to understand how the justice system works and why decisions are taken, for which purpose they have to be able to understand the issues and the evidence adduced in support of the parties' cases.

22. This does not mean that the principle of open justice may not be subject to derogation. In *Dring*, Baroness Hale also cited (at [39]) the following test:

"*Whether a departure from the principle of open justice was justified in any particular case would depend on the facts of that case. As Lord Toulson JSC observed… the court has to carry out a balancing exercise which will be fact specific.*

Central to the court's evaluation will be the purpose of the open justice principle, the potential value of the information in question in advancing that purpose and, conversely, any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others."

23. What this envisages, as Mr Smith submits, is that legitimate countervailing rights may be tested against the principle of open justice, in order to determine whether there should be a derogation. I do not accept that one starts by testing open justice against the "*interest*" that a member of the public might have in any particular fact. Indeed, I cannot see that as a relevant question. Even assuming that this is something a Judge could safely assess, I imagine that it could be said for any number of cases in the Commercial Court that the public would have little interest in the precise identity of a claimant or defendant or involved party. But that does not weaken the principle of open justice, let alone justify a slew of anonymisation applications.

The alleged Article 8 rights

24. As explained to me by Mr Keen, the Claimant sought to rely on four circumstances which were said to give rise to "*privacy*" rights which justified the orders sought on the application. They were as follows:

    a. The fact that there was an element of the case concerned with the Claimant's medical history.

    b. The fact that the subject matter of the action was a settlement agreement, the terms of which were protected by confidentiality provisions.

    c. The fact that the agreement involved the settlement of court proceedings.

    d. The likelihood that the claim would involve the disclosure of documents otherwise subject to legal professional privilege.

25. Mr Keen's broad case was that I should have regard to these factors in the round, and that the best way to deal generally with this group of "*privacy*" considerations was to anonymise the proceedings and make the further consequential orders which he asked for. Whilst there is normally value in having regard to the overall picture, it is in my judgment necessary to consider each of the elements individually, because different considerations may arise and, indeed, each may engage different potential relief.

26. I have referred above to Mr Smith's opening observation that the terms of the relief sought were very wide. He also submitted that this was without precedent and unjustified in what he described as a typical solicitors' negligence action. I did ask Mr Keen whether he could show me any case in which a Court had made orders of the nature sought on the grounds applied for. He was not able to do so. Whilst the argument before me was, to some extent at least, from first principles, such that the

absence of supporting authority is not fatal, this does suggest that I should approach the Claimant's submissions with a degree of caution. I am mindful of the concern expressed by the Defendant as to the radical nature of the application.

27. As to the first circumstance relied upon, namely the relevance to the action of the Claimant's medical history, Mr Keen submitted that this engaged an important privacy right under Article 8. Whilst I accept that, the question is whether the existence of such a right justifies a derogation from the principle of open justice. Where, as here, it is the Claimant who brings the action, and makes reference to his medical history in his statement of case, it may be wondered whether he has not foregone his right to privacy through his decision to pursue a claim and to deploy that material. In the present case, there is the further complication that the draft order makes no reference to any matters concerned with the Claimant's medical history.

28. In order to forestall any further argument on this point, and without making any findings either way, I suggested to the parties what I considered to be a pragmatic interim solution, namely to redact from the Particulars of Claim and any Defence, when served, those particular paragraphs that dealt expressly with the Claimant's medical history. This would be a temporary solution, subject to further consideration at the first CMC in the action. It was intended also to respond to Mr Keen's submission that, given the early stage of the proceedings, there was uncertainty as to the specific aspects, if any, that would be in issue. Mr Keen accepted that this met the concern which he had articulated; without prejudice to his client's position, Mr Smith did not object. I reiterate that I regard this as a temporary remedy only, pending the completion of the statements of case and the first CMC.

29. The second circumstance turns on the fact of the confidentiality provision in the Deed. In very broad terms, Mr Keen submitted that the subject matter of clause 21 (including the terms of the Deed and the negotiations leading to its terms) has by contractual agreement been made confidential and that that confidentiality engages an Article 8 right which the Claimant can deploy. There was a clear suggestion in Mr Brewer's statement that this submission was being made for the benefit of all of the parties to the Deed, including therefore the company and the owner, but that is unsustainable. The Claimant has deliberately chosen not to make any other party to the Deed a respondent to the application and, indeed, has evinced an intention to ensure (at least) that neither the owner nor the company know about the application. It cannot now be appropriate for the Claimant to pray in aid the unknown wishes of parties excluded from the application.

30. As I have mentioned above, Mr Keen explained in his oral submissions that the primary purpose of the application was to preserve the confidentiality of the Deed. He also confirmed that this was not, in fact, being advanced for the benefit of any other parties but for the benefit of (and therefore in support of the Article 8 rights of) the Claimant. This was said to be twofold: (a) that the preservation of agreed confidentiality was itself a benefit to the Claimant; and (b) that this would also serve the purpose of ensuring that the Claimant was not sued for breach of confidentiality. I

have difficulty with this second stated benefit, which may just be a recasting of the apparent aim of ensuring that any breach be undiscovered. The Claimant is not compelled to disclose the terms of the Deed and thereby risk a breach of the confidentiality obligation, because he is not compelled to sue at all. And if he wishes to sue, then he is able to seek (in an application to which, presumably, the other parties to the Deed would be respondent) a permissive order of the Court pursuant to clause 21(c). So, whatever precisely this is intended to cover, I do not consider that the Claimant's understandable wish not to be sued for breach of contract is a relevant factor in my determination.

31. That leaves the submission that the Claimant seeks, for his own personal benefit, to uphold his contractual rights in the confidentiality of the Deed. I treat this submission on its face, though I note in passing that there is no inkling of this in the Claimant's witness statement. Indeed, and on the contrary, the thrust of the Claimant's evidence (at [23]) is that it would be "*manifestly unfair"* for him to be sued on (and hence bound by) the contractual term, "*particularly in circumstances where the confidentiality provisions of the [Deed] were negotiated over and ultimately recommended to me by this Defendant. In effect, I would be being punished for terms of agreement for which this Defendant was responsible for."* Yet, I am being asked to make wide ranging privacy orders because of the inherent importance to the Claimant of upholding the confidentiality provisions.

32. At all events, it was not suggested that, unlike the position in respect of the medical records, there was anything intrinsically personal in the information; all that was relied upon was the fact that the Claimant had agreed with the other parties to the Deed that it was confidential. What the submission amounts to is the contention that the Claimant wishes to rely on the Deed in order to advance this litigation, even if this amounts to a breach of confidentiality, yet he also seeks to have a partly or perhaps even largely secret process, because he otherwise wishes to take advantage of his contractual term. Those appear to me to be inconsistent positions. This is all the more evident when it is recollected that the confidentiality provision is itself not even absolute, but is subject to contrary order of the Court. I do not consider that, if and to the extent that clause 21 of the Deed did give the Claimant any Article 8 rights to privacy, they are such as to derogate from the principle of open justice, in a claim brought by the Claimant himself.

33. Mr Keen relied in support of his submissions on two cases, in particular. The first was *ABC v Telegraph Media Group Ltd* [2018] EWCA Civ 2329, [2019] 2 All ER 684. This was an application for an interim injunction to prevent the publication by a newspaper of what was said to be confidential information given in breach of a non-disclosure agreement in a settlement. I was directed in particular to passages at [19-21] of the Judgment, in which the Court referred to the development of English law in cases where disclosure of information in breach of confidence is met by a public interest defence. But this is some distance removed from the present case. It was concerned with the freedom of the press, not with open justice. More fundamentally, it was a claim for an injunction by the alleged victim of a potential breach of

confidence. I do not consider that the balance to be struck in that case, let alone at the stage of an injunction, informs the course that I should take in the present.

34. The same can be said for the second case, *Raab v Associated Newspapers Ltd* [2011] EWHC 3375. The Claimant issued proceedings for an alleged libel, published in *The Mail on Sunday*, concerning the Claimant's treatment of an employee. Prior to service of its Defence, the Defendant requested that the Claimant release the employee from contractual obligations of confidentiality entered into under a settlement agreement. On his refusal to do so, the Defendant applied to stay or strike out the action, on the grounds that this interfered with its ability to defend the claim. The application was dismissed. Again the fact pattern means that I derive little assistance from this case. I agree with Mr Smith that the issue was one of timing, namely whether the Defendant should have to plead its defence of justification before the confidentiality obligations were released, it being accepted by the Claimant that, if and when justification was pleaded, and there was an issue of fact, the public interest in the administration of justice would override the obligations of confidentiality.

35. Ultimately, as it was put to me by Mr Keen, the Claimant has the benefit of a confidential agreement and "*should not have to forego that confidentiality to bring his claim."* But this only raises the question in response, why not? Whilst the Court may use its powers to afford protection for information whose release into the public might cause harm, for example by the use of confidentiality clubs or specifically tailored hearings, this will have to be justified by the circumstances and should be as narrowly used as possible. The existence of an obligation of confidence, *per se*, does not shift the balance. Confidential documents are still subject to disclosure. And, as discussed below, there is no normal rule that even privileged documents justify special treatment if there has been an implied waiver. In my view, the mere fact that the Deed contains a confidentiality provision from which, it is said, the Claimant would like to benefit, does not begin to justify the relief sought.

36. There is also a further difficulty, as it seems to me the result of the way in which the focus of the application shifted. With a clean slate, an application to uphold the confidential terms of a settlement deed would be drafted so as achieve that aim. That would most obviously lead to the suggested redaction of information which was protected by the contractual obligation (in this case, including the terms of the Deed and pre-contractual negotiations). Yet, none of that is mentioned in the draft order sought by the Claimant. Instead, the principal relief is that the identity of the Claimant, the owner and the company be anonymised. If granted, that would not preserve the confidential information and so secure the benefit which the Claimant now says is the purpose of the application, and nor would it prevent a breach. It would merely remove from Court documents the names of the individuals concerned, something which would not prevent the disclosure of confidential information at all. Instead, and at best, it might or might not impede the owner, the company or any member of the public from realising that the confidential information otherwise still being disclosed concerned those parties. Accordingly, and apart from anything else,

the relief sought does not achieve the maintenance of the rights said to support the application.

37. Finally, I should point out that it is not even clear or established that, either in commencing his claim, or in its pursuit, the Claimant will or is likely to breach the terms of the confidentiality provision in the Deed. Leaving aside the saving provision at clause 21(c), the clause only protects information which is not already in the public domain. The Defendant has shown me materials which indicate that there was public interest in, and publication of, details of the underlying dispute the subject matter of the original litigation. It does not, therefore, follow that the pursuit of this litigation is necessarily incompatible with whatever rights of confidence are retained under the Deed. That is not a matter which I was asked to explore. Hence, the supposed infringement of Article 8 rights was at best hypothetical rather than established. This is a further reason why it would not be appropriate to grant the relief.

38. The Claimant's third circumstance was the fact that the confidentiality provision was contained in an agreement which settled legal proceedings. Mr Keen relied on observations, for example in *Raab* at [60], that it is the policy of the law to encourage settlements of disputes by agreement and that confidentiality is (or is often) required to achieve this. Whilst this is of course right, I do not see how it provides assistance, or at least independent assistance, to the argument. For the reasons I have explained, I reject the submission that the Claimant can rely on the confidentiality provisions in the Deed to achieve a derogation from the principle of open justice in his own proceedings. The fact that settlements of legal proceedings are seen as a good thing does not to my mind alter that conclusion.

39. The fourth and final circumstance is the likelihood that the claim will involve the disclosure of documents otherwise subject to legal professional privilege. Mr Keen referred me to *Eurasian Natural Resources Corp v Dechert LLP* [2016] EWCA Civ 375; [2016] 1 WLR 5027, in support of the propositions that (a) the implied waiver of legal professional privilege where a party sues his legal advisers (or, as in that case, seeks detailed assessment of costs) is of a limited nature; and (b) the Court may take steps to protect that privilege including (as in that case) an order to sit in private. Neither proposition, at least in the terms that I have expressed them, is in doubt. But the question is whether, in the circumstances of this case, the fact of the limited waiver likely to be made by the Claimant justifies any, and if so the particular, relief sought. I do not consider that it does. I asked Mr Keen whether there was anything special or unusual about this case or about the subject matter of any potentially privileged material which was deserving of special treatment but he did not suggest that there was. From my own experience, and as submitted also by Mr Smith, it is not normal practice in professional negligence claims against solicitors to impose privacy orders merely because of the fact that the subject matter may include privileged information. The facts in *ENRC* (which did not involve anonymisation) were exceptional in that there was potential prejudice to the applicant's privilege against self-incrimination, in the context of an ongoing criminal investigation by the Serious Fraud Office. Absent any similarly compelling reason, I do not regard this

circumstance as justifying the relief sought. I also note in passing that the draft order makes no reference to privileged information in any event.

Determination

40. For the reason given above, and save that I am prepared to allow some specific redactions to the statement of case, pending the first CMC, I dismiss the application.