

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Wednesday, 27 November 2019

BEFORE:

MASTER KAYE

BETWEEN:

KINGS SECURITY SYSTEMS LIMITED

Claimant

- v -

(1) ANTHONY DOUGLAS KING
(2) EVANS

Defendants

MR PAUL DOWNES QC appeared on behalf of the Claimant

MR ROBERT HOWE QC and **MR CHRISTOPHER NEWMAN** appeared on behalf of
the Defendants

JUDGMENT
(As Approval)

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Lower Ground, 18-22 Furnival Street, London, EC4A 1JS
Tel No: 020 7404 1400
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(Official Shorthand Writers to the Court)

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1. **THE MASTER:** This was a CCMC at which the parties identified three live matters: costs budgeting, some aspects of disclosure and an application for a response to a request for further information. By the time the CCMC started, the parties had reached agreement, a broad agreement on the directions between themselves subject to the court's approval and this included seeking directions for a ten-day trial. To give these case management decisions and rulings some context, it is helpful to give a little bit of brief background. The relationship between the claimant and defendant goes back to about 2013. The claimant, KSSL, is a national security and surveillance company. The first defendant, Mr King, is its former MD and CEO; it was a family company.
2. In 2013, KSSL appears to have been in some financial difficulties. A Mr Fisher and Mr Steifel were part of a venture capital group who were approached as external investors. They invested in the Kings security companies through an acquiring company called Prime Kings. The terms of the investment were changed just prior to completion as the investors said they wanted more protection. Mr King and his family believed they had been misled about the state of the business and misled into completing the deal they did complete in 2013. As a consequence in 2015, the defendant and members of his family took action against Mr Fisher and a Mr Swain, (who was also involved in the investment), and Prime Kings, the acquiring company, alleging fraudulent misrepresentation.
3. The trial of that action commenced in May 2017. On the tenth day of the trial, the King family discontinued, on advice, apologised and agreed to pay costs. An interim costs order was made in the sum of about £1.7 million. The King family are now in the process of pursuing their former legal team and I understand that the pre-action protocol is being pursued.
4. The King family were not immediately in a position to pay the £1.7 million. The claimant took action to secure its debt, being the interim payment of £1.7 million. The Kings were opposed to this. They viewed the attempts to secure the £1.7 million as further evidence of what they see as a concerted attempt by the claimant to divest them of their remaining interest in the King companies. As part of the process of seeking to secure the interim costs order, the claimant obtained charging orders over what are called the 'B' shares and I understand sought an order for sale. The interim payment of £1.7 million was eventually paid on behalf of the King family by their previous solicitor's insurers in about October 2018. There remains an outstanding balance of costs to be assessed in relation to the 2015 to 2017 proceedings. Costs Proceedings have been issued in the Costs Court in relation to costs more generally and at the time I originally heard this Case Management Conference the parties were awaiting a reserved judgment of Costs Judge Whelan on the question of whether there should be stay in relation to those costs proceedings.
5. The claimant and Mr King parted company shortly after the conclusion of the 2017 trial with an agreed severance package; this included a payment to Mr King. The claimant says that after this package had been agreed and after the first payment had been made, they discovered the facts that give rise to these proceedings which were then issued in August 2017. The claimant has not paid the balance of £70,000 of the severance package which then formed the original counterclaim to these proceedings.

6. In these proceedings, it is alleged that Mr King and a Mr Evans, who was the CEO, accepted bribes from a fleet hire company called TCH which provided fleet hire vehicles to the claimant in the shape of two Range Rovers for a nominal monthly charge. The provision of the vehicles is not in dispute but whether there was anything inappropriate about the provision is at the heart of this claim.
7. Mr Evans has settled with the claimant and made a payment which includes a contribution towards costs. The claim proceeds against Mr King. On its face, the maximum value of the claim appears to be in the region of £120,000. The claimant says that as a reputable company in the security industry, they can and do have to take matters such as the bribery allegations against Mr King seriously and they are entitled to pursue these proceedings as a matter of principle. Mr King initially counterclaimed for the balance of his severance package but following a decision of Deputy Master Arkush in November 2018 he was given permission to amend his counterclaim to include a claim for damages for the tort of abuse of process.
8. In August 2018, Mr King had applied to add the expanded counterclaim to these proceedings to plead that tortious abuse of process saying the proceedings had been brought for an improper purpose, to obtain the King family shares in the claimant at an undervalue and to inflict serious reputational damage, that they were part of a campaign against him. The counterclaim was a claim for the tort of abuse of process and for damages said to flow from that abuse of process aggravated exemplary and reputational damages.
9. In November 2018 as I say, Deputy Master Arkush, with some reservations, determined that the counterclaim could be brought. Both parties have referred me to the transcript of that judgment. The claimant is now also, therefore, defending a very broad based allegation of fraud and dishonesty against them, alleging that they have embarked upon a campaign against Mr King. They say as a regulated entity in the security world, they need to be seen to be addressing the issues that have arisen. They cannot risk not being seen to be a fit and proper person to conduct their business. They are entitled to take a zero-tolerance approach. They say that this justifies an approach that results in costs exceeding the sums at stake. Mr King says he is entitled to defend the claim. He denies that he was involved in any bribery. He says that the claim has been brought against him not for the reasons the claimant says but deliberately and in a disproportionate manner for the purposes of putting pressure on him and for the collateral purpose of obtaining the 'B' shares in the company at a significant undervalue.
10. The claimant served an amended reply and defence to counterclaim in January 2019. The claimant made an application to re-amend its reply and defence to counterclaim in February 2019 and this was heard by Deputy Master Linwood in February 2019 who was also referred to Deputy Master Arkush's judgment. Both Deputy Master Linwood and Deputy Master Arkush expressed the view that the costs associated with this claim and counterclaim were wholly disproportionate. Deputy Master Linwood at paragraphs 16 and 17 noted that the then figures for costs in February 2019 were even more disproportionate than the costs had been in November 2018. Those costs had increased again by the time I came to review the claim and the counterclaim at the Case Management Conference.

11. In the meantime, in 2018, Mr King and other members of his family commenced an unfair prejudice petition pursuant to section 994. Those proceedings are listed for a directions hearing in March 2020. The parties have, therefore, been embroiled in disputes since at least 2015 and any trial of these proceedings will not occur until at least the end of 2020. Both Mr Downes QC for the claimant and Mr Howe QC for the defendant made submissions in relation to the various case management issues outstanding. I do not propose to identify all of their submissions and arguments.
12. This is a Case Management Conference at which the court is making case management decisions in the exercise of its discretion about the future conduct of the dispute in order to further the overriding objective and by reference to its broad case management powers. As will be clear from the brief summary, this is a hard fought attritional litigation of a type commonly seen in these courts with the added frisson that all the parties were once part of the same venture joined in common cause. This appears to have resulted in an unfortunate level of mistrust and hostility between the claimant and defendant and their respective legal teams, including I am told threats of an application by the defendant to injunct and seek to remove the claimant's solicitors.
13. In such cases, parties can lose sight of a need to cooperate with each other in the conduct of the proceedings so as to assist the court with furthering the overriding objective and enabling there to be sensible and efficient case management. The claimant argues that the importance of being seen to address the alleged wrongdoing justifies the expenditure of time and cost, notwithstanding the modest financial sums involved. The defendant wants vindication of his rights and reputation which he says justifies the expenditure of time and costs.
14. The court is looking to strike a balance. The overriding objective plays an important role in case management and the exercise of the court's discretion, even in hotly contested litigation. It enables the court to use its case management powers to deal with cases justly and at proportionate cost. This requires the court to consider, so far as is practicable, ways of managing litigation that are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party. Cases should be managed in a way that saves expense, ensures they are dealt with efficiently, expeditiously and fairly, allotting to them an appropriate share of the court's resources while taking into account the need to allot resources to other cases. It would be an indulgence to the parties if further limited court resources were to be used to enable them to pursue this dispute in the manner they propose. It needs to be dealt with reasonably and proportionately whilst minimising its impact on other court users. I come to the question of how to case manage this claim and counterclaim against that background.

The disclosure issues

15. At the outset of the hearing, there was a list of issues for disclosure which amounted to some 54 issues. A separate schedule of non-agreed issues for disclosure provided six disputes related to the appropriate model for extended disclosure. In the bundle for the hearing there was a draft list of 66 issues said to be issues that the judge would need to determine, which were not agreed. As I understood it, the list stood at 79, odd, issues at the end of the CCMC.

16. A list of issues is not and should not be a granular exercise in identifying each and every point on which the parties disagree on the statements of case, including non-admissions. Nothing in the list of issues detracts from the statements of case which will take precedence, in any event. A list of issues that just summarises the differences in the pleadings is of no practical use to the trial judge. Such an exercise may and indeed often will have some value to the parties in considering how they approach the evidence or preparation of the case but it is not a list of issues that assists the trial judge. The list of issues provided to the court should be an exercise in identifying the high level key issues or principal issues that the trial judge needs to determine, not the minutiae. Long lists should be avoided wherever possible. It may be that the current list of issues includes sub-issues on which it is necessary for some specific reason for there to be a finding. If so they should be grouped under the relevant key issue.
17. I have already indicated that there will need to be a direction requiring the parties to engage in an exercise of agreeing and reducing the list of issues after witness statements are served, in any event, but I would encourage the parties to revisit the exercise sooner as it may help with the preparation of witness evidence and the list of issues for disclosure.
18. As I say, the list of issues for disclosure ran to 54 issues. The parties reached a landing on the outstanding issues for disclosure save for the question of the appropriate models over the lunch adjournment.
19. I would remind the parties that under the PD 51U paragraph 7.3 a list of issues for disclosure means a list of issues for the purposes of disclosure is only those key issues in dispute which the parties consider will need to be determined by the court with reference to contemporaneous documents in order for there to be a fair resolution of the proceedings. It does not extend to every issue which is disputed in the statements of case by denial or non-admission.
20. The list of issues for disclosure appears to suffer from exactly the same lack of focus on the key or principal issues as the list of issues itself. The list of issues for disclosure was, of course, derived from the list of issues and is a broad anamorphous and certainly not focused in the way required by PD 51U. The list of issues for disclosure lack precision and appear to me to do no more than provide a general description of areas in which the parties each want or hope that there will be documents to be disclosed. Numbers of the issues are either going to have limited or no documents or rely on witness evidence rather than documents.
21. Whilst the defendant will say, at least in part, that he does not know what documents exist, that does not mean that the issues for disclosure cannot be more clearly expressed and focused.
22. The parties have, it appears, sought to be more focused about the date ranges and search terms in section 2 of the DRD. Whilst that may alleviate some of the concerns around the number and scope of the list of issues for disclosure it does not alleviate my concerns about the broad nature of the issues for disclosure. When coupled with the

approach to the list of issues itself, it leaves me with considerable concern about the willingness of these parties to carry out the exercise cooperatively and in accordance with PD 51U principles as set out in paragraph 2 and the duties as set out in paragraph 3 of PD 51U.

23. I anticipate difficulties in progressing disclosure in any reasonable and proportionate way in accordance with PD 51U if the parties are not more focused on the key issues and on the documents which may exist which go to those key issues.
24. I remind the parties that PD 51U 6.4 requires that in all cases an order for extended disclosure must be reasonable and proportionate, having regard to the overriding objective, including the following factors:
 - (1) the nature and complexity of the issues in the proceedings;
 - (2) the importance of the case including any non-monetary relief sought;
 - (3) the likelihood of documents existing which will have probative value in supporting or undermining the party's claim or defence;
 - (4) the number of documents involved;
 - (5) the ease and expense of retrieval;
 - (6) the financial position of each party; and,
 - (7) the need to ensure that the case is dealt with expeditiously, fairly and at proportionate cost.
25. I further note that it is possible for the court, where it deems it appropriate, to make an order for disclosure in stages. Such an approach does not change the ongoing duties of the parties as set out at paragraph 3 of the practice direction, nor the obligation to disclose adverse documents.
26. The practice direction expects the parties to be in a position to justify to the court why model C is not appropriate in any case where they are intending to seek model D or E. Here, again, the parties have agreed model D, save where the defendant seeks model E.
27. In this case, notwithstanding my reservations more generally, the allegations by and against both parties are serious and involve allegations that relate on the one hand to bribery and on the other to the allegation of tort and abuse of process. In such circumstances, model D, providing **some** level of search based disclosure provided it is contained, **may** be appropriate for **some** key issues for disclosure.
28. The obligation to disclose known adverse documents remain and that includes adverse documents that are identified as a result of any search based disclosure.
29. In this case, given the relationship between the parties and the nature of the claim and counterclaim, the disclosure obligation is weighted on the claimant. The claimant is likely to hold the documents in its various electronic systems. The defendant has a more limited exercise to undertake. It would be surprising if the defendant had substantial documents to disclose; it is important that I take that into account when considering what might be reasonable and proportionate and it goes to the question of ease of retrieval and the cost of retrieval.

30. The defendant seeks disclosure from the claimant by reference to model E in respect of six of the issues for disclosure.
31. The defendant says this is justified as this is an exceptional case given the unusual allegations where knowledge and state of mind are important. The key issues in dispute in relation to the counterclaim, he says, are the state of knowledge and purpose and intention from time to time of the board members of the claimant. This, it is said, can be identified through contemporaneous documents. As the defendant does not have access to the board members' documents, he does not know what there is. Mr Howe QC argues that given the nature of the allegations, the defendant is entitled to pursue disclosure on the basis of model E which includes chain of enquiry documents. The defendant says given the seriousness of the allegation, there needs to be a much broader search based disclosure. It was argued that even though Mr King had been a board member that this was about piecing together the jigsaw to establish the true intentions of the claimant.
32. The claimant opposes the use of model E. They say this is not a case which justifies a chain of enquiry type approach. PD 51U makes it clear that model E is an exceptional order. The claimant argues the court should approach the issue of the relevant disclosure model on the basis that it should try to focus and restrict disclosure provided it can be done without injustice. The claimant says model E is not justified in this case and will lead to unnecessary and disproportionate disclosure.
33. PD 51U is a cultural shift in approach to disclosure. It is clear from the practice direction itself that disclosure can be an iterative process and that the court can make disclosure orders in stages. I have already commented on the difficulties I perceive in the list of issues for disclosure that the parties have agreed. Whilst I accept that in a case with such serious allegations, there is a need for some measure of search based disclosure, I still need to keep in mind both the reasonableness and proportionality of that exercise and consider the factors in paragraph 6.4, as I have already identified. I also have to consider the approach to disclosure in the context of the case as a whole and the overriding objective and proportionate expense. There needs to be some case management and costs management brought to bear to these proceedings.
34. I was referred to the 13th edition of Mr Hollander's book on Documentary Evidence where he considers Peruvian Guano disclosure. Mr Hollander's book is currently based on CPR 31, not PD 51U, which was, as I say, intended to be a cultural shift from CPR 31. That, itself, had already been an attempt at a cultural shift from the earlier disclosure rules. However, model E is considered to be a broad equivalent of a chain of enquiry Peruvian Guano type disclosure. Despite that, I note that even under CPR 31, Mr Hollander suggests that whilst Peruvian Guano type disclosure might be appropriate in cases where the knowledge or state of mind of one party is in issue, he accepts there is no rule about it and it will be for the party seeking disclosure to justify its use. As he says, in general the Peruvian Guano order should be limited to particular issues or classes of documents. The burden will be squarely on the person seeking the order to show it is justified by the particular circumstances, not disproportionate and does not extend over too many classes of documents.

35. PD 51U is intended to focus and narrow disclosure and reduce the amount of disclosure so that it is not wider than is reasonable and proportionate in order to fairly resolve those issues and specifically the issues for disclosure. Model E is only to be ordered in exceptional cases and must still be reasonable and proportionate.
36. Given:
- a. the costs incurred to date by both parties,
 - b. the extensive proposed list of issues for disclosure,
 - c. the broadness of the issues to which the model E is proposed to be applied and the potential wide scope of the disclosure that it would encompass,
 - d. the absence of any proper costs information about the likely costs of the exercise to be carried out to weigh in the balance when considering what is reasonable and proportionate,
 - e. my concerns about the effectiveness of the list of issues for disclosure and the inability of the parties to conduct disclosure in reasonable and proportionate manner consistent with the principles and duties set out in PD 51U and,
 - f. the fact that the weight of the disclosure exercise will be focused on the claimants at this stage,

were I prepared to make any direction at all in relation to disclosure at this stage, it would be limited to model D, subject to identifying appropriately narrow and focused issues. I would not be prepared to order broader extended disclosure on model E.

37. I am not persuaded that in this case, despite the unusual nature of the allegations that model E is appropriate. Model D based on a new focused list of issues for disclosure which I deal with below, coupled with the ongoing obligation under PD 51U, to provide known adverse documents, will provide a generous broad search based disclosure. It may be that upon reflection and having redrafted a more narrow focused list of issues for disclosure, the parties will be content to adopt model C or even model B on some issues in accordance with the principles behind PD 51U.
38. As I have already indicated, disclosure is an iterative process. If having completed disclosure in due course subject to what I say later, the defendant or claimant will be in a position to make further applications. If they are then able to demonstrate that there is a good basis for extending the disclosure further on a focused narrow basis that is both reasonable and proportionate and necessary for the just disposal of the case, having regard to paragraph 17 and 18 and paragraph 6.4 of PD 51U, they may obtain permission to do so.
39. The parties had agreed to put off costs budgeting, the costs of disclosure. That is permitted under PD 51U but it means that I do not know what costs have been incurred

to date on the exercise to identify the 54 issues for disclosure. This means that in addition to the concerns I have expressed about the list itself, the court is unable to determine whether the costs of the proposed exercise are reasonable and proportionate at this stage. In those circumstances, in relation to disclosure, I propose to direct

- a. that the parties seek to agree a revised list of issues for disclosure that meets the requirements of paragraph 7.3 of PD 51U by a date to be agreed,
- b. they provide their proposed disclosure phased costs figures for costs budgeting purposes based on their assessment of the likely costs of that disclosure exercise as agreed or proposed and
- c. I will then reconsider the list of issues for disclosure, the costs budgeting in relation to disclosure, the timing, nature and extent and costs of disclosure and the appropriate order for disclosure including in relation to models at a further disclosure guidance hearing which will be listed for two hours.

It seems to me that hearing should take place after the determination of the applications listed on 13 December as the outcome of that application may affect the issues for disclosure, going forwards. I would, therefore, propose that a hearing in relation to that be listed early in the new year now and the parties can work towards that.

The request for further information

40. The defendant was given permission to plead a counterclaim for abuse of process in November 2018 following a contested hearing. The draft amendments were considered by Deputy Master Arkush as part of the application. A re-amended defence and amended counterclaim was served on 29 November 2018 and, as I understand it, in the same form as the form before the Deputy Master which had originally been provided to the claimant in draft in June 2018. The claimant filed and served an amended reply and defence to counterclaim in January 2019. The claimant then sought to amend its reply and defence to counterclaim in February 2019 which was the substance of the application before Deputy Master Linwood. The claimant served a request for further information pursuant to CPR 18 on 26 July 2019. The request for further information sought clarification and further information in relation to the measure and quantum of damages sought by the defendant in his counterclaim for damages to reputation, aggravated and exemplary damages.
41. The defendant objected by letter dated 6 August 2019. The defendant identified his objections to providing a response to the request. He referred to the time period since the claimant had had the original draft, over a year, the fact that the claimant had already been able to plead to the amended counterclaim and that the pleading itself said it provided the best particulars that could be provided prior to disclosure.
42. The request for further information seeks further particulars of paragraph 85 of the amended counterclaim. This paragraph is preceded by four paragraphs which set out various matters on which Mr King is said to rely pending disclosure. Paragraph 85 starts with the well-known phrase "by reason of the matters aforesaid", thus referring

back to the previous four paragraphs. It then continues to set out what are said to be the best particulars of loss and damage claimed by Mr King prior to disclosure. There are no figures provided for those four subparagraphs which include claims for damages, for loss of reputation, aggravated and exemplary damages. The request for further information is of the subparagraph in relation to damages for loss of reputation, aggravated and exemplary damages only. It is not for the prior paragraphs.

43. In summary, it seeks full particulars of the loss and damages claimed/alleged for each of the three subparagraphs and in particular all facts and matters relied on in support of the allegation that a loss has been suffered on the basis alleged and full particulars of the measure and quantum.
44. On 17 September 2019, the claimant issued an application for further information pursuant to CPR 18 in relation to the amended counterclaim. The application was supported by the evidence in part C or box 10 of the application notice. The claimant said that further information was important as it would provide clarity around the counterclaim including in relation to its value and without the information, the claimant could not fully assess the counterclaim. A response would facilitate fair case and costs management.
45. Mr McQueen, a solicitor for the defendant, provided a witness statement in opposition and in relation to various case management matters dated 30 September 2019. So far as the application is concerned, this broadly repeats the objections to providing further information that had previously been made in correspondence but in addition sets out what he says the court's approach should be to an assessment of damages in relation to the heads of damages claimed and to which the request for further information relates.
46. Mr Downes QC submits on behalf of the claimant that the damages sought by the defendant in relation to the amended counterclaim are unparticularised. Mr Downes QC took me through a detailed analysis of paragraphs 81 to 85 of the amended counterclaim, identifying what he said were its shortcomings in the way it was pleaded and raising issues about the nature of the claim which will ultimately be a matter for the trial judge. I was referred to the decisions in *Rookes v Barnard* [1964] UKHL on the question of exemplary damages and *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 where Lord Woolf sets out the nature of aggravated damages and the approach to the calculation and what a jury should be told to consider when determining the amount. Lord Woolf also sets out the approach to exemplary damages and sets a broad parameter for the quantum of such an award.
47. Mr Downes QC says that it is fair that the claimant should know the broad scope of the quantum that they are facing and where there is specific evidence relied on, it should be provided. Since Mr King has been able to plead his case, he ought not to have any difficulty providing answers and particularisation sought, says Mr Downes QC. He referred me to the notes in CPR 18.1 of the White Book setting out the court's broad discretion and the need to have regard to the likely benefit from requiring the further information to be provided, the likely cost of providing it and the financial position of the party asked to give the information. Mr Downes QC says that the fact that the claimant did not ask for Further Particulars earlier does not mean they are not entitled to them now if they are properly sought. Just because the list of issues has been agreed

does not mean the claimant is not entitled to know the case they have to meet, including in relation to quantum, he says. He argues it is appropriate for the defendant to have to particularise the matters he relies on in asserting the claim for damages. Although the claimant has provided a general plea in response to the counterclaim, that does not mean that they are not entitled to ask for further particulars. More broadly, he said that Mr King must be able to provide further particulars, given the nature of the pleading. In particular, Mr Downes QC focused on some of the limited detail provided in, for example, paragraph 83 in relation to which I note there was no request for further information.

48. Mr Howe QC for the defendant says that the application for further information is hopelessly broad and unnecessary. He says the claimant does not need the answer to the request to understand the case they have to meet. He submits that the claimant has made general requests for the particularisation of a claim for general damages. He analysed the request as one that is seeking evidence or propositions of law, that the claimant is asking the defendant to provide particulars of the measure and quantum of damages and to assess his own general damages which ought to be a matter for the trial judge. Mr Howe QC argues this is misconceived as damages are at large and, as I say, will be determined by the trial judge. In short, the defendant says that the further information sought is neither necessary nor proportionate and in any event is seeking particularisation, as I say, of general damages. Paragraph 85 relies on all the matters pleaded in paragraphs 81 to 84 about which no further information is sought although, as I have already indicated, submissions were made about those paragraphs. He further says the claimant had, of course, been able to plead to all of it and further information was not necessary.
49. Mr Downes QC has not persuaded me that I should make an order directing a response to the RFI at this stage. The request for further information is only relation to paragraph 85 which references back to the previous four paragraphs as setting out the matters relied on. As is clear from the authorities I have been referred to, the calculation of reputation or aggravated and exemplary damages themselves will be a matter for the trial judge.
50. Part 18 requests should be for the purpose of providing further information strictly necessary to understand another party's case. There is some force in the argument that the claimant had the draft amended counterclaim for five months before the hearing before Deputy Master Arkush. Deputy Master Arkush was content to give permission on the basis of the pleading that was the subject of the application. There was no suggestion before me that the claimant raised any concern about the draft pleading in specific details rather than their general objection to the counterclaim being allowed. If they did, it was one that Deputy Master Arkush clearly did not take on board and if they did not, it is a matter for them.
51. Whilst the delay in making the application itself is not determinative of the application, I do take into account that in this case the parties are involved in attritional litigation. There was a substantive hearing about whether the amended counterclaim should proceed at all a year ago. The claimant pleaded to that amended counterclaim and despite other hotly contested hearings and applications did not seek to pursue this request until July 2019. It then waited until 14 days before the CCMC to issue the

application so that it could be heard at the CCMC. Having had a response from the defendant setting out why they said they did not need to respond as long ago as 6 August.

52. In the meantime, in the absence of further particulars does not appear to have caused the claimant any difficulty in preparing for the CCMC. The request appears to be an attempt to require the defendant to provide early evidence in relation to some aspects of his claim in advance of the exchange of witness evidence. Some aspects of the request are clearly seeking advance notice of the position the defendant adopts in relation to the legal principles and/or is asking them carry out the exercise which is a matter for the trial judge to consider at the end of the trial once he has heard all the evidence.
53. It is not reasonable or proportionate or in keeping with the overriding objective or efficient case management to require the defendant to produce what is going to be primarily fragmented witness evidence. It does not appear to me to be reasonably necessary at this stage given the history of this particular amendment. I am not, therefore, prepared to direct the defendants must provide the answer to the request for further information and that application fails. However, that obviously does not preclude the claimant from making a further application after disclosure and/or witness evidence if appropriate. Such an application would, of course, be considered on its own merits and in the context of the proceedings at that time.

Costs and Case Management

54. Before turning to the issue of costs budgets, it is necessary to put that in context.
55. The parties had agreed between themselves that there should be a ten-day time estimate for trial. The trial is intended to involved up to 12 witness: 9 for the claimant, 3 for the defendant. I should note that the defendant identified six of the claimant's witnesses as witnesses he intended to call in addition to his own witnesses. When asked to explain how this was reasonable use of the court's resources given the value of the claim and counterclaim, both parties focused and agreed upon the importance to their clients the risk of the trial not being completed with a shorter time estimate and the injustice of guillotines. Neither party had suggested how the timetable of ten days would be allocated or used.
56. It seems to me that ten days is an inappropriately lengthy period of trial for the issues between the parties. I have no doubt that given ten days, or even more, the parties in this case would take full advantage of the time allowed to cross-examine each other's witnesses. That is not the basis on which the court determines what is an appropriate length trial. I accept that presently the parties propose to call between them up to 12 witnesses. Some will take up more of the court's time than others, some may not need to give live evidence at all once the parties have focused on the key issues for determination. There will be no expert evidence.
57. I take into account the costs incurred to date. The two decisions of the Deputy Masters who were uneasy about the litigation as a whole and considered the costs already to be wholly disproportionate, in the exercise of my discretion and my case management

powers, taking into account the likely value of the respective claim and counterclaim, the importance of the issues of the parties, the complexity of the issues between the parties and the overriding objective and the allocation of court resources, I am not prepared to allow a ten-day trial period for this dispute. An appropriate length for trial taking into account those issues is one day pre-reading, six days sitting, and I am prepared to allow up to a two day break between the end of the fifth day and the beginning of the sixth day of sitting to allow the parties to prepare their closing submissions. It may be that the only reasonable and proportionate way to manage the trial would be to guillotine or time limit the cross-examination of witnesses if the parties consider they cannot reduce the number.

58. Once the list of issues has been revisited and the full extent of the disclosure and witness evidence is known, the parties may decide to try to persuade the judge at the pre-trial review to reconsider the trial estimate. I will, however, direct that any application to do so would have to include an application to amend the costs budgets and provide details of the additional costs anticipated to take into account any increase in trial estimate so that the judge hearing the application would be in a position to consider the reasonableness and proportionality of such an application in the context of the case.
59. I will, therefore, be approaching the costs budgeting exercise on the basis of a shorter trial but at this stage will not curtail the number of witnesses the parties are proposing to call. Given that the witnesses the claimant is proposing to call are, for the most part, the same witnesses that the defendant would otherwise propose to call, it may be that once disclosure has been completed, as I say, and witness evidence has been exchanged and in light of the shorter trial length, the parties will be in a position to review the position on the number of witnesses or the length of possible cross-examination of those witnesses.

Cost budgeting

60. There were issues of principle and quantum. In simple terms, the dispute of principle was whether I could or should carry out a costs budgeting exercise at all in relation to the claimant's costs. The defendants argued that the claimant had not provided full details of all the costs they had incurred in relation to the proceedings, including the earlier concluded interlocutory applications and the costs relating to the second defendant, Mr Evans. The court did not have the information it needed to carry out the costs budgeting exercise.
61. There were then more traditional arguments in relation to both proportionality and quantum on specific phases by both parties. The claimant's costs budget is in total about £1.2 million. The incurred costs in that budget including the costs of a CCMC amount to some £579,000. The to be incurred costs are £672,000, odd, which currently includes a figure of £155,000 for disclosure which is not part of the costs budgeting exercise the court is considering at this hearing and which number may change. These figures did not include the costs of completed interim applications, nor the costs which had been incurred in relation to Mr Evans. The original information about the incurred costs was included only in correspondence but a witness statement was provided shortly before the hearing to confirm the position.

62. The defendants' costs budget is in a total of £734,000. Incurred costs in the budget including the CCMC costs is £226,000, the to be incurred costs are, therefore, £510,000, odd. This currently includes a figure of only about £5,000 for disclosure which is again not part of the costs the court is considering at this hearing. In addition, the defendant provided a schedule to show other incurred costs amounting to an additional £257,000. It is worth noting that once the disclosure costs are stripped out of the to be incurred costs, the parties' costs are not widely apart on the to be incurred costs.
63. In respect of the court's approach to costs budgeting, the parties were anticipating that they would spend in excess of £2.25 million on this dispute. Although the overall spend by the defendant appears to be closer to £1 million and the claimant's appears likely to be nearer £1.5 million, neither sum is modest in the context of a relatively low value claim and counterclaim which, but for the nature of the allegations, would fall to be dealt with in the County Court at Central London.
64. The parties' costs have already been described by both Deputy Master Arkush and Deputy Master Linwood as wholly disproportionate. Both the claimant and defendants' costs budgets were signed with statements saying that they represented a fair and accurate statement of the incurred and estimated costs which it would be reasonable and proportionate for the claimant or defendant to incur in this litigation. That may be a matter of debate given the arguably wholly disproportionate nature of the total costs compared to any monetary value that can be placed on the claim and counterclaim. However, what that does **not** mean, in any event, is that each and every item of cost that either party has incurred or anticipates incurring should be in the budget.
65. The budgeting process sets or fixes recoverable costs for the to be incurred costs in the budget by reference to 11 phases and contingencies which represent future anticipated costs. Incurred costs, whether in the budget or not, if they form part of the costs of the action for which the costs order is made and have not previously been addressed by a summary assessment process, will be determined by the costs judge in due course on a detailed assessment if not agreed. The parties can only depart from the budgeted figures for the to be incurred costs once determined on a costs budgeting exercise if they can show a good reason on a detailed assessment or if there is a significant development in the case prior to that and an application to amend the budget is successful. A costs budget is not a solicitor/client bill of costs. It does not represent all the costs a party might incur or have incurred with their solicitors in progressing the claim or defence. It represents a limit unless there is good reason to depart to the standard basis costs that a party can recover so far as the to be incurred costs are concerned.
66. There is provision for the judge carrying out the costs budgeting exercise to comment on incurred costs to assist the costs judge in due course in relation to the incurred costs and the judge setting the budget can take into account the incurred costs where appropriate.
67. Mr Howe QC sought to argue that the claimant's costs budget should be considered unreliable. Not only did it not include all the incurred costs to date but there was also a note in the claimant's accounts which had different figures for the amount the company

had incurred in relation to the dispute. However, the claimant's legal spend on litigation including its costs in dealing with Mr Evans are not a comparator for the costs which are sought in the costs budget. I note the reference to recovery of 60 to 70 per cent. The figure in the accounts might perhaps raise more questions if the figures were substantially less than those in the costs budget as then there might be issues as to a breach of the indemnity principle. I do not find that being referred to a figure in the claimant's accounts prepared for one purpose is of more than passing interest when the court is looking to determine costs which are reasonable and proportionate to incur in relation to the proceedings on a standard basis as part of the costs budgeting process. It is not an exercise in comparing like with like.

68. Mr Howe QC argues that the claimant has spent and proposes to spend sums vastly in excess of the sums in dispute. The sums in dispute and claimed by the claimant are around £120,000. He identified that sums in the costs budget submitted at various stages in the proceedings to date had increased substantially and the court could not be satisfied about the reasons for those increases. I was referred to CPR 3.12, 3.15 and 3.18 and the notes in the White Book as well as PD 3E. I was referred to a decision of Slade J which appears to relate to detailed assessment which was again not comparing like with like and of limited assistance in the exercise the court has to undertake on a costs budgeting exercise. It was suggested I should adjourn off the costs budgeting exercise until that information about incurred costs was provided at the claimant's expense.
69. So far as proportionality is concerned, Mr Howe QC argued that the claimant's suggestion that they needed to pursue this claim to protect themselves in relation to regulatory matters or the reference to the Bribery Act did not justify bringing a claim against Mr King in such a disproportionate way. The suggestion that there was a tax reason for bringing a claim when that aspect of the claim had been discontinued was not a good reason either. Mr King's team suggests that because the litigation is part of a wider campaign against Mr King, the claimant's costs should be substantially reduced while the defendant's should not be reduced to reflect the underlying reason for the high costs. Nonetheless, he argued that both parties say this is important and complex litigation, the financial positions of the parties are similar and they are both able to fund the dispute but there is a dispute about what is reasonable and proportionate.
70. The claimant's position on costs and proportionality can be summarised as follows: both parties have made serious allegations against the other; the claimant is entitled to take the counterclaim seriously and defend it; the claimants believe Mr King to be both dishonest and deluded; they say that Mr King says that the claimants will not be content or give up until they have destroyed him; for both parties the stakes are high in the sense that both seek vindication of the approach they have taken in the litigation; both parties have the wherewithal to spend what they are choosing to spend on the proceedings so the court should let them do so; both parties say the case is complex and that this is a serious piece of litigation and that the court has sufficient information to enable it to determine the costs budgets and should do so.
71. In this particular case, given the information that the court has from the defendants about their total incurred costs in relation to the various prior applications, the details of the settlement with Mr Evans, the contribution made by the claimants towards the

defendants' costs, the information about the security of the costs position and the information that has been provided previously in relation to costs, the court has sufficient information about the nature and extent of the incurred costs for both parties to be in a position to carry out a costs budgeting exercise. The court is carrying out the costs budgeting exercise and is approving the total for budgeted costs for each phase of the proceedings, although in the course of its review, the court may have regard to the constituent elements of each total figure, PD 3E 7.3. The absence of information about the incurred costs in relation to an interim application that has already concluded does not assist in determining the to be incurred costs in a particular phase that has yet to be completed. At a CCMC, the court is not in a position to and does not determine the incurred costs figures.

72. Although the court has to have regard to the overall costs, both incurred and to be incurred, when considering proportionality and thus having the information in relation to incurred costs is helpful in making that assessment, in this case, having more detailed information about other incurred costs is not going to tip the balance between the costs being proportionate and disproportionate; the costs of both parties are already disproportionate. Adjourning off the costs budgeting in such circumstances is neither reasonable, nor proportionate, nor good case management, nor in keeping with the overriding objective. It does nothing to progress this dispute and engages further in the war of attrition that the parties are engaged in and will result in further unchecked costs being incurred.
73. Proportionality is a concern in this case. When the court considers proportionality pursuant to CPR 44.3(5), no one factor outweighs the others and each case should be considered on its own facts. The financial value of the claim does not justify the expenditure that the parties consider they should be entitled to invest in the continuation of this dispute on the basis that it is recoverable. A claim and counterclaim raise issues that relate to honesty and knowledge and both parties seek vindication of their positions and on both sides, the consequences of an adverse outcome could be significant for their respective reputations even though the claim for damages to reputation is made by the defendant by way of counterclaim.
74. The parties' approach to the dispute has caused it to become complex and attritional. Just because the parties' approach causes the case to become complex does not mean that it will justify the costs that the parties propose to incur.
75. I take into account all these issues when considering the costs budgeting exercise and both the incurred and to be incurred costs. The court has a very broad discretion when it comes to costs and costs budgeting and comments on costs budgets. This is a case in which I consider that the overall costs both parties both incurred and to be incurred are disproportionate sums in issue in dispute. I acknowledge, however, that to the parties on both sides of the issues are considered to be of sufficient importance such as to justify expenditure on legal fees that have been incurred so far. As I have already said, this is an exercise in determining recoverable costs. Nothing I do today limits the costs that either party can choose to incur. It has been suggested I should make comment in relation to the claimant's expenditure to date and then determine their costs taking into account what the defendant says of their disproportionate incurred costs.

76. My starting point is that if I were to comment at all, it would be to the effect that both parties' incurred costs appear to be disproportionate which is, of course, not what the defendant is asking me to do. However, if I were to comment on the incurred costs in the recital to the case management order, such comment must be taken into account by a costs judge on detailed assessment but it does not bind the costs judge. I cannot see any value in a comment that simply repeats for the costs judge a general view that costs incurred to date are excessive or disproportionate but without being able to provide some express guidance as to what it is about the costs that is considered to be disproportionate or excessive. There is little or no value in the court recording a general comment about incurred costs when the court is not in a position to make a specific and well founded comment about any specific element of the costs which might be of assistance to the costs judge.
77. On any basis, both parties have incurred substantial costs to get to the stage of the CCMC. These costs in aggregate come to in excess of £1 million with proposed to be incurred costs likely to be in excess of £1 million between the parties. The difficulty for the court is although these figures appear substantial in absolute terms, when compared to the financial value of the claim and counterclaim, there are, as I have indicated, other factors to be considered in this case. A costs judge on detailed assessment will have a detailed bill of costs and far more information about how the costs were incurred and why they were incurred and will have the opportunity to look at the costs at a granular level, should that be necessary. There is no value in a comment at this stage which might be seen as a fetter on the discretion on the costs judge. So whilst on the basis of the figures I have seen it appears to me that the costs to date for both parties are wholly disproportionate, I will leave it to the costs judge to form his own view in due course in relation to incurred costs.

Quantum

78. Turning, therefore, to quantum, the defendant's approach was to say that the claimant's costs should be substantially reduced to take into account the excessive costs spent to date which they say was symptomatic of the matters relied on in the defendant's counterclaim and form part of the counterclaim against the defendant. The defendant, therefore, asked the court to apply a granular approach to the costs budgeting exercise and to apply the decision in *Lowndes*. *Lowndes* relates to the approach adopted before 2013. It is no longer good law, it having been overtaken by the formulation of the standard basis test now set out in CPR 44.3(2)(a). I do not, therefore, find reference to *Lowndes* in the context of costs budgeting to be of assistance.
79. The defendants' broad theme was that they should be allowed their costs in full, as sought, but the claimant's costs should be substantially reduced on all future phases to reflect the modest nature of the claim for bribes, the career nature of the counterclaim for the defendant. It is argued by the defendant that the costs he has incurred and proposes to incur are commensurate with the situation he finds himself in.
80. The claimant argues that there are costs issues on both sides. Their primary opposition is the court should allow both budgets and approve both in the sums sought. As an alternative, both should be cut down but they should allow broadly the same for trial preparation and trial.

81. Neither of these approaches provides me with any sensible basis on which to determine the figures for the to be incurred phases of the case. However, I have a very broad discretion when it comes to costs budgeting and costs. I therefore turn to the costs which are still to be budgeted in the future phases.
82. When carrying out a costs budgeting exercise, the court must keep in mind that it is not carrying out a detailed assessment. The court should avoid an overly arithmetical approach. It should not be looking at the costs on a granular level, analysing the number of hours or the hourly rates. The court is looking to determine a reasonable and proportionate sum for recoverable costs. It is not seeking to limit what the parties choose themselves to spend on costs. There can be no single right figure. There will be a range of costs that can be reasonable and proportionate. What is reasonable and proportionate is an objective exercise based on the court's perception of the factors such as complexity and value, not the parties' perceptions. Simply comparing one budget to another is not the correct approach. Just because the claimant's proposed costs are higher than the defendant's proposed costs does not automatically make them either unreasonable or disproportionate. The court has to take into account that there are many reasons why figures will be different. The parties are likely in most cases to have a different view on the approach to the evidence on the legal issues and the significance of certain aspects of the case. That is why there is a range of what is reasonable and proportionate. In carrying out the budgeting exercise, proportionality trumps reasonableness. I have to look at the budget on a phase by phase basis, having regard to the costs, if already incurred, for that phases and the further sums sought. I should also keep in mind overall proportionality.
83. Costs up to and including the CCMC are already incurred. The parties have already agreed that disclosure costs should be dealt with separately and I have already directed for the reasons I have given that the question of disclosure costs will be revisited at the disclosure guidance hearing.
84. I, therefore, turn to deal with the claimant's witness statements phase. The claimant seeks £173,387.51 of which £19,487.51 had already been incurred. They were, therefore, seeking an additional sum of £153,900. The claimant currently proposes to call nine witnesses, six of which the defendant had identified as witnesses they would otherwise have been seeking to call. The claimant says there are six substantial witnesses and three less substantial witnesses and that the figures they propose amount to approximately £17,000 to £18,000 per witness. The defendant offers £20,000 in addition to the already incurred costs. This is in keeping with the defendant's view that the court should limit the claimant considerably and should approach the phase on a *CIP Properties Ltd v Galliford Try Infrastructure Ltd* [2015] EWHC 481 (TCC) basis. The defendant is, therefore, proposing that the total figure for the claimant's costs for nine witness statement should be about £40,000. The defendant seeks £37,000, odd, of which only £1,900 has been incurred and the defendant is, therefore, seeking £35,000, odd. The defendant proposes to call three witnesses on his own behalf. The claimant has agreed the defendant's witness statement phase.
85. As a matter of first impression, the claimant's estimated costs for witness statements seem surprisingly high. However, I take into account the fact that six of the witnesses are ones which the defendant would otherwise have wanted to take statements from

and so the defendant will not have to incur those costs which partially explains the disparity of the costs between the parties. I have already indicated my overall concern about proportionality in relation to the value of the claim and counterclaim but I have to accept that the claim and counterclaim are important to the parties. I also note that the witness evidence will be primarily focused on the counterclaim and but for the counterclaim, the evidence would be much lighter. Whilst I might consider that an overall figure of £173,000, odd, not to be reasonable and proportionate, only £19,000 of that has already been incurred to date and there is no particular risk that the court would have to apply the effective cost capping approach adopted by Coulson J, as he then was, in *CIP and Galliford* in relation to this phase. The court is able to adjust its view on a reasonable and proportionate sum for the witness statements in the to be incurred costs element of the phase. Here, there will be nine witnesses for the claimant and there is no suggestion that those are not the appropriate witnesses, given the defendant wants to call most of them, too. There will, therefore, need to be an exercise carried out that requires the claimant to prepare six substantial and three less substantial witness statements and the defendant's proposal of £20,000 is neither reasonable nor proportionate does not assist in determining a reasonable and proportionate sum for this phase. Doing the best I can and taking into account the pleadings, the evidence, the procedural history as well as the submissions made by counsel in relation to disclosure and the request for further information in addition to the costs submissions, the figure of £153,900 seems to me to not fall within a range of reasonable and proportionate cost for the to be incurred costs for this phase. I will allow and approve a figure of £100,000 for the to be incurred costs in the witness statement phase. This will give a total for the phase of £119,487.51.

86. The pre-trial review phase is an entirely future phase. The claimant seeks £24,000; the defendants have offered £16,500. The defendant seeks £16,628 which is agreed by the claimant. Other than the defendants' general objection to the claimant's costs being excessive, their specific objections relate to the excessive use of partner and excessive fees for counsel. As I have said, this is not a granular exercise. It is about determining reasonable and proportionate sums for the pre-trial review. I take into account that the pre-trial review is an important hearing in advance of trial. In a case such as this, given its procedural history to date, the PTR is likely to be necessary and important. It is important that both parties are properly prepared and represented. Taking into account the issues I have already identified about proportionality in the court's approach to costs budgeting and considering a reasonable and proportionate sum for the PTR for the claimant, doing the best I can, it seems to me that the claimant's figure of £24,000 is slightly on the high side, given this only a half-day PTR. I will allow the claimant £18,000 as a reasonable and proportionate sum.
87. The trial preparation phase is also a future phase for which there are no incurred costs. This phase is not affected by the decision in relation to trial length on the basis of the costs budgets when they were prepared, although had they been prepared later, they might have done. The claimant seeks the sum of £41,000; the defendant seeks £30,000. The defendant offers £30,000 and the defendant seeks the sum of £54,897 and the claimant offers £32,000. The trial preparation phase includes the preparation of the trial bundle and general preparation in advance of trial but did not, at the time these costs budgets were prepared, include brief fees. I note in passing that since

1 October, brief fees has been moved from the trial phase back to the trial preparation phase and in future budgets that is where it should be sitting.

88. The defendant raises concerns about the preparation of the trial bundle and who might be carrying out the work and whether copying or assembling the bundle is included in the figures. The claimant raises issues about counsel's fees and raises an issue about the costs included in trial preparation relating to an application for a witness summons which they say should be a contingent cost. As a matter of costs budgeting, the defendant's potential application for witnesses summonses should neither be in the current trial preparation phase, nor should it be in the costs budget as a contingency. The claimants are proposing to provide witness statements from nine witnesses, six of which the defendants have proposed as witnesses. There is no suggestion at this stage that the witnesses which each of the parties propose to take statements from would not attend trial. It cannot be said at this stage, therefore, that the costs of witness summons applications are more likely than not to be incurred, given the parties' current position on the witnesses. In those circumstances, any application dealing with witness summonses at a later stage should be dealt with as being outside the budget and PD 3E 7.9 will apply, the costs of those applications being determined on those applications if they become necessary. I, therefore, take that into account when considering the figures for the trial preparation phase. Further and on the basis of the procedural history of this case to date and considering the bundles for the CCMC, it is likely that the process of agreeing the bundle for trial will be fraught but that the bulk of the work will be undertaken by the claimant. I take that into account when considering the trial preparation costs.
89. Looking at the trial preparation costs in the round and doing the best I can, a reasonable and proportionate sum for the claimant is £38,000 and for the defendant £33,000 which excludes specifically any allowance for the witness summons application which, for the reasons I have just given, should be a freestanding application outside the costs budget.
90. The trial phase is complicated by the fact that, as set out above, I have determined it is neither reasonable nor proportionate for this case to be listed for ten days. The time estimate for trial, as a matter of case management, I have limited to six hearing days plus one day pre-reading. The parties have allowed for same day transcription which, given the nature of the allegation, seems reasonable and proportionate. However, at this stage, the claimant seeks £365,480 on the assumption of a ten-day trial. The defendant offers £160,000 as it says the court should exercise restraint and reduce the claimant's costs to reflect the fact that the approach being adopted by the claimant is excessive. The defendant also refers to previous costs budgets prepared for earlier hearings which were in a lower amount. The defendant seeks £374,760 including two counsel on the assumption of a ten-day trial against which the claimant offers £304,600.
91. The court must consider what is a reasonable and proportionate sum for the parties to expend on the trial phase on a recoverable basis. It is, of course, as I have already indicated and as it is in relation to all costs, entirely a matter for the parties how much they actually choose to spend on a solicitor/client basis. The court is simply setting a phase by phase overall figure that is reasonable and proportionate as a recoverable figure taking into account the various proportionality factors.

92. I should mention that the issue of conduct is a proportionality factor more generally where one party's conduct is said to have caused another party to incur additional costs. That might be a good reason for departing from a costs budget on a detailed assessment. Equally, previous conduct that appears to have unreasonably increased incurred costs can be taken into account when one party's prospective costs are higher or lower than another party's in the costs budgeting process. However, the court should be cautious at the costs budgeting stage particularly where, as here, the conduct complained of is, in fact, the substance of the counterclaim. It would be to predetermine the outcome of the counterclaim to reduce the claimant's costs budget for trial or otherwise because it is said it is part of the overall campaign against the defendant.
93. If, as here, the parties have not agreed the incurred costs, their argument about conduct and the excessive nature of the incurred costs will in due course be determined by the costs judge who will then have the benefit of hindsight and will know who was the successful party and have a better view of the conduct issues. The judge carrying out the costs budgeting exercise is not carrying out a detailed assessment. The costs budgeting judge's view is necessarily impressionistic and, as I have said, should also try to be objective and not capricious. As I have already indicated, what a case looks like to the parties is not the basis on which the court sets the budget. The court looks at the costs objectively and recognises that there are different approaches to litigation that can cause parties to incur different levels of costs. That does not, of itself, make those costs unreasonable or disproportionate.
94. The defendant's approach to the trial costs phase requires the court to predetermine the merits of the defendant's counterclaim central to which is the argument that the claimant has embarked upon a campaign to cause the defendant to divest himself of the family shares at an undervalue and to destroy the defendant's reputation in the security world. This litigation is said to be part of that campaign. It is simply not appropriate, as I have already said, for the court to take that approach on the facts of this case and the defendant's approach does not assist in determining a reasonable and proportionate sum for the trial costs.
95. The claimant's submission on trial costs was that the court should either approve both costs budgets for trial, they not being dissimilar, or reduce both by a similar amount; it had offered £304,000.
96. In light of a reduction in the length of trial but also taking into account my view that the trial costs were, in any event, excessive, it is necessary to substantially reduce both parties' costs budgets for the trial. That cannot be approached on a simple pro rata basis. That is not how trial costs are built up. I have some assistance from the budgets themselves in terms of a breakdown of the costs. I note the trial costs for a ten-day trial for both parties were remarkably similar, given the differentials on other phases. It is the overall figure for the phase that I have to determine against a background where the sums sought by both parties are not reasonable and proportionate. The parties can choose to spend the sum in whatever way they deem appropriate and if they want to incur additional costs which will not be recoverable, as I have said, that is a matter for the parties. I am determining reasonable and proportionate sum and I am doing the best I can on the basis of the information I have and taking into account the reduced

length of the trial. I will, therefore, allow each party a total sum of £200,000 for the trial phase.

97. So far as the other phases are concerned, the claimant's ADR and settlement phase to be incurred costs are set at £1,875 and are agreed by the defendants. The level of that phase helps to demonstrate the attritional nature of these proceedings. The defendants are seeking a figure of £6,100 which is agreed by the claimants.

98. Contingent costs B for the defendants and C for the claimants relate to an application which the defendants may make for third party disclosure against the fleet hire company at some point in the future depending on what comes out on disclosure. Although the claimants have been prepared to agree the defendants' costs, the defendants have not agreed the claimant's costs on the basis that it was not an application that the claimant would be party to. The claimant says they would need or want to be at the hearing, given the nature of the application. Can it be said that such an application is more likely than not and should be budgeted now? Should the court predetermine the costs of an application that is has not seen, which may not happen and which fetters the discretion of any Master hearing the application to determine the position in relation to costs including whether it was reasonable for the claimants to be represented at the application if they are? It is not appropriate for this court to undertake that exercise now and determine those issues. The court will not costs budget the potential third party disclosure application and sanction it in advance. The application, if made, will fall within PD 3E 7.9 and the judge or Master hearing the application will have a free hand in determining the liability and quantum of any costs arising.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Court.