



Neutral Citation Number: [2024] EWHC 3177 (KB)

Case No: KB-2024-002814

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 December 2024

Before :

THE HONOURABLE MR JUSTICE NICKLIN

Between :

Anton Chirkunov

Claimant

- and -

(1) Person(s) Unknown

**(being the person or persons responsible for the
publication of a webpage referring to the Claimant
on the website www.rucriminal.info)**

(2) Person(s) Unknown

**(being the person or persons responsible for the
publication of a webpage referring to the Claimant
on the website www.talk-finance.co.uk)**

Defendants

Ian Helme (instructed by Taylor Wessing LLP) for the Claimant
The Defendants did not attend and were not represented

Hearing date: 21 November 2024
Further written submissions: 29 November 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 11 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Nicklin :

1. This is a data protection claim. The Claimant alleges several breaches of the UK General Data Protection Regulation (“UK GDPR”) arising from the original and continued publication of the following articles, on separate websites:
 - (1) an article, under the headline “*Free Wheely: How the former governor of the Perm Territory Chirkunov gave his son a dream job*”, published from 13 January 2021 (“the First Article”) on the website rucriminal.info (“the rucriminal Website”); and
 - (2) an article, under the headline “*Anton Chirkunov, Daria Tarasenkova and Wheely company: an expensive toy for children of oligarchy*”, published from 19 June 2023 (“the Second Article”) on the website www.talk-finance.co.uk (“the Talk Finance Website”).

The Claimant’s case is that, save for minor details, substantially the First and Second Articles are in the same terms. It is not necessary, nor is it appropriate, to set out the terms of the two Articles in this judgment.

A: The Claim

(1) Claim Form

2. The Claim Form was issued on 29 August 2024. The Defendants were identified as follows:
 - (1) The First Defendant:

“Person(s) Unknown (being the person or persons responsible for the publication of a webpage referring to the Claimant on the website www.rucriminal.info (sic))”.
 - (2) The Second Defendant:

“Person(s) Unknown (being the person or persons responsible for the publication of a webpage referring to the Claimant on the website <http://www.talk-finance.co.uk>)”.
3. The Claim Form did not state the address of either Defendant. Instead, an email address for each Defendant was provided in the box on the Claim Form where the Defendants’ addresses for service were required to be provided. Pursuant to CPR PD16 §2.2, the Claim Form is required to include the address at which each Defendant lives or carries on business, together with a postcode.
4. The address is important, not least because the domicile of a defendant is relevant to jurisdiction. Where a defendant is domiciled outside England & Wales, a claimant may require the Court’s permission to serve the Claim Form outside the jurisdiction. If the address of the defendant stated on the Claim Form is outside the jurisdiction, it will be stamped to indicate that it is not to be served out of the jurisdiction.

5. If a Claim Form does not include the full address (including postcode) for all parties to the claim, then the Claim Form will be issued but will be retained by the Court (and not served) until the claimant has supplied a full address, including postcode, or the Court has dispensed with the requirement to do so: CPR PD16 §2.3. If the claimant cannot provide the address, as required, an application for alternative service of the Claim Form under CPR 6.15 will also usually be required.
6. In this case, the Court did not retain the Claim Form; it was provided to the Claimant. That should not have happened, but no harm has been caused because the Claimant has not purported to serve the Claim Form on either Defendant.

(2) Particulars of Claim

7. Particulars of Claim, dated 20 August 2024, were filed with the Court on 29 August 2024. They erroneously state that they were “*served*” on 20 August 2024. They have not been served.
8. In the Particulars of Claim, the Claimant is described as the founder and Chief Executive Officer of Wheely Ltd, which operates a “*luxury ride-hailing service*”. The Claimant is a Swiss national who has lived in London since April 2020. He is a resident of the UK and has “*pre-settled status*”.
9. The Particulars of Claim contain no more, by way of identifying material about the Defendants, beyond that contained in the Claim Form. As to the Websites, on which the Articles appear, the Claimant states:

“The Websites are published anonymously, and the identity of the Defendants is unknown to the Claimant. Each of the Defendants appears to have taken steps to conceal their identity and has failed to identify themselves when requested to do so by the Claimant’s solicitors in correspondence... To the best of the Claimant’s knowledge, there is no registered data controller in respect of either Website on the register maintained by the Information Commissioner’s Office”.
10. The Claimant contends that the First and Second Articles contain his personal data within the terms of Article 4(1) of the UK GDPR and/or the Data Protection Act 2018. The Claimant alleges that, in material respects, the data are inaccurate, and that the Defendants have been processing this data by making it available via the published Articles on the two Websites. It is alleged – but without particulars – that, in respect of this processing, the Defendants “*were and are the data controllers for the purposes of [the Data Protection Act 2018] and Article 4(7) of the UK GDPR*”. I would note that not everyone who falls within the current definition of ‘Persons Unknown’ in the Claim Form would necessarily be a data controller for data protection purposes (see further [79] below).
11. Reference is made to, and reliance placed upon, letters of complaint sent to the Defendants, in early January 2024, in which the Claimant sought erasure of the personal data from the two Articles that was alleged to be inaccurate.
12. The Claimant contends that “*the wrongful processing of [his personal data] by the Defendants has caused the Claimant serious distress and anxiety and damaged his autonomy and reputation*”. No particulars are given. Insofar as the Claimant

complains of harm to his reputation, he has not brought any claim for defamation. The 1-year limitation period for defamation claims (s.4A Limitation Act 1980) would now stand as a likely impediment to such a claim.

13. The Particulars of Claim state that, on 3 May 2023, the Claimant used an intermediary to contact the First Defendant to seek the removal of the First Article. In response, it is alleged, *“the First Defendant refused to remove the First Article unless the Claimant paid the sum of US\$30,000. This demand was tantamount to blackmail and rejected by the Claimant”* (see further [38]-[39] and [40.(6)] below).
14. The principal remedies sought by the Claimant against each Defendant are:
 - (1) compensation pursuant to Article 82 of the UK GDPR and/or s.168 Data Protection Act 2018;
 - (2) a compliance order pursuant to s.167 Data Protection Act 2018 requiring:
 - a) the erasure of the personal data *“and any similar data”*; and
 - b) the Defendants to take the steps set out in Article 17(2) and Article 19 of the UK GDPR; and
 - (3) a declaration that the personal data in issue are inaccurate.
15. The relevant provisions of the UK GDPR relied upon by the Claimant in relation to his claim for remedies are as follows:

Article 17(2)

“Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.”

Article 19

“The controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17(1) and Article 18 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.”

Absent a Defendant’s agreement to do so voluntarily, an order for erasure of data, and remedies under Articles 17(2) and 19, if granted, could only be effected by mandatory injunction.

16. It might be thought that, unless the First and Second Defendants can be properly identified, none of these remedies is likely to have any practical value beyond, perhaps, the declaration sought. I deal with the separate issue of enforcement below.

17. In evidence filed for the hearing, it was claimed that the Claimant was “*entitled*” to a declaration, if his claim were successful. That is not correct. There is no such entitlement to a declaration. As Mr Helme accepted in his skeleton argument, declarations are not remedies provided under the data protection legislation, and they are not generally granted in this type of litigation (even after contested *inter partes* litigation): *Cleary -v- Marston (Holdings) Ltd* [2021] EWHC 3809 (QB) [29]-[30].
18. In *Aven -v- Orbis Business Intelligence Ltd* [2020] EWHC 1812 (QB), Warby J explained:

[191] ... The [Data Protection Act] does not provide for declarations, and no case has been identified in which the issue has been examined. My findings are analogous to a finding of liability for libel. But this is not a libel action. Anyway, English law and procedure do not permit the court to make a declaration of falsity at the end of a libel action: *Jameel -v- Dow Jones Inc* [2005] QB 946 [67] (Lord Phillips MR). It is available, as a discretionary remedy, in limited circumstances, by way of a statutory “*anomaly*”: see *Loutchansky -v- Times Newspapers Ltd (Nos.2-5)* [2002] QB 321 [98]-[99]...

[192] Assuming but without deciding that a declaration is available in principle, I would decline to make one. [Counsel for the Claimant] makes clear that he is only seeking a declaration between the parties. But a danger of declarations as between parties is that they may, mistakenly, be seen as binding the rest of the world. This case is not about the media publication of the Dossier; it relates to relatively limited disclosures. This judgment and the order that will follow are a sufficient statement of the position. The Order may contain recitals which record my findings of inaccuracy. I have also taken into account my conclusion on the issue of compensation, which affords some real vindication for the first and second claimants.

19. Warby LJ returned to consider the remedy of declaration in *HRH The Duchess of Sussex -v- Associated Newspapers Ltd* [2021] EMLR 15 [29]-[40]. He had granted summary judgment to the claimant ([2021] 4 WLR 35) and the question of the remedies to be granted consequent on the judgment had to be resolved. The Judge noted Neuberger J’s observations from *FSA -v- Rourke* [2001] CP Rep 14 that: “... *when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration.*” The Judge was satisfied, on the facts of the case, that a declaration, in the terms sought by the claimant, would serve a useful purpose and he granted that remedy.
20. It is, however, one thing to grant a suitably worded declaration, after the Court has decided the merits of the claim (although the Court will always need to consider what, of value, a declaration adds beyond its judgment). It is another entirely to grant a declaration, consequent upon a default judgment against ‘Persons Unknown’, that certain information is “*inaccurate*”. The capacity for such a declaration to be misinterpreted by the public at large – and to be seen (or even to be promoted by the claimant) as representing some ‘adjudication’ by the Court that published allegations were ‘false’ – is obvious. On an application for default judgment, the Court simply

does not investigate, still less does it determine, the merits of the claim: *Brett Wilson LLP -v- Person(s) Unknown* [2016] 4 WLR 69 [18]-[19]. I have real difficulty in imagining the circumstances in which the Court would grant a declaration of “inaccuracy” in a data protection claim following a default judgment.

21. Perhaps recognising these issues, Mr Helme indicated that the Claimant would, if that stage were reached, be content to tailor any relief sought to that which is “*deemed necessary and proportionate*”.

B: Applications relating to service of the Claim Form

22. Together with the Claim Form and Particulars of Claim, on 29 August 2024, the Claimant also filed an Application Notice seeking orders (1) for permission to serve the Claim Form by an alternative method pursuant to CPR 6.15; and (2) for permission to serve the Claim Form on the Defendants out of the jurisdiction pursuant to CPR 6.36 and 6.37. The Application Notice, in section 3, stated the order sought and the reasons why as follows:

“An order pursuant to CPR 6.36 and 6.37 for permission to serve out of the jurisdiction on the First and Second Defendant and an order pursuant to CPR 6.15 for permission to serve by alternative method via the email addresses set out below given the Claimant cannot ascertain the Defendants’ identity or addresses...”

23. In respect of the alternative service application, the Claimant sought permission to send the Claim Form by email to inform@rucriminal.info, in respect of the First Defendant(s), and by email to LLCTFinance@hotmail.com, in respect of the Second Defendant(s). As required by CPR 6.15(4), the draft order included a provision that a Claim Form sent by email to the relevant email address would be deemed to have been served on the date the email was sent (if sent before 4pm GMT) or the following business day (if sent after 4pm GMT). The draft order proposed to give each Defendant 14 days after the deemed date of service of the Claim Form to file an acknowledgement of service and, having done so, 28 days from the deemed date of service to file a Defence (or to challenge the Court’s jurisdiction).
24. The Application Notice asked the Court to make the orders sought without a hearing.
25. On 25 October 2024, Steyn J refused to deal with the Claimant’s Application Notice of 28 August 2024 without a hearing. She gave directions for a hearing of those Applications before a Judge of the Media & Communications List. Included in her reasons, the Judge stated:

“An application to serve out of the jurisdiction, on persons unknown, in the context of a claim that seeks to restrain freedom of expression, gives rise to complex issues which I consider ought to be determined at a hearing rather than on the papers. Accordingly, I have made directions.”

The hearing was fixed for 21 November 2024.

26. In advance of the hearing, after the Court drew the Claimant’s attention to the requirements of CPR PD16 §2.3 (see [3] above), the Claimant filed a further Application Notice, on 18 November 2024, seeking an order dispensing with the

requirement to include each Defendant's address on the Claim Form ("the Dispensation Application").

C: Evidence in support of the Applications

27. The Applications in relation to service of the Claim Form was supported by the first witness statement of Michael Yates, one of the Claimant's solicitors, dated 20 August 2024. The Dispensation Application was supported by a second witness statement from Mr Yates, dated 18 November 2024.

(1) Permission to serve out

28. In his first witness statement, beyond what I shall set out, Mr Yates has provided no further information regarding the parties beyond that set out in the Particulars of Claim.

29. As to the application for permission to serve the Claim Form out of the jurisdiction, and in accordance with the Court of Appeal's decision in *Soriano -v- Forensic News LLC [2022] QB 533*, he addressed (1) the underlying merits of the data protection claim that the Claimant sought to bring; (2) the gateways under CPR PD6B §3.1; and (3) the appropriate forum.

30. As to the gateways, Mr Yates identified and relied upon the following paragraphs under §3.1:

“(2) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.

...

(9) A claim made in tort where – (a) damage was sustained, or will be sustained, within the jurisdiction; (b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction...”

(20) A claim is made... under an enactment which allows proceedings to be brought and those proceeding are not covered by any of the other grounds referred to in this paragraph.”

31. As to the appropriate forum, Mr Yates stated:

“The Claimant's habitual residence is England and Wales, and he has suffered damage in this jurisdiction. Whilst the Claimant is a Swiss citizen, the Claimant has told me that he has limited connections remaining in Switzerland and that, over the years, he has created a life for himself in England and that he has family members and a large network of friends and wider acquaintances with whom he both socialises and works with day to day. He also runs and operates his business in England as the CEO and is a director of several English, limited companies. For these reasons, the Claimant believes that England & Wales is the proper place for this claim to be brought and that the Court should therefore exercise its discretion to grant permission to serve out under CPR 6.37(4).”

32. That evidence dealt only with the Claimant's connection with the jurisdiction of England & Wales. The witness statement did not address – because it had not been identified – the jurisdiction in which the Defendants were located.

(2) Permission to serve the Claim Form by an alternative method

33. In support of the application under CPR 6.15, Mr Yates states, first, that the Defendants have “*gone to extreme and sophisticated lengths to conceal their identities*” from which he argues that the Claimant would be “*highly unlikely*” to be able to serve them via any other method “*on any reasonable timescale or at all*” unless an order for alternative service is made. No details have been provided as to the “*extreme and sophisticated lengths*” to which the Defendants are alleged to have gone to conceal their identities. Second, after letters of claim were sent, the Defendants, he says, have refused to engage or to identify themselves despite being asked to do so. Third, he relies upon the demand for money made by the First Defendant.
34. Mr Yates has exhibited several documents to his first witness statement. Some of these are self-explanatory – for example the correspondence sent by the Claimant's solicitors – but others are difficult to follow, and some are in Russian, with provision of what appears to be only a rudimentary translation.
35. I can summarise the documents presented in the exhibit (and what they contain) as follows:
- (1) The letter of complaint in respect of the First Article was sent by email to inform@criminal.info, on 5 January 2024, and included the following:

“On 3 May 2023 our client wrote to you to seek the removal of the Article. In response you attempted to extort our client for money (see Schedule 2 to this letter for evidence of the exchange).”
 - (2) The letter of complaint in respect of the Second Article was sent by email to LLCTFinance@hotmail.com, on 4 January 2024. It also included a reference to the 3 May 2023 letter sent by the Claimant to the operators of the rucriminal Website.
 - (3) The letter of 3 May 2023 has not been provided. It now appears that it was not sent by the Claimant, as claimed in the letter of 5 January 2024 (see [38] below).
 - (4) No reply was sent to either letter of claim from the email addresses to which the letters was sent.
 - (5) The documents in Schedule 2, enclosed with both letters of claim, are difficult to understand. There are two emails, in Russian, that have had their headers redacted. They have been translated into English, under the headings “*Facilitator*” and “*Executor*” (the meaning of which is not immediately apparent). It is impossible to identify from these documents between whom the emails were exchanged, using which email addresses and the date on which the messages were sent. The translation of the exchange is as follows:

“Facilitator:

Tell me if I understand correctly that this price above includes:

1) Removal of negativity by English language links [links to two website addresses on rucriminal.info are set out, the first of which is a link to the First Article]

2) A block on mentioning the person of Anton Chirkunov and the company Wheely in materials with the address en.

Executor:

Yes I will send you the payment details.”

- (6) The next document in Schedule 2 appears to be a printout of an exchange from WhatsApp. The messages appear to have been exchanged between 20-27 June, there is no indication as to the year, but from context it would seem likely to be 2023 because there is a contemporaneous reference to the Second Article. The people exchanging messages are not identified in the WhatsApp exchange and the text is in Russian. The translation, which identifies one of the parties as “George Chibisov” (“GC”) and the other as “Marina” (“M”), also includes some element of commentary/explanation. The exchange is as follows (reproduced exactly as it appears in the exhibit):

20 June

GC: “Tell me has the situation changed since we talked with you? I understand that articles need to be deleted, and over time they are copied. For example, a new one has appeared: [link to the Second Article]”

M: “George, good afternoon, I also saw this material in the morning, I was going to write to you.”

M: “I think Nick planned to delete it legally. In general, this material on the site can just be the foundation for removing the rest from Google. The only thing I haven’t analyzed the site in detail yet.”

M: “With whom I communicated on commercials in general disappeared (she means Executor from last message) and stopped responding to anything. There is another one with whom I worked. I can try to visit them again, but I would consider the option of legal action.”

M: “wrote to another one, if possible, they have been in the sector for more than 10 years. As the answer from them will be today/in the coming days, I will write to you.”

GC: “Marina, I’m sorry that I was silent and did not answer. I was at meetings without the opportunity to write. Thank you, I will wait for your answer, and in parallel with Nick I communicate on legal opportunities.”

M: “thank you, I hope there will be positive feedback from them”

GC: “Thank you!”

27 June

M: “Georgy, good afternoon, while there is also a refusal to delete materials. The argument is the same ‘we are afraid of a repeat of the fate of our colleagues’ – meaning those who are under investigation now. I’ll ask you again in a couple of months, if it’s relevant.”

GC: “Marina, good afternoon. Thank you for coming back to me with the news. I hope we can cooperate with you in the future. Stay in touch.”

M: “Thank you, mutually”

- (7) The Claimant’s solicitors sent letters, dated 28 February 2024, to StackPath LLC and Private Layer Inc. It is clear from the terms of the letters that the Claimant’s solicitors clearly believed that StackPath LLC and Private Layer Inc were hosting the rucriminal Website and Talk Finance Website respectively. The basis on which they reached that conclusion is not explained in the evidence. The letter asked both companies to identify the operators of the Website that they were hosting.
 - (8) StackPath LLC responded promptly, on 29 February 2024, stating that it “*did not provide service*” to the rucriminal Website. On 13 March 2024, the Claimant’s solicitors replied suggesting that “*an online hosting checker*” had suggested that it was hosting the rucriminal Website and asking if StackPath LLC could “*confirm who is providing hosting services to that website*”. There was apparently no response to that email. Private Layer Inc. did not respond to the Claimant’s solicitors’ inquiry.
 - (9) The rucriminal Website provides – at the top and bottom of its home page – “*Contacts – inform@rucriminal.info*”. The Talk Finance Website provides – at the foot of its homepage “*Contact us by LLCTFinance@hotmail.com*”.
 - (10) I note that, stated in the letter of claim to the Second Defendant, and in the letter sent to Private Layer Inc. (but not in the body of Mr Yates’ witness statement) it is alleged that two people, identified on the Talk Finance Website as “*authors*”, and a further individual identified as the “*managing editor*”, are fictitious, in the sense that, although the individuals exist, they do not work for the Talk Finance Website.
36. In his first witness statement, Mr Yates did not explain (or shed any further light upon) the exchanges of emails and messages set out in Schedule 2 to the letters of claim. They raise many questions. For example, in relation to the exchange of WhatsApp messages, who is Nick? The reference to Marina’s prior contact with the “*Executor*” is not explained and no further information is given. The fact that s/he “*stopped responding to anything*”, might be thought to be inconsistent with an alleged effort at blackmail/extortion. A second potential contact is identified by Marina, but no further details are provided. The whole exchange cries out for a proper explanation of what is being referred to.

37. In his second witness statement, although this was ostensibly dealing with the Dispensation Application, Mr Yates provided some further information about these exchanges. This evidence is important. It is to be noted that the Claimant had originally submitted the Application Notice of 28 August 2024, together with Mr Yates' first witness statement, asking the Court to deal with the application, without a hearing, based on the material submitted in Mr Yates' first witness statement. It is now clear that this evidence was materially incomplete.

38. In this second witness statement, Mr Yates provided the following further information:

“In May 2023 the Claimant engaged an intermediary to contact the First Defendant to seek to secure the removal of the First Article. I note that I said in my First Witness Statement that the Claimant had contacted the First Defendant directly, but this was a mistake on my part, and I had meant that contact was made not via this firm. Having now spoken to the Claimant again about these communications, he has told me that Wheely's former marketing director, George Chibisov, engaged Adves (a search engine reputation management provider) to approach the First Defendant. As a result of that approach, Mr Chibisov informed the Claimant that the First Defendant told Adves that it would not remove the First Article unless the Claimant paid the sum of US \$30,000.

The partially redacted message exchanges in Schedule 2 of the Letters Before Action were provided to Mr Chibisov by Adves in this form. Mr Chibisov left Wheely and the Claimant found the messages by reviewing his Wheely email account, together with the Claimant's instant messages with Mr Chibisov. For the avoidance of any doubt, the Claimant is not aware of the email address which Adves used to contact the First Defendant. The Claimant is not aware of any email address used for the First Defendant other than that provided on its website and set out in the Draft Order.

A further point may be made in relation to the First Defendant's refusal to remove the First Article unless the Claimant paid the sum of US \$30,000. Although I have been unable to establish any clear link between the Defendants, I am aware from Counsel for the Claimant, who was also Counsel in the Zhurba claim, that a similar tactic was adopted by the Second Defendant in this action whereby payment of Bitcoin was demanded to remove the article in the Zhurba case.”

(The reference to the “Zhurba” claim/case is to ***Zhurba & Another -v- Persons Unknown [2023] EWHC 3535 (KB)***, in which Mr Helme appeared for the Claimants.)

39. At the hearing, I was told (by way of further evidence) that Mr Chibisov is now dead. “Marina”, who exchanged messages with Mr Chibisov (see [35.(6)] above) was the “intermediary” who worked for Adves. Beyond her first name, she has not otherwise been identified. The person at the First Defendant, who told Adves that it would remove the First Article if paid US\$30,000, has not been identified. The Claimant does not have the unredacted email messages (see [35.(4)] above).

40. The way this evidence has been presented – in relation to important issues on this application – could hardly be described as thorough or straightforward. There are

significant unexplained areas and obvious avenues of further investigation apparently left unexplored.

- (1) There is no statement from Mr Chibisov, and he is now dead. Beyond what Mr Yates says that he was told by the Claimant, who was given the information by Mr Chibisov, I have no evidence from Adves, not even the name of the person who provided the information to Mr Chibisov.
 - (2) Beyond the fact that she worked for Adves, I have no information about who “Marina” is. The original emails – unredacted and showing the important header information – have not been provided and appear to be part of a wider conversation, which has not been provided. It now appears that the emails were provided in this (redacted) form to Mr Chibisov by Adves. No explanation has been provided as to whether Adves is able to provide the unredacted copies of relevant emails.
 - (3) The instant messages from the Claimant to Mr Chibisov, referred to by Mr Yates have not been provided.
 - (4) The letter of 3 May 2023 – referred to in the Claimant’s solicitors’ letter of 5 January 2024 – has not been provided (whoever sent it).
 - (5) The WhatsApp messages clearly demonstrate that there had been previous communications, which have not been provided. The email exchange similarly suggests that there had been prior communications, which have not been provided. Mr Yates has now confirmed that the Claimant does not know the email address used by Adves to contact the First Defendant.
 - (6) It is impossible to draw any reliable conclusions about the circumstances in which the alleged demand for US\$30,000 was made. No documents have been provided that demonstrate the demand being made. It is entirely unclear who made the demand and in what terms. In the Particulars of Claim (see [13] above), the demand is attributed to the “*First Defendant*”, but such is the imprecise definition of the ‘Persons Unknown’ it is impossible to identify who it is alleged made this blackmail threat. The email exchanges strongly suggest that the discussion was wider than the removal of the First Article (see [35.(4)] above). The only thing that can be said with confidence is that the evidence that has been presented falls a long way short of demonstrating “*blackmail*”.
41. Whatever can be said about what the evidence does *not* show, one thing is clear: it does not demonstrate that there has been *any* effective communication with the email addresses inform@rucriminal.info or LLCTFinance@hotmail.com, which will be important when I come on to consider the alternative service application.
42. Pressed by me at the hearing, Mr Helme submitted that the evidence that the Claimant has provided, and the inferences that can be drawn from it, suggest that the First Defendant(s) are in Russia. He submitted that the evidence does not enable a conclusion to be drawn as to where the Second Defendant(s) are located.

(3) The Dispensation Application

43. In his second witness statement, Mr Yates acknowledges that the Court must be asked to dispense with the requirement to provide the address of each Defendant on the Claim Form. The Claimant seeks such an order on the basis that he cannot provide an address for the Defendants because the addresses are not known.
44. Mr Yates provided printouts from <https://lookup.icann.org/en/lookup> (“the ICANN Website”) showing the publicly available information about the two Websites. He noted that no address was provided for either Website. Having reviewed the printouts provided, it is correct that some of the contact information is not available on the ICANN Website. However, the website states:
- “If the registration data you are seeking is not provided in the lookup results, please use the Registration Data Request Service (RDRS) to submit a request for nonpublic registration data. RDRS is intended for use by requestors with a legitimate interest in accessing nonpublic registration data.”
45. Mr Yates has not explained whether any request has been made for the non-public registrations data or, if it has, what information was provided.

(4) Full and frank disclosure

46. In his First Witness Statement, Mr Yates included a section headed “*Full and fair disclosure*” (reflecting the way in which the duty is described by Ralph-Gibson LJ in ***Brink’s Mat Ltd -v- Elcombe* [1988] 1 WLR 1350, 1356G**). Nothing turns on any distinction in meaning between the words “*frank*” and “*fair*”.
47. As to potential *Norwich Pharmacal* applications that the Claimant might have been expected to pursue, Mr Yates said this:
- “... it might be said that the Claimants (sic) should have made an application for *Norwich Pharmacal* relief or perhaps an application for a subpoena in the USA prior to bringing his claim against persons unknown. The reason why this was not done was because it was considered that a *Norwich Pharmacal* or subpoena application would be very unlikely to provide assistance to the Claimants (sic) based on the facts as known. This is because this firm wrote to entities which appeared to be the hosting providers of the [rucriminal Website] and the [Talk Finance Website]... asking them to provide the details of the operators of each website. Respectively, these hosting providers either failed to respond or denied any involvement and failed to cooperate when asked for information about who the alternative hosts may be... Making such applications would also be very costly and cause further delay. Hosting providers based outside this jurisdiction would also be unlikely to comply with any *Norwich Pharmacal* order and could, as I understand it, also use possible protections under the First Amendment to prevent compliance with a subpoena granted in the US courts.
48. Mr Yates does not explain who reached the conclusion that pursuit of *Norwich Pharmacal* applications was unlikely to help the Claimant. The explanation is unconvincing. I have already summarised the extremely limited correspondence between the Claimant’s solicitors and the two companies that they clearly believed were hosting the websites (see [35.(7)]-[35.(8)] above). StackPath LLC’s denial that it hosted the rucriminal Website did not apparently lead to any further inquiries as to

who was hosting it. Private Layer Inc did not respond to the Claimants' solicitors' inquiries and there appears to have been no further investigation.

49. Mr Yates has not explained the basis for his claims that hosting providers based outside England & Wales would be unlikely to comply with a *Norwich Pharmacal* order or might raise issues under the First Amendment to challenge a subpoena granted in the US courts. Without any further explanation, I find both claims surprising. If a litigant wishes to rely upon what are alleged to be problems with the enforcement of orders in a foreign jurisdiction, then s/he can be expected to provide proper evidence about it.
50. It is my experience, as a Judge in the Media & Communications List, that *Norwich Pharmacal* applications remain very effective in providing information that can be used to identify people who publish anonymously online. Some of the largest companies involved in hosting content on the internet, many of which are based in the United States, are frequent respondents to *Norwich Pharmacal* orders made by the Courts of England & Wales. I am not aware of such orders being routinely challenged and there is generally a high level of compliance. In *Gatley on Libel and Slander* (§33-005, *Sweet & Maxwell*, 2022), the authors state that “*the reality is that [Norwich Pharmacal] applications are almost invariably consented to by the respondent internet service provided or webhost, which usually does not even appear before the court..., but instead contents itself with maintaining a position of neutrality and indicating that it will abide by any order that the court thinks it right to make.*” That certainly accords with my own experience. A recent example is the case of ***Davidoff -v- Google LLC [2024] 4 WLR 6***. Although the Claimants in that case were ultimately unsuccessful in obtaining a *Norwich Pharmacal* order against Google (because it was not caught up in the relevant wrongdoing), earlier *Norwich Pharmacal* orders, granted by the Court on the Claimants' application, had been complied with and had led to information being disclosed which identified the IP addresses and locations of 11 people who had posted online and in respect of whom the Claimants believed that they had a civil claim (see the Annex to the judgment).
51. In his further written submissions, Mr Helme referred to ***Brett Wilson LLP -v- Persons Unknown*** in which a *Norwich Pharmacal* order was apparently ignored by the website owners [7]. The fact that, in that case, a *Norwich Pharmacal* order was not successful in identifying the defendant does not stand as authority for other litigants in other cases not to pursue this line of investigation. The fact that the claimant, in ***Brett Wilson LLP***, had attempted to identify the defendant, including by obtaining a *Norwich Pharmacal* order, but had failed, provide a justification for why it was forced to proceed against ‘Persons Unknown’.
52. I also do not recognise the suggestion that US companies, who are respondents to *Norwich Pharmacal* orders from the Courts of England & Wales, or subpoenas issued by a US Court, typically challenge them on First Amendment grounds. In ***Bacon -v- Automattic Inc [2012] 1 WLR 753*** [14], expert evidence was provided from a US attorney who stated that he did not envisage difficulty with enforcing a *Norwich Pharmacal* order in California. I appreciate that this was over 10 years ago, but I am not aware of any significant problems in compliance with *Norwich Pharmacal* orders. Applications for *Norwich Pharmacal* orders remain part of the staple diet of the Media & Communications List and are typically sought by those attempting to identify those who are responsible for online publications.

53. On the evidence, I conclude that the Claimant has simply chosen not to pursue several avenues of investigation, including applications for *Norwich Pharmacal* relief. The basis for this decision is unpersuasive and unimpressive. On the evidence that has been provided, I am left with a very clear impression that the Claimant thought that he could avail himself of a simple short-cut – avoiding the cost of further investigations to identify the Defendants – by the expedient of issuing a claim against ‘Persons Unknown’. The argument that this step was taken to avoid further delay is hollow. It is nearly 4 years since the First Article was published. It took the Claimant 3 years before he sent a letter of claim relating to the First Article. The Second Article was published over a year before the Claim Form in this action was issued. The steps taken by the Claimant show that he does not regard the case as urgent. Further, as the limitation period for data protection claims is 6 years, there is ample time for the Claimant to pursue any pre-action investigations and *Norwich Pharmacal* applications. In my judgment he should have done so before launching proceedings against ‘Persons Unknown’.
54. In his further written submissions, Mr Helme set out what steps the Claimant’s solicitors took to investigate the identity and location of the Defendants. To the extent that this relies on evidence that had not been provided to the Court, I am not prepared to consider it. The Claimant has had two opportunities to file evidence in support of his applications. The extent of the evidence as to the inquiries made on behalf of the Claimant is set out earlier in the judgment. The most obvious avenue of further inquiry was to request further registration information relating to the two websites from the ICANN Website (see [44]-[45] above), but I have no evidence as to whether such inquiries were made or, if they were, what information was provided.

D: Legal principles

(1) Permission to serve the Claim Form by an alternative method

55. It is convenient to summarise these principles first. Although it might be thought that, logically, the question of whether permission should be granted to serve the Claim Form out of the jurisdiction should be resolved before the method of service is considered, because there is a significant overlap of the issues that arise, it assists if I deal with alternative service first.
56. CPR 6.15 provides:
- “(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
 - (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.
 - (3) An application for an order under this rule –
 - (a) must be supported by evidence; and
 - (b) may be made without notice.

- (4) An order under this rule must specify –
 - (a) the method or place of service;
 - (b) the date on which the claim form is deemed served; and
 - (c) the period for –
 - (i) filing an acknowledgment of service;
 - (ii) filing an admission; or
 - (iii) filing a defence.”
57. The central issue on an application for alternative service is whether the claimant can demonstrate that there is a good reason to authorise the proposed method of service. The leading authority is *Abela -v- Baadarani* [2013] 1 WLR 2043 and the principles are summarised in the *White Book* §6.15.3:
 - (1) Whether there is good reason to treat a method of service not permitted by CPR Part 6 as good service under CPR 6.15(1) and (2) is essentially a matter of fact.
 - (2) The contrast with CPR 6.16, under which the court can only dispense with service of the claim form “*in exceptional circumstances*”, shows that it is not right to add a gloss to the test by holding that there will only be good reason in exceptional circumstances.
 - (3) It should not be necessary for the court to spend undue time analysing decisions of judges in previous cases which have depended on their own facts.
 - (4) The mere fact that the defendant has learned, by the method used, of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under CPR 6.15(2), but the wording of the rule shows that it is a critical factor.
 - (5) The most important purpose of service is to ensure that the contents of the document is communicated to the defendant.
58. As to that last factor, on any application for a permission to serve the Claim Form by an alternative method, or an alternative place, the cardinal principle is that the proposed method of service must be shown to be reasonably likely to bring the proceedings to the attention of the defendant: *Cameron -v- Liverpool Victoria Insurance Co Ltd* [2019] 1 WLR 1471 [21]. This reflects the wider fundamental principle of justice that a person cannot be made subject to the jurisdiction of the court without having such notice of the proceedings as will enable him to be heard: *Cameron* [17] and *Abela* [37]-[38] *per* Lord Clarke.
59. Ultimately, whether the proposed method of alternative service is one that can reasonably be expected to bring the proceedings to the attention of the defendant is a question of fact to be resolved on the evidence. If there is more than one defendant in

respect of whom an alternative service order is sought, the test must be satisfied for each defendant.

60. If it is not possible to devise a method of service that is reasonably likely to bring the proceedings to the attention of the defendant, the application for alternative service will fail. Alternative service orders are not granted as a reward for persistence in trying conventional methods of service that have been unsuccessful; neither are they punishment for a defendant's efforts to evade being served. These circumstances may supply the "good reason" why alternative service is needed, but unless the claimant can propose a method of service that is reasonably likely to bring the proceedings to the defendant's attention, the application will fail. Even an abundance of "good reasons" will not make up for a deficiency in proving an effective method of communication.
61. In litigation sought to be pursued against 'Persons Unknown', applications for alternative service orders are likely to be essential, but the principles are the same: ***LB Barking & Dagenham -v- Persons Unknown*** [2021] EWHC 1201 (QB) [31]-[34], [43]-[48], [164]-[166]. There is an important inter-relation between the definition of the 'Persons Unknown' and the proposed method of alternative service. The greater, and more ambitious, the width of the definition of 'Persons Unknown' in the Claim Form, correspondingly the more difficult it is likely to be to satisfy the requirements for an order for alternative service. That is simply a reflection of the fact that the method of alternative service must bring the proceedings to the attention of *all* the defendants in the class: ***Barking & Dagenham*** [47]. There is also a separate requirement that the definition of 'Persons Unknown' must be sufficiently clear to make it clear to a potential defendant whether s/he is the target of the claim, without being required to work their way through the body of a lengthy statement of case to answer that question: ***Birmingham City Council -v- Afsar*** [2020] EWHC 864 (QB) [21(2)].
62. Any alternative service order *must* contain the matters required in CPR 6.15(4). A failure to include the deemed date of service and/or the date for filing an acknowledgement of service and/or defence may mean the claimant is unable to show default for the purposes of getting default judgment: ***Dubai Financial Group LLC -v- National Private Air Transport Services*** [2016] EWCA Civ 71 [38].

(2) Permission to serve the Claim Form outside the jurisdiction

63. On the evidence, the overwhelming likelihood is that the Defendants are outside the jurisdiction of England & Wales (and are not domiciled in Scotland or Northern Ireland). As such, CPR 6.36 requires the Claimant to make an application to obtain the permission of the Court to serve the Claim Form on the Defendants outside the jurisdiction.
64. The general principles to be applied when considering an application for permission to serve the Claim Form outside the jurisdiction are not in dispute. They are set out in ***Altimo Holdings and Investment Ltd -v- Kyrgyz Mobile Tel Ltd*** [2012] 1 WLR 1804 [71], [81] and [88] and ***VTB Capital plc -v- Nutritek International Corp*** [2012] 2 Lloyd's Rep 313 [99]-[101]. In summary, the claimant must satisfy the Court of three things:

- (1) (the merits test) in relation to the foreign defendant to be served with the proceedings, that there is a serious issue to be tried on the merits of the claim, i.e. a substantial question of fact or law or both. This means that there must be a real, as opposed to a fanciful, prospect of success on the claim;
- (2) (the gateway requirement) there is a good arguable case that the claim against the foreign defendant falls within one or more of the classes of case set out in CPR PD6B §3.1. “*Good arguable case*”, in this context, means that the claimant has a much better argument than the foreign defendant. Where a question of law arises in connection with a dispute about service out of the jurisdiction, and that question of law goes to the existence of the jurisdiction (e.g. whether a claim falls within one of the classes set out in CPR PD6B §3.1), then the Court will normally decide the question of law, as opposed to seeing whether there is a good arguable case on that issue of law; and
- (3) (the forum test) that England & Wales is clearly or distinctly the appropriate forum for the trial of the dispute and that in all the circumstances the Court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. As to this, following *Spiliada Maritime Corporation -v- Cansulex Ltd* [1987] AC 460, 475-484 *per* Lord Goff:
 - a) where a claimant seeks permission to serve the proceedings on a foreign defendant out of the jurisdiction, the task of the Court is to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice; and
 - b) in such a case the burden is on the claimant to persuade the Court that England & Wales is clearly or distinctly the appropriate forum.

65. CPR 6.37 provides:

- “(1) An application for permission under rule 6.36 must set out –
- (a) which ground in paragraph 3.1 of Practice Direction 6B is relied on;
 - (b) that the claimant believes that the claim has a reasonable prospect of success; and
 - (c) the defendant’s address or, if not known, in what place the defendant is, or is likely, to be found.
- (2) Where the application is made in respect of a claim referred to in paragraph 3.1(3) of Practice Direction 6B, the application must also state the grounds on which the claimant believes that there is between the claimant and the defendant a real issue which it is reasonable for the court to try.
- (3) The court will not give permission unless satisfied that England and Wales is the proper place in which to bring the claim.
- (4) In particular, where –

- (a) the application is for permission to serve a claim form in Scotland or Northern Ireland; and
 - (b) it appears to the court that the claimant may also be entitled to a remedy in Scotland or Northern Ireland, the court, in deciding whether to give permission, will –
 - (i) compare the cost and convenience of proceeding there or in the jurisdiction; and
 - (ii) (where relevant) have regard to the powers and jurisdiction of the Sheriff court in Scotland or the county courts or courts of summary jurisdiction in Northern Ireland.
- (5) Where the court gives permission to serve a claim form out of the jurisdiction –
- (a) it will specify the periods within which the defendant may –
 - (i) file an acknowledgment of service;
 - (ii) file or serve an admission;
 - (iii) file a defence; or
 - (iv) file any other response or document required by a rule in another Part, any other enactment or a practice direction; and
 - (b) it may give directions about the method of service.

(The periods referred to in paragraphs (5)(a)(i), (ii) and (iii) are those specified in the Table in Practice Direction 6B.)”

66. The importance of the requirement, under CPR 6.37(1)(c), to provide the address of the defendant is also emphasised in Practice Form 6A, paragraph 1 of which provides:

“The applicant should use Form N244 and include in paragraph 3 the following:

‘for an order that the claimant has permission under rules 6.36 and 6.37 to serve (party) at (state the full address, including the country, at which the party is to be served), or elsewhere in (state again the name of the country)’.”

(I note that, in respect of Arbitration Claims, CPR 62.5(2) similarly requires that an application for permission to serve an arbitration claim form out of the jurisdiction must be supported by written evidence “*showing in what place or country the person to be served is, or probably may be found*”)

67. It is not surprising that there are strict requirements, on an application for permission to serve the Claim Form outside the jurisdiction, to identify the location of the defendant. The domicile/location of the defendant is relevant, first, to *whether* the Court will grant permission to serve the Claim Form on the defendant in that jurisdiction (applying the forum test) and, second, if permission is granted, *how* the defendant is to be served with the Claim Form under CPR 6.40.

68. CPR 6.40(3) and (4) provide:

“(3) Where a party wishes to serve a claim form or other document on a party out of the United Kingdom, it may be served –

(a) by any method provided by -

(i) ...

(ii) rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities); or

(iii) rule 6.44 (service of claim form or other document on a State)

(b) by any method permitted by a Civil Procedure Convention or Treaty;

(c) by any other method permitted by the law of the country in which it is to be served.

(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the claim form or other document is to be served.”

69. If the Court has granted permission to serve a Claim Form on a defendant outside the jurisdiction, then CPR 6.37(5)(b) gives the Court jurisdiction to permit service of the Claim Form on that defendant by alternative means: see e.g. *Marashen Ltd -v- Kenvett Ltd* [2018] 1 WLR 288 [17]-[18].

70. In this case, the Defendant has not complied with CPR 6.37(1)(c) (or PF 6A). He has not provided either an address for each Defendant or (even) the country in which the Defendant is, or is likely, to be found. The reason for this failure is that such investigations as the Claimant has carried out have not enabled him to identify the (probable) location of the Defendants. One question that arises on this application is whether the failure to comply with the mandatory requirement in CPR 6.37(1)(c) is an impediment to the Court nevertheless granting permission to serve out.

71. This point does not appear to have been considered specifically in the authorities that Mr Helme has been able to identify. There are several examples of the Court having granted permission to serve out in claims against ‘Persons Unknown’, but in none of those cases was the specific point addressed.

72. The notes in the current edition of the *White Book* state (§6.40.4):

“In a number of cases, the courts have made orders for alternative service against defendants (including ‘persons unknown’) where their location is not known, so that they could be within or outside the jurisdiction, and where traditional methods of service are unavailable or are unlikely to be effective. In such circumstances, the courts have been quite creative in granting permission to serve out of the jurisdiction by alternative methods. These have included, in a number of cases involving alleged cryptoasset fraud, service by ‘non-fungible token’ (or NFT) to relevant ‘wallets’ on a cryptoasset exchange. See for example *D’Aloia -v- Persons Unknown* [2022] EWHC

1723 (Ch), *Jones -v- Persons Unknown* [2022] EWHC 2543 (Comm) and *Osbourne -v- Persons Unknown* [2023] EWHC 39 (KB).”

73. Mr Helme has identified several first instance decisions which, he submits, show that the Court has been willing to grant permission to serve a Claim Form out of the jurisdiction without knowing in which country the defendant is located.

- (1) In ***PML -v- Persons Unknown* [2018] EWHC 838 (QB)**, I dealt with the return date of an interim injunction granted against “hackers”. In [18], I acknowledged that there was a possibility that the defendant(s) might be domiciled outside the jurisdiction and granted permission to serve the Claim Form out of the jurisdiction. There was no consideration of CPR 6.37(1)(c).
- (2) In ***Linklaters LLP -v- Mellish* [2019] EWHC 177 (QB)**, Warby J dealt with an interim injunction application to restrain threatened disclosure of information by a former employee. It appears that the defendant was likely to have been either in the jurisdiction or in France; it was unlikely (but not impossible) that he was in Australia ([20]). The Judge granted permission to serve the Claim Form on the defendant by email and, if he was in France (or Australia), permission to serve the Claim Form out of the jurisdiction. He said ([21]):

“Given the claimants’ ignorance of the defendant’s whereabouts, I granted permission, pursuant to CPR 6.15 and 6.27, for service of the claim form and other documents in the case to be effected by an alternative method, namely email in combination with text messages to alert the defendant to the existence of the emails. I was satisfied that this was legitimate, notwithstanding the limits on the permissible methods of service abroad that are laid down by CPR 6.40. Email is not a method of service allowed under French law, so I am told. But, as Mr Caldecott pointed out, the prohibition in r 6.40(4) relates to methods of service that are ‘contrary to the law of the country where the claim form or other document is to be served’. There is nothing to suggest that French or for that matter Australian law prohibits the service of English proceedings by email or text. And CPR 6.15 applies to authorise service ‘by a method or at a place not otherwise *permitted*’ ***Abela -v- Baadarani* [2013] 1 WLR 2043 [24].”**

Although there was no consideration of CPR 6.37(1)(c), the candidate jurisdictions were clearly identified.

- (3) ***AA -v- Persons Unknown* [2020] 4 WLR 35** is another hacking case. The location of the persons unknown defendants was not known. Bryan J granted permission to serve the Claim Form out of the jurisdiction ([71]). In the context of the further application to permit service of the Claim Form by an alternative method, the Judge noted ([73]) that the persons unknown defendants “*could be in this jurisdiction, in which case permission to serve out would not even be needed. They could be in any jurisdiction*”. CPR 6.37(1)(c) was not considered.
- (4) ***Ince Group -v- Persons Unknown* [2022] EWHC 808 (QB)** is a decision on an interim injunction application in a further cyber-attack case. Although the

Judge permitted alternative service ([17]), the issue of service out of the jurisdiction did not arise.

- (5) *D'Aloia -v- Persons Unknown* [2022] EWHC 1723 (Ch) was an interim injunction case in a case of alleged fraudulent misappropriation of cryptocurrency. In relation to the persons unknown defendants, the evidence did not demonstrate where they were domiciled, although there was limited evidence that they might be in Hong Kong ([16]). There was no consideration of CPR 6.37(1)(c).
 - (6) *Jones -v- Persons Unknown* [2022] EWHC 2543 (Comm) is a summary judgment decision in a crypto-asset theft case. Permission to serve the Claim Form out of the jurisdiction had been granted previously ([13]), so the decision does not assist on the point I am considering.
 - (7) *Osborne -v- Persons Unknown* [2023] EWHC 39 (KB) is another crypto-asset misappropriation case. The interim injunction against the persons unknown first defendants had been granted at an earlier point, together with permission to serve the Claim Form out of the jurisdiction by alternative means. The Claimant then made an application to Lavender J to join further defendants, including further persons unknown. Permission to serve out was granted ([44]). There was no consideration of CPR 6.37(1)(c) or specific attention on the location of the defendants in respect of whom permission to serve the Claim Form out of the jurisdiction was sought.
 - (8) *Armstrong Watson LLP -v- Persons Unknown* [2023] 4 WLR 41 is another cyber-attack interim injunction case. One of the issues that arose at the hearing was the question of service out of the jurisdiction. The claimant did not know the location of the defendants ([20]). The judgment deals with the principles governing applications for permission to serve out and permission to serve the Claim Form by an alternative method (but does not focus on the issue of the location of the defendants and CPR 6.37(1)(c)).
 - (9) *Synnovis Services LLP -v- Persons Unknown* [2024] EWHC 2127 (KB) is another interim injunction decision following a cyber-attack. The location of the defendants was not known. Relying upon *Armstrong Watson LLP*, Stacey J granted permission to serve the Claim Form out of the jurisdiction and by alternative means ([21]-[22]).
74. As I have noted, in none of these cases did the Court consider the terms of CPR 6.37(1)(c), and in few cases was any real attention paid to the location of the defendant. This may have been because, in most cases, the application relating to service of the Claim Form was an adjunct to an urgent interim injunction application.
75. In my judgment, it is necessary to recognise several fundamental principles.
- (1) Service of the Claim Form is not simply a procedural formality. It is the step by which the jurisdiction of the Court is established over a defendant: *Barton -v- Wright Hassall LLP* [2018] 1 WLR 1119 [8].

- (2) The traditional view is that service of the Claim Form out of the jurisdiction is an exercise of sovereignty within the foreign state in which the originating process is to be served. It requires the defendant, if s/he is to dispute the claim, to file an acknowledgment of service and to participate in litigation in what, for him/her, is a foreign state. The act, by the Courts of England & Wales, of permitting a Claim Form to be served on a defendant in a foreign state is an interference with the sovereignty of the country in which service is to be effected. Ordinarily, it requires the consent of the foreign state: *Cecil -v- Bayat* [2011] 1 WLR 3086 [61]-[65] (and cases cited there).
 - (3) CPR 6.40(4) recognises that service of the Claim Form potentially impacts upon the sovereignty of the state in which service is to be effected and provides that nothing in the order of the Court granting permission authorises or requires any person to do anything which is contrary to the law of the country of service: *Abela -v- Baadarani* [2013] 1 WLR 2043 [45] *per* Lord Clarke.
 - (4) In modern times, the accession of the United Kingdom to several conventions regulating the international jurisdiction of national courts means that in most cases where service out is authorised, there will have been either a submission to the jurisdiction of the Courts of England & Wales or there will be a substantial connection between the dispute and this country which makes the Courts of England & Wales clearly the most appropriate forum: *Abela* [53] *per* Lord Sumption.
 - (5) One of the most important sources of the consent of foreign states to service of foreign process within their territory is to be found in the Hague Convention. The Hague Convention provides the permissible methods of service. Contracting Parties to the Convention can opt out of some methods of service. The Russian Federation, for example, objects, under Article 10, to foreign process being sent by post to people in Russia. To effect service in Russia, the necessary documents must be sent to the Central Authority in the Russian Federation, which is the Ministry of Justice. The documents to be served must be translated into Russian. The Central Authority will then undertake service.
 - (6) Orders permitting service of a Claim Form by alternative means which would subvert the principles on which service and jurisdiction are regulated by agreement between the United Kingdom and its convention partners are exceptional: *Knauf UK GmbH -v- British Gypsum Ltd* [2002] 1 WLR 907 [59]; *Cecil -v- Bayat* [65]-[68]. In the context of applications for alternative service, where the Hague Convention applies, it is important to ascertain the service regime that applies to the relevant country.
76. In cases which involve service abroad under the Hague Convention or a bilateral treaty, the following principles were identified by Popplewell J in *Soci t  G n rale -v- Goldas Kuyumculuk Sanayi Ithaltat Ihracat A.S.* [2017] EWHC 667 (Comm) [49(9)] (approved by the Court of Appeal [2019] 1 WLR 346):
- “(a) Where service abroad is the subject matter of the Hague Convention or a bilateral treaty, it will not normally be a good reason for relief under

CPR 6.15 or 6.16 that complying with the formalities of service so required will take additional time and cost: *Knauf* [47], *Cecil* [66], [113].

- (b) It remains relevant whether the method of service which the Court is being asked to sanction under CPR 6.15 is one which is not permitted by the terms of the Hague Convention or the bilateral treaty in question. For example, where the country in which service is to be effected has stated its objections under Article 10 of the Hague Convention to service otherwise than through its designated authority, as part of the reciprocal arrangements for mutual assistance on service with this country, comity requires the English Court to take account of and give weight to those objections: see *Shiblaq -v- Sadikoglu* [2004] 2 All ER (Comm) 596 [57]. In such cases relief should only be granted under Rule 6.15 in exceptional circumstances. I would regard the statement of Stanley Burnton LJ in *Cecil* [65] to that effect, with which Wilson and Rix LJ agreed, as remaining good law; it accords with the earlier judgment of the Court in *Knauf* [58]-[59]; Lord Clarke at paragraphs [33] and [45] of *Abela* was careful to except such cases from his analysis of when only a good reason was required, and to express no view on them (at [34]); and although Stanley Burnton LJ's reasoning that service abroad is an exercise of sovereignty cannot survive what was said by Lord Sumption (with unanimous support) [53] of *Abela*, there is nothing in that analysis which undermines the rationale that as a matter of comity the English Court should not lightly treat service by a method to which the foreign country has objected under mutual assistance treaty arrangements as sufficient. That is not to say, however, that there can never be a good reason for ordering service by an alternative method in a Hague Convention case: *Bank St Petersburg OJSC -v- Arkhangelsky* [2014] 1 WLR 4360 [26].

77. If service is to be effected in a country in which there are no bilateral treaties for service, then the question is simply whether, in all the circumstances of the particular case, there is a good reason to make the alternative service order sought: *Abela* [34]-[35].

E: Discussion and decision

(1) The definition of 'Persons Unknown' in the Claim Form

78. There was discussion at the hearing about the definition of the Persons Unknown against whom the Claimant wishes to pursue his claim. I was concerned at the potential width of the definition and its capacity to embrace several different people. Responsibility for publication is a broad concept, ranging from all those who participate in the act of publication (e.g. authors and editors) to those who have a secondary role in publication (e.g. those who host the website on which the material is published). As the facts of this case might demonstrate, those who are "responsible" for a publication may not be based in the same jurisdiction, and the wider the definition of 'Persons Unknown' the more difficult it is to fashion a proposed method of alternative service that can reasonably be expected to bring the Claim Form to the attention of all of those in the class of the 'Persons Unknown'.
79. Given the nature of the claim that the Claimant wishes to pursue, Mr Helme indicated that the Claimant would be content to redefine the 'Persons Unknown' to identify

only the ‘data controller’ of each Website. That would narrow down, and more precisely target, the person(s) whom the Claimant seeks to hold responsible for the historic and continuing processing of what he alleges to be inaccurate data. This more focused definition would also avoid the potential problem that not everyone who is “*responsible*” for the publication of the Articles is likely to be a ‘data controller’ (see [10] above). I will therefore treat the Claimant’s applications relating to service of the Claim Form as being made on the basis that he would, as a condition of being granted the orders he seeks, be willing to amend his Claim Form and Particulars of Claim to redefine the ‘Persons Unknown’ as indicated.

(2) Permission to serve the Claim Form out of the jurisdiction

80. On the evidence, and applying the principles from *Soriano*, I am satisfied that, as between the Claimant and the revised definition of the First and Second Defendant ‘Persons Unknown’, there is a serious issue to be tried on the merits of the claim. At this stage, this is not a difficult hurdle to surmount. Neither Defendant has had an opportunity of advancing a defence or evidence in answer to the Claimant’s claim. The analysis of the claim is based solely on the pleaded case and the relevant law. Based upon the facts averred in the Particulars of Claim, the Claimant has a real prospect of success with his claim. There is undoubted publication of the First and Second Articles in this jurisdiction. There is a real prospect of the Claimant demonstrating that such publication amounts to processing of his data, which he alleges are inaccurate. I am satisfied that the merits test is satisfied. The extent of publication, and any argument that it does not amount to a real and substantial tort, would be something to be raised by one or more of the Defendants on an application to set aside any grant of permission to serve the Claim Form out of the jurisdiction.
81. I am also satisfied that the gateway requirement is satisfied. The claim advanced by the Claimant falls within paragraphs (2) and (9) of CPR PD6B §3.1. It is not necessary to consider paragraph (20), which in any event is a fall-back.
82. On the evidence provided by the Claimant, and for the reasons that follow, I am not presently satisfied that England & Wales is clearly or distinctly the appropriate forum for the trial of the dispute. I therefore decline to exercise the discretion to permit the Claim Form to be served on the First and Second Defendants out of the jurisdiction.
83. Dealing first with the non-compliance with CPR 6.37(1)(c), the explanation for the non-compliance is prosaically simple: the Claimant cannot at present provide that information. The evidence he has gathered does not demonstrate where the Defendants are, or are likely, to be found. Mr Helme’s primary submission is that the location of the Defendants cannot be established. Pressed by me at the hearing, he accepted that there are factors that suggest that the First Defendant(s) might be in the Russian Federation, but I recognise that this is little more than educated guesswork. It could well be wrong.
84. As to the consequences of non-compliance, Mr Helme has submitted that CPR 6.37(1) is only a procedural requirement governing what must be included in an Application Notice seeking permission to serve a Claim Form out of the jurisdiction. No doubt, as a summary, that is correct, but it rather overlooks that the purpose of requiring this information is not procedural, it is substantive. The provision has an element of flexibility built in. If the claimant does not know the address, s/he must set out “*in*

what place the defendant is, or is likely, to be found". The identification of, at least, where the defendant is likely to be found is not a procedural requirement; it is a matter of substantive importance to the issues to be resolved on an application for permission to serve a Claim Form out of the jurisdiction (and any associated application for permission to serve the Claim Form by alternative means).

85. As I have explored above, this information is important and required for the following reasons:
- (1) Under the forum test, and CPR 6.37(3), the claimant must satisfy the Court that England & Wales is clearly or distinctly the appropriate forum for the trial of the dispute and that, in all the circumstances, the Court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction (see [64.(3)] above). Without knowing where the defendant is, or is likely, to be found, analysis of this critical issue is seriously impaired; it is like attempting to weigh two items against each other, without knowing what is in the other side of the scales.
 - (2) CPR 6.40 provides the usual methods of service that can be used once the Court has granted permission to serve the Claim Form out of the jurisdiction. The rule is calibrated to ensure compliance with the UK's convention obligations, where applicable. It depends upon the domicile/location of the defendant being identified so that the permissible method(s) of service can be ascertained.
 - (3) Under CPR 6.40(4), the Court needs to avoid purportedly authorising a method of service of the Claim Form, under CPR 6.37(5)(b), which is contrary to the law of the country where the Claim Form will be served (see [75.(3)] above).
 - (4) Specifically in the context of alternative service orders under CPR 6.15, it is important for the Court to know whether the proposed method of alternative service order would, if granted, arguably subvert the principles on which service and jurisdiction are regulated by agreement between the United Kingdom and its convention partners (see [75.(6)] above). As explained by Popplewell J in the *Société Générale* case (see [76] above), where the country in which service is to be effected has, under Article 10 of the Convention, objected to service otherwise than through its designated authority, comity requires the English Court to take account of and give weight to that objection. If the educated guess that the First Defendant(s) are located in the Russian Federation proved to be correct, exceptional circumstances must be shown before the Court should authorise alternative service of the Claim Form out of the jurisdiction.
86. In light of the above, I do not accept Mr Helme's submission that the Court can simply waive the requirement of CPR 6.37(1)(c), if necessary, relying upon CPR 3.10. CPR 3.10 does not operate prospectively to relieve the need to comply with requirements that are imposed by other parts of the rules. CPR 3.10 enables certain errors of procedure retrospectively to be condoned.
87. I accept that Mr Helme can justifiably point to several cases in which the Court has apparently granted permission to serve a Claim Form out of the jurisdiction where, in

many cases, the location of the defendant was unknown (see [73] above). As I have noted, it appears that in none of those cases was any attention paid to CPR 6.37(1)(c), so they do not provide much assistance on the point that arises in this case. Also, the circumstances in which these decisions came to be made – often urgent interim injunction applications where only one party was represented – mean that the fact that CPR 6.37(1)(c) was not considered is not altogether surprising. Many of the cases were instances where, wherever the defendant was located, the assessment of appropriate forum plainly favoured England & Wales. In several of the cases, the grant of permission to serve the Claim Form out of the jurisdiction was very much an insurance against a possibility that the defendant turned out not to be within the jurisdiction of the Court. Not all cases will be that straightforward.

88. It is also important to remember that claims against ‘Persons Unknown’ are still something of a recent invention in civil litigation in England & Wales. Although the number of claims that are brought against ‘Persons Unknown’ appears to be increasing, some of the procedural and jurisdictional issues are still being worked out. The Supreme Court’s decision in *Wolverhampton City Council -v- London Gypsies & Travellers* [2024] AC 983, whilst important, is not likely to be the last word on some of the complexities of litigating against ‘Persons Unknown’. That this appears to be the first case in which any attention has been paid to compliance with CPR 6.37(1)(c) in extra-territorial ‘Persons Unknown’ litigation rather bears that out.
89. I find this a difficult issue to resolve. On the one hand, CPR 6.37(1)(c) is clearly a mandatory requirement, and I am uncomfortable treating non-compliance with this mandatory provision as having no consequence. The inclusion of this mandatory requirement reflects the importance of the information to the decision the Court must make. On the other hand, CPR 6.37(1) is dealing only with what must be contained in an application for permission to serve out under CPR 6.36; it does not purport to make the grant of permission to serve out conditional on these matters being provided.
90. In the circumstances, and given the view I have taken on the substantive issues, I prefer not to express a final view about the effect of non-compliance with CPR 6.37(1)(c). It may be that those framing this rule had not specifically considered how it applies to litigation against ‘Persons Unknown’ where the claimant may be unable to comply with CPR 6.37(1)(c). An alternative view is that those framing the rule *did* foresee ‘Persons Unknown’ litigation but decided that, to obtain permission to serve the Claim Form out of the jurisdiction on ‘Persons Unknown’, it was an essential requirement that the claimant should identify at least the country in which the defendants were likely to be found.
91. Whatever the formal consequence of non-compliance with CPR 6.37(1)(c), the practical effect of the inability to provide a defendant’s address or the place in which s/he is, or is likely, to be found may mean that the claimant has difficulty in persuading the Court to grant permission to serve the Claim Form out of the jurisdiction.
92. As I have noted (see [85.(1)] above), the location of the Defendants is a very important factor in the Court’s assessment of whether England & Wales is clearly or distinctly the appropriate forum. If further investigation were undertaken, and evidence emerged that showed the First and Second Defendants were, or were likely to be, domiciled in an EU member state, that might well be a very significant factor

militating against a finding that England & Wales was clearly or distinctly the appropriate forum for this data protection claim.

93. In support of his general submission that the Court should grant the Claimant permission to serve the Claim Form on the Defendants out of the jurisdiction, even when he is unable to identify where they are, or are likely to be, found, Mr Helme argued that the Court should not permit people to evade responsibility for civil wrongs by hiding behind online anonymity: *Wolverhampton* [3]. I accept the general force of that submission. The Court will not lightly allow those who operate from the shadows to escape being answerable for wrongdoing that can be proved against them. Nevertheless, the stirring cry of “*ubi jus, ibi remedium*” (“*where there is a right, there must be a remedy*”), is not without limit. Arguably, it was appeal to that maxim that led to error at first instance and in the Court of Appeal in *Cameron*. In *Canada Goose UK Retail Limited -v- Persons Unknown* [2020] 1 WLR 417 [59] I said:

“The Civil Procedure Rules provide a comprehensive framework for the commencement of claims and the service of originating process upon defendants. In broad terms, the object is to seek to ensure that defendants to civil claims are given proper notice of the claim that is being made against them and a reasonable opportunity to put forward any defence to the claim. The fact that the Court, exceptionally, permits a claim to be brought against ‘persons unknown’... does not lead to the abandonment of this basic principle. There may be practical difficulties in achieving the objective where the identity of the defendant is not presently known, but it does not lessen the obligation to attempt to do so. Even people who shield themselves behind anonymity are to be afforded the basic right, so far as possible, to be given notice that a claim is being made against them and an opportunity to defend themselves.”

94. Of course, litigation sought to be pursued against ‘Persons Unknown’ may make it more difficult to ascertain the domicile/location of the defendant(s), but it does not relieve the party of the obligation to make reasonable efforts to try. Litigation against ‘Persons Unknown’ is not the norm; it is the exception: *Birmingham City Council -v- Afsar* [21(1)]. The *Norwich Pharmacal* jurisdiction exists to assist parties in their efforts to attempt to identify the ultimate alleged wrongdoer and enable proceedings to be brought against him/her. Even if *Norwich Pharmacal* orders do not ultimately enable the claimant to name the intended defendant(s), the information and evidence that is obtained is likely to assist with the issues that arise on applications for permission to serve a Claim Form out of the jurisdiction and/or by alternative means. In my judgment, a claimant who decides, unilaterally, that it will be too costly or time-consuming to pursue reasonable avenues of inquiry (including *Norwich Pharmacal* applications) may find that the paucity of evidence that s/he can provide will make it difficult to persuade the Court to grant orders that will permit service of the Claim Form on Persons Unknown out of the jurisdiction and by alternative means.
95. In my judgment, that is the position here. Mr Helme suggested that the further investigations into who is responsible for the publication of the two Articles was “*disproportionate*”. I reject that. Identification of the defendant against whom a party wants to bring a civil claim is not the sort of inconsequential detail the ascertainment of which can be dispensed with if it proves to be too expensive. The proper identification of the defendant and his/her location is fundamental, not only so that the Court can make a proper assessment of whether s/he is, or should be, answerable to

the Court's jurisdiction over the claimant's claim, but so that s/he can be served with the proceedings. On the evidence presented on these applications, it is my assessment that the Claimant's efforts thus far to identify the Defendants and their location has been perfunctorily inadequate. The evidence does not persuade me that England and Wales is clearly the appropriate forum and that I should exercise my discretion to permit service of the Claim Form on the Defendants out of the jurisdiction.

96. There is a further point which is relevant to the exercise of my discretion whether to permit service of the Claim Form out of the jurisdiction. In my judgment, the Court is entitled to ask, "*what is the point of the proposed proceedings?*" Litigating against 'Persons Unknown' in circumstances where the defendants are little more than phantoms risks serving little or no purpose. Worse, such litigation is wasteful of the resources of the claimant(s) and the Court. Whilst a well-resourced party may be willing to commit his/her funds to such an endeavour, even if it proves fruitless, in exercising the powers under the CPR, it is my duty to ensure that the Court's limited resources are allotted appropriately: CPR 1.1(2)(e) and CPR 1.2(a). As Lord Phillips MR observed in *Jameel -v- Dow Jones & Co Inc* [2005] QB 946 [54]:

"It is no longer the role of the court simply to provide a level playing field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice."

97. At the heart of the assessment of proportionality are two things: (1) what is the value of what is legitimately sought to be obtained by the proceedings; and (2) what is the likely cost (including depleting the resources of the court) of achieving it? It is also relevant, when assessing proportionality, to ask whether there is any realistic prospect of the claim actually yielding a tangible or legitimate benefit to the claimant: *Schellenberg -v- BBC* [2000] EMLR 296, 319.
98. In the context of applications to serve out, the assessment of the likelihood of the claim yielding any tangible benefit has a further dimension. What are the prospects that any order that the Court makes being capable of enforcement against the defendant if the Court permits its jurisdiction to be exercised over the defendant and the claim? If the Court concludes that there is no prospect that an order granting remedies to the claimant can be enforced (and no other legitimate objective has been identified), then the benefit sought to be achieved by the proceedings would not be tangible, it would be an illusion. The enterprise would be condemned in the same way it was in *Jameel*: "*the cost of the exercise will have been out of all proportion to what has been achieved. The game will not merely not have been worth the candle, it will not have been worth the wick*": [69].
99. In this case, the Claimant does not presently know where the Defendants are located. On the assumption that he is successful with his claim, the Claimant cannot assist the Court with whether there is any real prospect of his being able to enforce any order for damages or any mandatory injunction compelling the Defendants to provide the remedies he seeks. For the reasons I have explained (see [17]-[20] above), the Court is not likely to grant to the Claimant a declaration that the data are inaccurate. The Claimant cannot point to the sort of tangible benefit that arises in blackmail/extortion cases or any other legitimate objective that might otherwise make the proceedings worthwhile (see further [106] below). I am at a loss to understand the

purpose of this claim and what, of any tangible benefit, the Claimant is likely to achieve by it. It is unexplained in the evidence for these applications.

100. Mr Helme submitted that I should not attach any weight to the apparent futility of the proceedings because the Court should proceed on the assumption that there will be compliance with the orders that it makes: *Wolverhampton* [141]. I recognise that principle, but I am not persuaded that it compels me to ignore the realities of the litigation that the Claimant is seeking to pursue against unidentified persons outside the jurisdiction of the Court. As I shall demonstrate, this principle is also in tension with another well-established principle that the Court does not act in vain.
101. In *Re Liddell's Settlement Trust* [1936] Ch 365, a mother ordinarily resident in England had taken her four infant children to the United States, against the wishes of the father. The children were the beneficiaries of a trust and had therefore become wards of the court. On the father's application, the Court ordered the mother to bring the children back to England. Romer LJ rejected the argument that the order should not have been made because it could not be enforced against the mother as long as she remained outside the jurisdiction (at p.374):

“It is not the habit of this court in considering whether it will make an order to contemplate the possibility that it will be disobeyed.”

In the same vein, Slesser LJ stated (at pp.373-374):

“It has been said that this Court will not make an order which will be mere *brutum fulmen*. It seems that there has been a writ of sequestration. We are not to assume that the lady will necessarily disobey the Court or ignore the sanction imposed if she continues contumacious. Once jurisdiction is established, the power of the Court, as the guardian of the trusts of these children, to make the order is clear.” (emphasis added)

102. In *South Buckinghamshire District Council -v- Porter* [2003] 2 AC 558 [32], Lord Bingham memorably said:

“Apprehension that a party may disobey an order should not deter the court from making an order otherwise appropriate: there is not one law for the law-abiding and another for the lawless and truculent.”

103. Nevertheless, immediately thereafter, Lord Bingham added:

“When making an order, the court should ordinarily be willing to enforce it if necessary. The rule of law is not well served if orders are made and disobeyed with impunity.”

104. Avoidance of damage to the rule of law caused by disobedience of the Court's orders, without consequence, lies at the heart of the equitable maxim that the Court will not act in vain. In *Locabail International Finance Ltd -v- Agroexport* [1986] 1 WLR 657, 665, Mustill LJ articulated the principle as follows:

“It is a general principle of the law as to injunctions that the court should not put itself in the position of making an order which it cannot enforce...”

105. The statements of principle - from *Re Liddell's Settlement Trust* and *Porter* – that the Court should assume that a defendant will comply with the Court's orders – were made in cases where the Court's jurisdiction over the defendant(s), and the claim, had already been established (see the underlined passage from Slessor LJ's judgment above). On an application for permission to serve the Claim Form out of the jurisdiction, the Court is considering the anterior question of *whether* it should exercise jurisdiction over the claim. At that point, it appears to me to be a relevant consideration whether there is any real prospect of any order the court makes being complied with. There will be several factors that will bear on that question, and, reflecting the very clear policy statements above, I accept that the Court should generally be slow to conclude that the proceedings would be futile. Nevertheless, I am satisfied that the prospects of any order that the Court makes being capable of being enforced is a relevant matter for the Court to consider when considering the forum test on an application to serve the Claim Form out of the jurisdiction. If nothing else, CPR 1.2 requires that.
106. On this issue, I am also satisfied that the fact that the proceedings are being conducted against 'Persons Unknown' will also be relevant. Sometimes, litigation against 'Persons Unknown' does serve a purpose and can produce something of tangible benefit. In most of the blackmail/cyber-attack cases, which are brought against unidentified defendants, the proceedings are not primarily brought in the expectation that the ultimate wrongdoer will be identified and remedies granted against him/her (although no doubt that would remain an objective), but to obtain interim remedies which can be used to counter the defendant's threat to publish information that forms the basis of the blackmail/extortion threat. But in most 'Persons Unknown' cases, if the claimant does not know the identity of the defendant, and if there is no real prospect that it will be discovered during the proceedings, then, as I have already noted, the prospect of enforcing any order the Court makes is likely to be an illusion. This situation is not the analogue of enforcement of a *contra mundum* newcomer injunction as envisaged by the Supreme Court in *Wolverhampton*.
107. It is one thing to permit a claim to be brought against a named defendant who is located outside the jurisdiction, where the Court can make a reasonable assessment of the prospects of being able to enforce an order against him/her in the state in which s/he is domiciled, it is quite another to permit litigation against someone who cannot be identified other than a description of his/her role, and with no indication of the state in which s/he is domiciled.
108. For all these reasons, I refuse the Claimant's application for permission to serve the Claim Form on the Defendants out of the jurisdiction. Expressly, I do so on the basis of the evidence that is presently available to the Court. If the Claimant can provide further and better evidence as to the location of the Defendants, then it will be open to him to make a further application.

(3) Permission to serve the Claim Form by alternative means

109. My decision on the service out application means that this application does not strictly arise for consideration. Nevertheless, in case my decision on the former application were to be reversed, I should give my decision on this application as well.

110. I would refuse the application for an alternative service order on the grounds that the proposed method of service – by sending the Claim Form to the specified email addresses – is not one that, on the evidence provided, can reasonably be expected to bring the Claim Form to the attention of the Defendants.
111. I continue with the assumption that the Claimant would narrow the definition of ‘Persons Unknown’ to target, specifically, the ‘data controller’ for each Website.
112. The height of the Claimant’s evidence is that the email addresses that he seeks to use as the method of alternative service are promoted as a contact point on the respective Websites. In his further written submissions, Mr Helme relied on observations of Warby J in *Brett Wilson LLP -v- Persons Unknown* [11] that, in that case, it was a reasonable inference that the email addresses were genuine and that “*emails sent to them will be brought to the attention of the domain owners*”. However, in this case, there are several factors which undermine this as a basis for concluding that sending the Claim Form to the email addresses could reasonably be expected to bring the document to the attention of the Defendants.
113. First, no communication has been sent from either address, whether in response to communications sent to them or otherwise (see [41] above). When assessing the evidential value of this, it is to be remembered that the Claimant’s case, against the rucriminal Website, is that it has published an article containing inaccurate information about him and that its response to his protest about this was to demand US\$30,000. I have expressed doubt as to whether the evidence supports the charge that this was a blackmail attempt (see [40.(6)] above), but the absence of further communication from a person who was apparently at one stage seeking a substantial payment is perhaps surprising. In many blackmail cases, the Court can usually be satisfied that an email address (or mobile phone number) is a reliable means of contacting the (as yet unidentified) defendant because that is the very means of communication used by the defendant to send the demand for money to the claimant. No such channel of communication has been used in this case. As against the Talk Finance Website, the Claimant’s case is that the names of the journalists who (a visitor to the website would readily infer) worked for the website, are fake. This perhaps undermines the confidence that one can have that the email address that is similarly promoted in the same section of the website is genuine. It is a striking feature of this case that there is no direct evidence of *any* communication emanating from the Defendants. The documentary evidence provided by the Claimant of indirect communications is such an impenetrable fog that it is impossible to reach any further conclusions upon it.
114. Second, an email sent to the relevant address must be reasonably likely to bring the Claim Form to the attention of the ‘data controller’ of the relevant Website. There is no evidence that it would be likely to do so. All that can be said that, assuming that the email address is genuine, it might be received by *someone* connected with the relevant Website; it would be pure luck if that person happened to be the ‘data controller’. That is not sufficient. Once made, an alternative service order will deem the Claim Form to have been properly served and the jurisdiction of the Court established over the relevant defendant. That is the reason for requiring the relatively high threshold of confidence that the method proposed will be effective before the order can be made. In the alternative, if I consider the Claimant’s original formulation of ‘Persons Unknown’, the Claimant runs into a different problem. The width of the

definition of ‘Persons Unknown’ means that the sending of the Claim Form to the single email address is not likely to bring the Claim Form to the attention of all those who fall within the definition of people responsible for publication of the relevant Article on the relevant Website. The Claimant, frankly, has no idea how many people are “*responsible*”, or how effectively to communicate with them. The service method also, impermissibly, places the responsibility for trying to work out whether s/he is a member of the class of ‘Persons Unknown’ on the recipient of the email by interpreting whether s/he is “*responsible*” for the publication (which is not a straightforward issue to resolve) (see [61] above).

115. I accept that the email addresses represent the only means presently available to the Claimant to attempt to effect service of the Claim Form and that there is good reason to authorise alternative service (because the Claimant cannot use any other method of service), but that is insufficient. The Claimant has failed to demonstrate the essential further element that the means of alternative service proposed is reasonably likely to bring the proceedings to the attention of the Defendants. If the proposed method of service were used, it would be pure serendipity if it actually brought the Claim Form to the attention of the Defendants. That is not enough.

(4) Dispensation Application

116. Retrospectively, I dispense with the requirement, under CPR PD16 §2.2, to provide the address of each Defendant in the Claim Form. The Claimant cannot, at the moment, provide the addresses.

F: Final observation

117. As noted above (see [25] above), the Claimant initially sought to have his applications for service of the Claim Form dealt with without a hearing. Steyn J directed a hearing. Having now dealt with the hearing, and the issues raised, I would suggest that future applications for permission to serve a Claim Form on ‘Persons Unknown’ out of the jurisdiction in claims in the Media & Communications List (“MAC List”) should not be dealt with without a hearing, unless a Master or Judge directs that a hearing is not necessary. Litigation against ‘Persons Unknown’ is not the norm, it is exceptional. The issues raised on an application to serve a Claim Form on ‘Persons Unknown’ outside the jurisdiction mean that it is unlikely that it can be fairly determined without the Court having the opportunity properly to explore the factors that must be considered on such an application. A hearing, for which a skeleton argument will be provided in advance, will ensure that the issues are properly considered.
118. Before handing down judgment, I have consulted the Judges in charge of the MAC List about my suggestion in the previous paragraph. They have endorsed it as the practice now to be followed in the MAC List.