



Neutral Citation Number: [2021] EWHC 1192 (Comm)

Case No: CL-2017-000730

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2021

Before :

THE HONOURABLE MR JUSTICE CALVER

Between :

FEDERAL REPUBLIC OF NIGERIA

Claimant

- and -

JP MORGAN CHASE BANK, N.A.

Defendant

Roger Masefield QC, Richard Blakeley and Jonathan Scott (instructed by RPC LLP) for
the Claimant

Rosalind Phelps QC and David Murray (instructed by Freshfields Bruckhaus Deringer
LLP) for the Defendant

Hearing date: 5 May 2021

JUDGMENT

**Covid-19 Protocol: This judgment was handed down by the judge remotely by
circulation to the parties' representatives by email and release to Bailii. The date and
time for hand-down is deemed to be 11 May 2021 at 10:15am.**

Mr Justice Calver:

Background

1. The claim in this action relates to the circumstances in which the Defendant (“**JPMC**”) paid out a total of \$875,740,000 from a Depository Account held by the Federal Government of Nigeria (**FGN**) to a company named Malabu Oil and Gas Limited (“**Malabu**”) (“**the Payments**”). The funds were paid out in three instalments, two on 23 August 2011 (totalling \$801,540,000) and one on 29 August 2013 (for \$74,200,000). The Depository Account had been opened for the specific purpose of enabling the FGN to comply with its obligations under a settlement agreement in a long-running dispute about an offshore Nigerian oil field known as “Block 245”, or “OPL 245”. The operation of the Depository Account was governed by an agreement dated 20 May 2011 between JPMC and the FGN (“**the Depository Agreement**”).
2. The Claimant’s (“**FRN**”) case is that the Payments, made to Malabu, were in furtherance of a fraudulent and corrupt scheme of which the FRN was the victim. Malabu is the vehicle of a disgraced former oil minister in the Abacha regime, Chief Dan Etete (“**Etete**”), who was a major beneficiary of the Scheme and who had, by the time of the Payments, been convicted of money laundering in France. Ultimately, the Payments are said to be bribes, paid to the shell company of the corrupt former oil minister Etete, and distributed among other corrupt officials and former officials and to corrupt oil company executives. While Malabu received over \$875m, the FRN received only \$209m for the valuable oil prospecting licence in respect of OPL 245. The FRN’s claim is for the \$875m deposited into the Depository Account with JPMC (plus interest).
3. There is no allegation that JPMC knew about or was in any way involved in the alleged fraud.
4. It is common ground that the instructions to make the Payments were issued by the authorised officers of the FGN in compliance with the mandate governing the Depository Account. However, it is alleged by the FRN, following a change of government in Nigeria, that in making the Payments JPMC acted in breach of duty. Specifically, it is said that JPMC breached an implied term of the Depository Agreement to take reasonable care in executing payment instructions, and in particular not to comply with a payment instruction if, and for so long as, the circumstances were such that a reasonable and honest banker would consider that there was a real possibility that the instruction was an attempt to misappropriate the funds of the customer (the implied term found to have existed in *Barclays Bank plc v Quincecare Ltd* [1992] 4 All ER 363) (the “**Quincecare Duty**”).
5. Since the standard to be applied is that of the ordinary prudent banker, armed with whatever knowledge JPMC had at the time it made the relevant payments, it follows that a key issue in these proceedings is what JPMC knew, and when it knew it. It is the FRN’s case that an ordinary prudent banker in the position of JPMC would have been on inquiry of the risk of a fraud on the FRN (and that JPMC was indeed on such inquiry) both in 2011 and 2013.
6. The FRN’s present application relates only to documents said to be relevant to the payment made from the Depository Account in August 2013, not to the payments made in August 2011.

7. JPMC's early attempts to pay the money away in 2011 were rejected by the first two nominated recipient banks for "*compliance reasons*" (one based in Lugano and the other in Lebanon).
8. After the rejection of the first payment in 2011, JPMC then notified the Serious Organised Crime Agency ("**SOCA**") of the proposed payments. JPMC filed four Suspicious Activity Reports ("**SARs**") in 2011, detailing various concerns.
9. Mr Roger Masefield QC, who appeared on this application together with Mr Richard Blakeley and Mr Jonathan Scott for the FRN, submits that by the time JPMC made the 2013 Payment, further serious concerns had emerged. In summary:
 - 9.1 JPMC's suspicions were such that it had filed two further UK SARs and one in the US.
 - 9.2 Senior executives, such as Mr Pataki, the Head of JPMC's Global Escrow business, had expressed concerns that there were lessons to learn from JPMC having made the 2011 Payments. He emailed Pamela Johnson to set out concerns that "*the structure of the ... escrow didn't make sense in light of the underlying transaction*" and "*we did not know the final beneficiaries ... until we were asked to make the final payment*".
 - 9.3 The allegations of fraud surrounding the 2011 Payments and JPMC's role in making those payments had received widespread publicity, including in the FT and the Economist. The latter reported in June 2013 that the FRN's Attorney General (Mr Adoke) had been "*unusually active in helping the deal along*" and that there were claims that "*much of the money the government paid to Malabu in the 2011 deal was "round-tripped" back to bank accounts controlled by public officials*". JPMC was aware of this article, which it is said also sparked further internal investigations, both in the US and the UK.
 - 9.4 JPMC was also aware that money had flowed to Etete and to Mr Abubakar Aliyu (a.k.a. 'Mr Corruption') following the 2011 Payments.
 - 9.5 Separately, the Serious Fraud Office and Metropolitan Police asked JPMC to produce documents relating to the 2011 Payments. JPMC also knew that the US Department of Justice was investigating the 2011 Payments.
 - 9.6 In light of at least some of this, in late August 2013 JPMC's own US Global Financial Crimes Compliance ("**GFCC**") function recommended that Malabu be placed on a "*Watchlist*" and Etete and Rocky Top (a company controlled by Aliyu) on an "*interdiction filter*". However, this recommendation was not implemented in time to stop the 2013 Payment (although JPMC maintains that it made no difference to whether the payment was made or not).

Procedural history

10. The first CMC took place before HHJ Pelling QC on 11 July 2019, when both parties were ordered to provide Extended Disclosure. Most pertinently for present purposes, JPMC was required by paragraph 4 of the order to provide (extended) Model D disclosure in respect of Disclosure Issues 12 and 13 (unlike issues 7 and 11 where Model C was ordered), being as follows:

12. Between June and August 2013, did JPMC become aware of facts and matters such as to put it (or the reasonable and honest banker) on inquiry that there was a real risk that FRN was being defrauded and what (if any) inquiries and investigations did it conduct in this regard?
 13. What action was taken by JPMC in response to the facts and matters referred to in 11 and 12 above? On what basis did JPMC file the SARs that were submitted to SOCA in 2013 and what other communications did JPMC have with SOCA in this period in respect of the facts and matters referred to in 12 above?
11. Disclosure was originally given on 31 March 2020, although both parties have since given various rounds of supplemental disclosure. JPMC served its witness statements on 11 September 2020.¹ The FRN did not serve any witness statements. A second CMC took place on 12 November 2020, at which directions were given for expert evidence (on various issues of Nigerian law and banking and compliance practice) and the listing of the trial. The expert evidence is due to be completed by October 2021 (with the first reports being produced in May 2021), and the trial has been listed for six weeks commencing on 28 February 2022.
 12. In her third witness statement made on behalf of JPMC, Sarah Parkes (a Partner in the law firm Freshfields Bruckhaus Deringer LLP) describes the nature and scale of the disclosure exercise undertaken by JPMC, which was substantial. It was carried out in accordance with search parameters that were agreed between the parties following extensive discussions both before and after the first CMC held on 11 July 2019. In summary:
 - 12.1 JPMC has given disclosure from 57 custodians, with reference to date ranges between 1 September 2003 and 31 January 2014. This is in addition to hard-copy documents and documents from structured data sources.
 - 12.2 The starting population of documents for the disclosure process was approximately 15.1 million.
 - 12.3 The electronic documents were searched by reference to over 200 agreed search terms. Documents responding to the search terms (together with their “families”) were combined with the hard-copy and structured-data documents to form a population of over 350,000 documents.
 - 12.4 Every one of these was reviewed manually for relevance.
 - 12.5 So far 14,202 documents have been made available for inspection by the FRN, at a cost to date of more than £3 million.
 13. Following completion of disclosure over a year ago there has been lengthy correspondence about disclosure from both sides and further tranches of disclosure have been given by both parties. The parties and their professional advisers have cooperated, which is to be commended in a case of this nature.

¹ By consent, JPMC served one further witness statement on 2 October 2020.

Applicable legal principles

14. Ms Rosalind Phelps QC, who appeared on this application for JPMC together with Mr David Murray, points out that it was well-established even before the introduction of the Disclosure Pilot that the requirement is not to search all potentially relevant sources for all potentially relevant documents:

...the rules do not require that no stone should be left unturned. This may mean that a relevant document, even a ‘smoking gun’ is not found. This attitude is justified by considerations of proportionality.²

15. The Disclosure Pilot was, however, intended to effect a culture change in reducing the time and costs spent by litigants on disclosure, and in particular to ensure that disclosure is properly focused on the key issues in the case. This is expressed as follows in paragraph 2.4 of the Disclosure Pilot:

The court will be concerned to ensure that disclosure is directed to the issues in the proceedings and that the scope of disclosure is not wider than is reasonable and proportionate (as defined in paragraph 6.4) in order fairly to resolve those issues, and specifically the Issues for Disclosure (as defined in paragraph 7.3).³

16. As Vos C (as he then was) said in *UTB LLC v Sheffield United Ltd* [2019] EWHC 914 (Ch):

The introduction of the Pilot was intended to effect a culture change. The Pilot is not simply a rewrite of CPR Pt 31. It operates along different lines driven by reasonableness and proportionality (see paragraph 2 of PD51U), with disclosure being directed specifically to defined issues arising in the proceedings.

17. The criteria for making an order for Extended Disclosure are set out in paragraph 6.4 of the Disclosure Pilot:

In all cases, an order for Extended Disclosure must be reasonable and proportionate having regard to the overriding objective including the following factors—

- (1) the nature and complexity of the issues in the proceedings;
- (2) the importance of the case, including any non-monetary relief sought;
- (3) the likelihood of documents existing that will have probative value in supporting or undermining a party’s claim or defence;

² *Digicel (St Lucia) Ltd v Cable & Wireless plc* [2008] EWHC 2522 (Ch) at [46].

³ *Digicel* at [80], referred to in *Agents’ Mutual Ltd v Gascoigne Halman Ltd* [2019] EWHC 3104 (Ch) at [13].

- (4) the number of documents involved;
- (5) the ease and expense of searching for and retrieval of any particular document (taking into account any limitations on the information available and on the likely accuracy of any costs estimates);
- (6) the financial position of each party; and
- (7) the need to ensure the case is dealt with expeditiously, fairly and at a proportionate cost.

I. THE FRN'S APPLICATION

18. The relief sought by the FRN by its Amended Application Notice dated 27 November 2020 falls into two categories:

18.1 Documents concerning what are referred to in the draft order as the “Interdiction and Watchlist Recommendations” (see paragraph 1 of the draft order).

18.2 Documents relating to alleged concerns held by members of JPMC’s compliance function regarding the payment made by JPMC to Malabu in August 2013 (see paragraph 2 of the draft order).

19. The FRN’s case is that by refusing to undertake the searches requested and/or to disclose the specific documents identified in the FRN Application JPMC has failed to comply with the CMC 1 Order. The FRN therefore applies for an order, pursuant to paragraph 17.1(2)-(4) of PD51U, which provides that:

“Where there has been or may have been a failure adequately to comply with an order for Extended Disclosure the court may make such further orders as may be appropriate, including an order requiring a party to— ... (2) undertake further steps, including further or more extended searches, to ensure compliance with an order for Extended Disclosure; (3) provide a further or improved Extended Disclosure List of Documents; (4) produce documents...”

The FRN accordingly requests that JPMC now comply with the order for Extended Disclosure by conducting the searches and disclosing the documents identified.

20. Alternatively, in the event that JPMC can establish that the searches did not fall within the scope of the CMC 1 Order, then the FRN seeks an Order under paragraph 18 of PD51U, varying the CMC 1 Order to require that JPMC conduct the searches and disclose the documents identified. To the extent that the FRN is relying on paragraph 18 of the Disclosure Pilot, this is a more demanding test than that under paragraph 17 since the FRN must show not merely that making the order is “reasonable and proportionate”, but also that varying the original order “is necessary for the just disposal of the proceedings”.⁴

(1) The “Interdiction and Watchlist Recommendations”

21. This limb of the application breaks down into three parts, as set out in sub-paragraphs 1(a), (b) and (c) of the draft order. In summary:

⁴ Per Marcus Smith J in *Agents’ Mutual Ltd v Gascoigne Halman Ltd* [2019] EWHC 3104 (Ch).

- 21.1 Sub-paragraph (a) seeks the addition of three new disclosure custodians and the carrying out of searches of their documents by reference to specified date ranges and the keyword searches previously used for Disclosure Issues 12 and 13.
 - 21.2 Sub-paragraph (b) seeks the disclosure of a particular document, referred to by its disclosure number (JPMC_00040797).
 - 21.3 Sub-paragraph (c) seeks the disclosure of certain “policies and procedures” relating to the Interdiction and Watchlist Recommendations.
22. As explained by Ms Parkes in paragraph 8(b) of Parkes 3, JPMC has already disclosed document JPMC_00040797. There is therefore no need for the relief sought in paragraph 1(b) of the draft order.

Draft order paragraph 1(a): New custodians

23. By reason of Disclosure Issues 12 and 13, the key issues in the case are: (i) what JPMC knew (Issue 12) and as such whether it was on inquiry, and then in turn (ii) what JPMC did in response (Issue 13) and as such whether it acted in accordance with its Quincecare Duty to the FRN, including by refusing to pay out, or by taking steps to take itself off inquiry before paying out.
24. The FRN maintains that the three Interdiction and Watchlist Recommendations go to these issues that are the heart of the case. They contend that they are material both to what JPMC knew (“*Malabu’s reported connection to the alleged Nigerian corruption scheme*”) and what JPMC did (belatedly made ineffective recommendations). A watchlist recommendation was made for Malabu, and an interdiction recommendation for Etete and Rocky Top, by the US compliance team approximately one week before the 29 August 2013 payment was made.
25. The Malabu Watchlist recommendation refers on its face to it having an anti-money laundering reference as follows: “Investigative Case # 4600362”. It refers to TSS/WSS AML Investigations recommending Malabu be added to the watchlist due to allegations of Malabu’s involvement in wire transactions related to foreign corruption pertaining to the Nigerian oil trade. It states that “there would be a great risk presented if JPMC continues to process wires involving Malabu.” “A Watchlist entry is recommended for increased monitoring of any potential future wire activity involving Malabu that may be processed by any of JPMC’s F[oreign] C[orrespondent] B[ank] customers.” There then follows a series of bullet points which it is common ground is derived as to part – but not entirely – from a journalistic report (fairreporters.net). However, the document states that “There were no inquiries sent due to the abundance of current news media on the topic...”. There was then a summary of activity, which included a reference to the payments sent to Malabu in August 2011 via its JPMC account, but also payments into Malabu’s accounts at other correspondent banks. It was concluded that “These transactions appear to be directly related to the derogatory media cited above due to the date of the transactions, August 2011. ... a watchlist recommendation is being made to monitor all transactional activity through JPM.”
26. The Watchlist recommendation was submitted by Dawn Edwards on 23 August 2013 who is a compliance officer in the JPMC North America GFCC team, with manager approval from Patrick Flynn and Matthew Willard on 29 and 30 August 2013 respectively (i.e. on or after the date when the payment was made), who are compliance

directors in the same team, with Mr Willard also being responsible for Anti-Money Laundering Investigations.

27. A similar document exists for Etete. It contains the same Investigative case number, #4600362, and also contains an interdiction alert number, #4926727. Likewise, there then follows a series of bullet points which it is common ground is derived as in part – but not entirely – from a journalistic report (fairreporters.net). In addition, it specifically refers to the EFCC’s Investigation into the Payments received by Malabu and other shell companies, the EFCC being the Nigerian Economic and Financial Crimes Commission, which produced a preliminary report in December 2012. It also contained JPMC’s observations about several wire transfers sent by Etete to various entities and individuals, including funds processed by JPMC’s correspondent bank, Standard Chartered Bank (“SCB”). It is clear therefore that JPMC had been gathering material concerning the fraudulent scheme from sources other than purely press reports. Indeed, in the summary of activity section of the report, it refers to 65 payments sent by Etete to various individuals at SCB, which payments were then sent on by SCB to other non-JPMC accounts. The document then refers in terms to “the review of Etete’s wire transfers”. The report was submitted by Dawn Edwards once again, this time on 22 August 2013, and it was approved by Patrick Flynn on 29 August 2013 (the day of the payment).
28. Finally, a similar document also exists for Rocky Top. Once again this refers to “Investigative Case #4600362”. It also has an Alert Referral number of #4927065. It again refers to wires sent by Rocky Top to JPMC correspondent banks; to the EFCC report; to JPMC’s own observations on several wire transfers via accounts held at banks other than JPMC, and ends by referring to the “transactional review” carried out by JPMC. The report was submitted again by Dawn Edwards on 22 August 2013 and approved by her manager, Mr Flynn on 29 August 2013 (the day of the payment).
29. Mr Masefield QC explained that the FRN relies on the Interdiction and Watchlist Recommendations, and the matters known to JPMC, as clear evidence that JPMC was on inquiry in 2013.⁵ But it also relies on them as evidence that JPMC was grossly negligent: not least, because JPMC was simultaneously recording the “*great risk*” of processing transactions involving Malabu because of “*the alleged Nigerian corruption scheme*”, whilst at the same time making the 2013 Payment to Malabu. In this respect, the failure to place Malabu and Etete on an interdiction filter earlier is expressly pleaded as a particular of gross negligence at RRAPOC, paragraph 107(d)(iii).
30. The FRN seeks disclosure of documents leading to the making of the Interdiction and Watchlist Recommendations, and specifically to add three further custodians for Disclosure Issues 12 and 13 as follows:
 - (i) Ms Dawn Edwards (Compliance Officer) for the period 1 May 2013 to 31 January 2014;
 - (ii) Ms Jessica Gomel (Executive Director) for the same period;

⁵ At paragraph 18 of Schedule 3 to its RRAPOC, the FRN relies on that facts that “On 22nd and 23rd August 2013, Dawn Edwards of the Defendant recommended that Etete and Rocky Top should each be placed on the Defendant’s interdiction filters and on 23rd August 2013 she recommended that Malabu should be placed on its “Watch List”, in the circumstances pleaded in paragraph 82C.1 above.”

(iii) Mr Matthew Willard (Compliance Director, AML Investigations) for the period 22 July 2013 to 31 January 2014.

31. These three personnel are all part of the North America GFCC Team. The FRN contends that these documents should have been disclosed by JPMC the first time around because Disclosure Issue 12 specifically refers to “what (if any) inquiries and investigations did [JPM] conduct in this regard?” The underlying review documents are relevant to this issue. It argues that whilst they have the documents themselves, what is not clear, at the moment, is the primary information to which Ms Edwards and her colleagues had access, and on which they based their recommendation and on which they decided to act or not act. These documents show the US compliance and AML team actively following the money and carrying out transactional reviews. Moreover, Mr Cary explains in paragraph 18.4 of his 8th witness statement how the UK compliance team of JPMC actively contacted the US compliance team and shared information.
32. Furthermore, in paragraph 32 of his 8th witness statement, Mr Cary explains that it is apparent from a BuzzFeed article that in 2013 JPMC’s US Compliance team was investigating the 2011 payments because that article revealed that JPMC filed a US Suspicious Activity Report (**SAR**) and the Etete recommendation was created as part of the same US compliance investigation that resulted in the filing of that SAR. There are other references to investigations by JPMC’s US Compliance team in 2013. It appears that a case file was opened originally in the US by a Mr Kim of JPMC.
33. Mr Masefield submits that the knowledge of the personnel within JPMC’s US GFCC who prepared the Interdiction and Watchlist Recommendations is clearly relevant: because the same knowledge which led those personnel to recommend that Malabu, Etete and Rocky Top be placed on the Watchlist and Interdiction Filters is material to the question of whether JPMC was on notice that there was a serious possibility that the FRN was being defrauded by way of the payments to Malabu, Etete and Rocky Top (the applicable test for the purposes of the Quincecare Duty); and in assessing, in light of that knowledge, the question whether JPMC acted with gross negligence when it nonetheless went ahead and made the 2013 Payment to Malabu. The Interdiction and Watchlist Recommendations, and the information contained within them, did not spring out of thin air; Ms Edwards and her colleagues clearly spent considerable time investigating the OPL 245 transaction, before then filing a SAR in the US and reaching the views expressed in the recommendations. Their knowledge is clearly relevant to the issues in the present case and the FRN therefore says that it is “imperative” that disclosure is given.
34. Ms Phelps QC for JPMC submits that it is unnecessary to look beyond the recommendations contained in these 3 documents themselves. They contain a distillation of JPMC’s knowledge. She contends that the meat of the recommendation is drawn from the press articles referred to in them. This was just a series of “desktop” reports. It is speculation that there is significant other work or documents leading up to the compiling of these reports. It would be disproportionate to compel JPMC to search through the archaeology of the creation of these reports. She accepted that she was not saying that none of the background documentation would be relevant but it was not likely to take the FRN’s case any further. If there were major compliance issues which were investigated in the US, then that would have become apparent from the documents

already disclosed by the current 57 custodians, and it would have become apparent on the ground in Nigeria, but it did not: see the witness statement of Mr Adewuyi.

35. I consider that Mr Masefield is right about this. I do not consider that this part of the application can be described as some sort of archaeological dig as was suggested by Ms Phelps QC in her submissions, but rather the sources of information on its case file upon which JPMC has drawn for its recommendations (including outside sources) are important and are likely to be relevant to the issue of knowledge. Indeed, the extent to which JPMC made enquiries – which will become apparent from the source materials – is likely to be relevant to the case on gross negligence. However, up until now JPMC has only searched its EMEA database and not its US database for these documents and so any US specific compliance concerns of the type discussed might very well not have surfaced. (It is also of note that in paragraph 11 of his witness statement, Mr Adewuyi expressly refers to the fact that “legal and compliance control functions were overseen by London and New York”.) The three US personnel whose documents have been searched, Messrs Koch, McNeill and Jaber, did not have involvement in the Watchlist and Interdiction Recommendations. The documents of Mr Cutler, the Group General Counsel, had only just been searched and Mr Masefield QC explained that most of his material has been redacted for privilege and so is in any event unhelpful. In principle therefore I consider that this disclosure falls within the scope of disclosure which was originally ordered by the Court.
36. It falls next to consider whether it is appropriate for JPMC to search the documents of the three custodians whom the FRN have identified.
37. As to that, Ms Phelps QC points out that each of the three proposed custodians is based in the US, working in JPMC’s US GFCC department. By contrast, the Depository Account was held at JPMC’s London branch, and by far the majority of the personnel with material day-to-day involvement in the management and administration of the account were based in London or Nigeria. This included a number of senior individuals from JPMC’s UK-based compliance department (known as EMEA GFCC), which comprised (among others) Ian Lyall, Simon Lloyd, Carmel Speers and Daniel White, each of whom is a disclosure custodian and has given a witness statement.
38. These individuals, among others, were (as they describe in their witness statements) heavily involved in the events surrounding the payments made from the Depository Account in 2011. In particular, the Depository Account was (from 13 June 2011 until the account was closed) subject to a “legal and compliance block” which meant that no payments could be made from the account without the approval of senior members of the EMEA GFCC team, based in London. Ms Phelps submits that it is for this reason that, even if the Interdiction and Watchlist Recommendations had been implemented before JPMC received instructions from the FGN to make the August 2013 payment, this would not have resulted in the instructions receiving any higher level of scrutiny than they in fact did.
39. **Ms Edwards** was a Compliance Officer working in a JPMC office in New York. She is named in each of the Interdiction Filter and Watchlist Recommendations as the “submitter” of the document. Ms Phelps QC points out that despite having searched for documents created by 57 custodians across date ranges spanning from 2003 until 2014, JPMC has identified only one email sent by Ms Edwards to any of those custodians (sent on 16 July 2013). Ms Phelps QC suggested that Ms Edwards may simply have

been the person who submitted the document – who “pressed the button” and that her role was not much more than that.

40. I do not accept that submission. Ms Edwards submitted the recommendation for approval by her manager. She is not a mere secretary; she is a compliance officer. Moreover, the one email that has emerged to date which was sent by her is an important email. It is dated 16 July 2013 and it comes at the end of a string of emails beginning in June 2013. It concludes with Ms Edwards reviewing the investigative work done by JPMC EMEA concerning Malabu in the light of the Economist article, including the “raw data” used for each individual. The person asking her to review the materials, Hannah Collier, stated “*I think the most notifiable payments are those involving Rocky Top Resources, for which I believe Davide and Dawn Edwards have been liaising about*”. Dawn Edwards then provides her comments in a word document and asks Ms Collier to contact her with any questions. This shows her assuming a significant role in relation to these events.
41. I should add that Ms Phelps QC also submitted that Ms Edwards, Ms Gomel and Mr Willard were all geographically and functionally separate from the JPMC personnel who were responsible for administering the Depository Account and for giving approval for payments to be made from it. I do not accept that. There does appear to have been liaison between the US and UK compliance teams: see Cary 8, paragraph 18.
42. **Ms Gomel** was an Executive Director in JPMC’s US GFCC team, and worked in an office in Newark, New Jersey. Her inclusion in the application is based primarily on the fact that the metadata of the Interdiction Filter and Watchlist Recommendations lists Ms Gomel as the “*primary creator*” of each document. However, Ms Parkes maintains in her witness statement that there is no evidence that Ms Gomel was actually involved in the preparation of the Interdiction Filter and Watchlist Recommendations. She is not named in any of the documents as either submitting or approving the recommendations. Further, JPMC has identified over 500 different Interdiction Filter and Watchlist recommendations for hundreds of different entities where Ms Gomel is listed as the “Author” in the metadata but where a number of different individuals are named as submitters or approvers. Ms Phelps QC submits that the likely inference therefore is that Ms Gomel was the “Author” of the relevant original template document, which was then used by Ms Edwards to prepare the documents before they were approved. That is not a sufficient basis to make her a custodian.
43. Mr Masefield QC responds to this by asking why JPMC has not spoken to Ms Gomel to clarify whether this inference is correct or not. Despite Mr Cary raising this point in his 8th witness statement, Ms Parkes in her 5th witness statement did not answer this point. However, in oral submissions Ms Phelps QC told the court that Ms Gomel had left JPMC and she had not therefore been contacted.
44. Ms Phelps QC also points out that Ms Gomel has not sent a single email to any of the 57 custodians whose documents have been searched. The other few emails which have been identified as concerning Ms Gomel do not show any particularly active participation on her part in the matter.
45. It is true that Ms Gomel was a member of the Watchlist Governance Committee (“**WLGC**”) (Cary 5, paragraph 56.2) and the Executive Correspondent Banking Operating Committee (“**ECBOC**”) (Cary 5, paragraph 56.3), and attended meetings of those committees between September and November 2013, after the last payment was

made. It is also true that she is described in the ECBOC minutes of 14 November 2013 as an AML Investigator, together with Mr DeLuca. However, I agree with Ms Phelps QC that, on balance, this is not a sufficient reason to add her as a custodian, in circumstances where (i) she is just one of 10 other attendees at the WLGC Meeting of August 2013 relied upon by the FRN; (ii) she is named as one of the non-voting members of the ECBOC committee and (iii) other members of the WLGC and ECBOC are already custodians and the relevant meetings took place after the Depository Account was closed. Since I consider that Ms Edwards and Mr Willard (who is senior to Ms Gomel) should be added as a custodian (see below) I consider that it would be disproportionate in all the circumstances to add Ms Gomel as a custodian as well. There is nothing to suggest that adding Ms Gomel as a custodian would result in the production of further documents beyond those already located or likely to be located as a result of adding Ms Edwards and Mr Willard, both of whom are named on the Interdiction and watchlist Recommendations, unlike Ms Gomel.

46. **Mr Willard** was also a member of JPMC's US GFCC team. He is recorded as giving "Manager Approval" (as Ms Edwards' line manager) on 30 August 2013 for the Malabu Watchlist Recommendation (Mr Willard presented these materials to a meeting of WLGC in October 2013: see paragraph 35 and 36 of Cary 8). He is not recorded as having approved the recommendations in relation to Mr Etete or Rocky Top: these were approved by Mr Flynn, whose documents have regrettably been destroyed.
47. Ms Phelps QC points out that it is apparently the case that JPMC's disclosure to date does not include any e-mails sent by Mr Willard to any of the existing 57 custodians. He seems to have received only seven e-mails, and in each case was merely copied in rather than being a direct recipient.
48. However, he did attend committees that considered the Interdiction or Watchlist Recommendations and other matters between September 2013 and January 2014. Whilst these meetings took place after the payment in August 2013, it was only shortly thereafter and as a result, as JPMC's compliance director responsible for anti-money laundering investigations, and having approved one of the Interdiction or Watchlist Recommendations (and presumably having presented it at the relevant committee meeting), it seems to me that he is likely to have some documents (such as presentation materials, speaking notes and the like) which other custodians would not have relevant to issues 12 and 13. A reasonable and proportionate search of documents relevant to these issues should in my judgment include Mr Willard's documents.
49. The date range for the search of Mr Willard's documents suggested by the FRN for Mr Willard is narrower, being 22 July 2013 (instead of 1 May 2013) to 31 January 2014. JPMC submits that a much narrower date range of 15 June 2013 to 30 August 2013 is appropriate.
50. However, I agree with Mr Masefield QC that these are documents that JPMC should have searched for the first time around, and that this part of the application therefore falls within paragraph 17 of PD 51U: the search and disclosure must be for the period which has already been ordered (this is so for each of these custodians). Indeed, that date range was ultimately agreed by the parties as necessary to capture to a reasonable extent documents concerning the payments in the *ex post facto* review context. The start date for Mr Willard was also agreed between the parties to be later: a date was

chosen which was 1 month before the Malabu watchlist recommendation was submitted for Mr Willard's approval.

Draft order paragraph 1(c): Policies and procedures

51. Paragraph 1(c) of the draft order seeks the disclosure of “policies and procedures relating to the Interdiction and Watchlist Recommendations and the interdiction filter and watchlist that were in place at the time those Recommendations were made (August 2013)”. This category of documents is relevant to breach of duty and causation. FRN's case is that it was grossly negligent of JPMC, at a time when the US compliance team was pointing out the dangers of making payment to Malabu and associated entities, for it to make payment. It ought to have implemented the Interdiction and Watchlist Recommendations earlier and stopped the payments. JPMC disputes that and contends that there was a “manual” watch on the account in any event so this would have made no difference, but the FRN submits that it is entitled to test this allegation (and the causation dispute) against the documents, including this category. I agree with that submission. For example, if the US compliance team had placed a block on payments out of the account, the UK team would have had to contact the US team in order to make a payment out of the account. There would then be a sharing of knowledge between the US and the UK. The FRN is entitled to explore this issue by reference to this relevant category of documents.
52. Reasonably and understandably, JPMC *originally* agreed to search for and disclose this category of documents whilst not admitting their relevance and as a result this category of documents was not sought by the FRN at the earlier restored CMC: see Freshfields' letter dated 20 September 2019. However, JPMC has now changed its mind about this.
53. JPMC says that it has carried out a proportionate search for policy and procedural documents concerning the Interdiction Filter and the Watchlist (having not done so as part of its original disclosure exercise), and the five documents located as a result of that search are exhibited to Parkes 3. These are described by Ms Parkes in paragraphs 44-46 of Parkes 3.
54. The FRN is not satisfied with the documents exhibited by Ms Parkes because they largely post-date the final payment from the Depository Account (and the making of the Interdiction and Watchlist Recommendations) in August 2013 (Cary 8, paragraph 26).
55. As explained by Ms Parkes in Parkes 5, the only other potential source of such documents appears to be an electronic folder containing some 27,000 documents. She says that a further search of this is not reasonable, proportionate or necessary in circumstances where (a) the general mechanics of the operation of the Interdiction Filter and Watchlist are not relevant to the issues in the proceedings; (b) these matters are sufficiently apparent from the documents and evidence already made available for inspection; and (c) JPMC has searched for and produced those documents which it was able to locate in a proportionate manner, including versions of the documents in force before or only 2-3 months after the 2013 payment was made.
56. However, Mr Masefield QC points out that the obvious answer to that concern is for JPMC to extract all of these documents onto JPMC's document review platform and to run the relevant key-word searches (such as Interdiction and Watchlist). That ought to significantly reduce the relevant pool of documents. In the unlikely event that at that stage it becomes apparent that the exercise is still a massively expensive and time

consuming one and the benefit (in terms of harvested documents) is disproportionately outweighed by the burden in terms of cost and time, then the parties should cooperate to find an acceptable compromise. After all, JPMC did originally agree to search for and produce these documents (and I consider that it was obliged to do so by reason of disclosure issues 12 and 13). But at this stage I consider that I should make the order sought.

(2) Compliance “concerns”

57. This second principal limb of the application seeks documents relating to JPMC’s compliance function’s concerns over the payment to Malabu in August 2013. It breaks down into two parts, as set out in sub-paragraphs 2(a) and (b) of the draft order. In summary:

57.1 Sub-paragraph (a) seeks the addition of three new disclosure custodians, being members of JPMC’s senior management, and the carrying out of searches of their documents for the period 1 May 2013 to 31 January 2014 by reference to the keyword searches previously used for Disclosure Issues 12 and 13.

57.2 Sub-paragraph (b) seeks the disclosure of two particular documents, being the attachments to an e-mail which has already been disclosed (referred to by its disclosure number, JPMC_00024823).

Draft order paragraph 2(a): New custodians

58. The three custodians in respect of whom this part of the application is brought are Pamela Johnson, Lester Pataki and John Gibbons. They were all members of JPMC’s senior management when the August 2013 payment was made. Their roles were in summary as follows:

58.1 **Ms Johnson** was JPMC’s Global Head of Financial Crime Compliance, a role she assumed in August 2012.

58.2 **Mr Pataki** was JPMC’s Global Head of Escrow, a role he assumed in September 2012.

58.3 **Mr Gibbons** was the Head of Treasury Services for the EMEA region. As explained by Ms Parkes in Parkes 3, Mr Gibbons was one of the relevant individuals involved in the decisions in relation to the August 2013 payment, and he was therefore included on the list of such persons produced by JPMC following the second CMC in November 2020 (see paragraphs 25-7 of Parkes 3). JPMC agreed to add him as a custodian for the period 7 May to 25 September 2013. The FRN maintains, however, that his documents should be searched for a longer period, namely 1 May 2013 to 31 January 2014. The issue of the date range is therefore the only outstanding point in respect of Mr Gibbons.

59. The FRN’s application in this respect is made on the basis that these individuals were allegedly made aware in 2013 of “concerns” held by members of JPMC’s compliance function about what had happened to the money transferred from the Depository Account to Malabu in August 2011.

60. In particular, the FRN points to the fact that shortly prior to the 2013 Payment being made, Mr Pataki was emailing Ms Johnson to set out “*several lessons learned from the*

FGN transaction”, including that “*looking back, the structure of the FGN escrow didn’t make sense in light of the underlying transaction*” and “*we did not know the final beneficiaries in the FGN transaction until we were asked to make the final payment*”.⁶ The FRN says that the information available to Mr Pataki and passed to Ms Johnson, and what he and others within JPMC did (or did not do) with it, is material to Disclosure Issues 12 and 13.

61. The FRN submits that there is also very good reason to consider that Ms Johnson and Mr Pataki will hold unique documents that should be disclosed under Model D in response to Disclosure Issues 12 and 13 and which are not within the existing disclosure population. That is because they (and Mr Gibbons) were involved in relevant communications with other individuals not only within their own tier of management but also the tier above who are also not custodians, including a meeting between Ms Johnson and very senior individuals within JPMC, namely Mr Matt Zames (JPMC’s Chief Operating Officer) and Ms Cindy Armine (Chief Compliance Officer). Mr Cary’s evidence is that these documents would not have been caught by JPMC’s existing searches, particularly in the case of Ms Johnson as the US GFCC has been excluded from JPMC’s disclosure.
62. JPMC’s response to this part of the application is as follows. Since this part of the application seeks compliance concern documents, the relevant disclosure is likely to have already been given by existing compliance custodians. Two of the individuals did not even work in compliance: Messrs Pataki and Gibbons. This is reinforced by the fact that following JPMC’s voluntary addition of Mr Gibbons as a custodian after the second CMC, his documents were recovered and searched for the period 7 May 2013 to 25 September 2013 (being the period most likely to contain relevant documents, as it includes the payment made in August 2013). Despite the fact that this involved the recovery of 86,000 documents, of which 6,000 were manually reviewed (as being relevant) following de-duplication and the application of search terms, only 12 *new* documents were made available for inspection, the most recent of which was dated 28 June 2013 (two months before the August 2013 payment and three months before the end of the search period). Almost all of those documents are merely ‘FYI’ type communications receiving or forwarding documents which had already been disclosed.
63. Ms Phelps QC submits that there is no reason to think that the prospects of locating relevant documents from Ms Johnson or Mr Pataki (still less the balance of the period sought by the FRN in respect of Mr Gibbons) would be any greater. As Ms Parkes has explained, the addition of seven new custodians after the second CMC yielded only 55 new documents in total, at a cost of approximately £318,000 in solicitors’ fees.
64. Ms Phelps QC submits that the issue for the Court in relation to the 2013 payment will be whether JPMC was aware of facts and matters which would have put a reasonable and honest banker on inquiry that the payment instructions received from the FGN’s authorised officers were part of an attempt to misappropriate the FGN’s money, and on the FRN’s own case, seniority is immaterial: it says that if the relevant knowledge was held somewhere within the organisation, that is sufficient for the purposes of assessing compliance with the *Quincecare* duty. However, seniority is material in my judgment in three respects. First, if the relevant knowledge was held at a senior level in the

⁶ Pataki email of 12 July 2013 [D/12/694]: Cary5, ¶64.18 [C/5/42]. See also Cary8, ¶47 [C/8/138-139] noting that the 12 July 2013 email relates specifically to “*lessons learned*” in respect of the Depository Account.

organisation that might make it easier to prove a breach of the *Quincecare* duty than if it were held by a more lowly employee; conversely, if it were not held by more senior personnel that might make it *harder* for the FRN to prove a breach of the duty. Second, senior personnel may have the power within the organisation to take the necessary steps in compliance with the *Quincecare* duty whereas more lowly personnel may not. Third, they may hold their own documents which summarise at a high level (perhaps for the benefit of JPMC's management as a whole) the strategic decisions that the bank ought to be taking in the light of the information provided to them by subordinate personnel.

65. I turn next to the merits or demerits of the three identified individual custodians.
66. **Mr Pataki:** Mr Masefield QC makes three submissions about Mr Pataki:
 - (1) He was notified of and scrutinised the 2013 compliance concerns;
 - (2) He was actively involved in investigating the lessons learned from 2011;
 - (3) He had private correspondence with more senior executives who are not custodians.
67. So far as (1) is concerned, Mr Masefield QC showed the court correspondence involving Mr Pataki from May 2013 onwards in which he was kept closely informed of relevant events in 2013 leading up to the 2013 payment, which included a reference to Mr Pataki speaking to Mr Ansari (who reported to Mr Pataki, being Head of International Escrow at the time) and being actively walked through OPL 245 and his then asking for a written summary of the information imparted to him so that he could walk his superior through it in turn; and Mr Pataki being sent a copy of the Economist article (referred to in paragraphs 9.3 and 40 above) by Mr Gibbons.
68. In particular, there is an email from Mr Pataki to Mr Gibbons dated 28 June 2013 (disclosed by Mr Gibbons) in which Mr Pataki gives Mr Gibbons a quick update on three EMEA Escrow topics, including "FGN" and in which he states "I have completed a full review of this deal", which included his reading all the historical agreements, payment requests and related public articles. He states in particular "We must know who the final beneficiaries are before we close a deal. This was a miss on FGN". The fact that this is a quick update, suggests that there are likely to exist other communications between them on this topic.
69. Ms Phelps QC submitted that this reference to a "deal" is not a reference to the FGN payments, rather he is discussing why the account was opened in the first place, and there is no issue about that. However, as Mr Masefield QC points out, even if this email is purely about client "onboarding", that would include KYC checks and those checks in 2011, 2012 and 2013 were deficient. JPMC was in consequence playing catch-up as to the lessons which it ought to have learned during this period. This is relevant to the case based upon gross negligence and it may also throw some light upon the knowledge of the bank during the relevant period. Mr Pataki was sounding the alarm but his alarm was not heeded as the payment was still made on 29 August 2013. Mr Masefield fairly points out that in paragraph 24(2)(e)(iii) of the Re-Re-Amended Defence, JPMC pleads that it is "denied insofar as alleged that JPMC was under any obligation to investigate the beneficial ownership of "the entity which was to receive the funds"... JPMC would in any event have had no reliable way of doing this"; Mr Pataki plainly disagreed with that and the FRN is entitled to see his work and his review in order to dispute this line of defence. I agree.

70. Mr Masefield QC also referred to a similar email dated 12 July 2013 from Mr Pataki to his superior, Ms Pamela Johnson or “PJ”, Global Head of Financial Crimes Compliance (“the deep dive email”) in which he stated:

We are currently performing a deep dive into the EMEA Escrow book to indentify and understand where we have transactions that carry risk beyond our current risk tolerance. This process includes:

- Identifying the risk associated with each element of each existing escrow transaction on our books today (party, jurisdiction, industry, PEP, deal type, asset type, etc)
- Assigning an overall risk rating to each transaction in the portfolio
- Starting with the highest risk ratings, review each deal to decide whether to retain, mitigate risk or exit

There are several lessons learned from the FGN transaction that we are applying to our screen on new business:

- Be able to describe the underlying transaction and purpose of the escrow in simple terms to ensure that the use of escrow makes sense. Looking back, the structure of the FGN escrow didn't make sense in light of the underlying transaction
- Know the potential final beneficiaries before the deal closes. We did not know the final beneficiaries in the FGN transaction until we were asked to make the final payment. We may have caught the issue if we knew where the final payments were going.
- High risk transactions need to be risk accepted at various levels of the organization (product, region, line of business). It is not clear that happened with FGN.

The quality of deals needs to be assessed independent of the quality of the clients associated with the deal.”

71. Mr Masefield QC submits, and I agree, that this again shows Mr Pataki playing an active role in reviewing the transaction and liaising with US compliance personnel – he is reviewing the 2011 payments and the faults which had still not been rectified by the time of the 2013 payments. Ms Parkes says that no documents have been located to date relating to this deep dive, but of course Mr Pataki is not currently a custodian so that is not necessarily surprising. Indeed, it may suggest that there are also relevant deep dive documents passing between Mr Pataki and Ms Johnson (who is also not yet a custodian).
72. Accordingly I consider that Mr Pataki should be made a custodian, and for the date range sought (which is consistent with the other custodians).
73. **Ms Johnson:** She was global head of financial crimes compliance in 2013 and it can be seen from the disclosed documents to date that there has been some communication with her and meetings involving issues surrounding the 2013 payment. JPMC have identified from other custodians a small number of emails sent by Ms Johnson, the most

recent being a month before the payment was made. Whilst this is obviously not a significant number, it shows some involvement in the relevant transaction and obviously her documents have not yet been searched.

74. I also note, for what it is worth, that an individual who held broadly the equivalent position to Ms Johnson at the time of the 2011 payments – William Langford – has been included as a custodian, albeit that he apparently had greater involvement at the time of the 2011 payments.
75. Mr Masefield QC submits that so far as Ms Johnson is concerned:
- (1) Like Mr Pataki, she was notified of and actively involved in scrutinising the compliance concerns in 2013;
 - (2) Like Mr Pataki, she was in communication with other senior US executives who are not custodians, such as Matt Zames (the COO).
76. Mr Masefield QC took the court through a series of contemporaneous documents beginning in May 2013 to make these propositions good. Those documents show Ms Johnson asking “several questions” of a group of her US colleagues in June 2013, including compliance officers, in the light of the Production Order which was made regarding the FRN Depository Account, as well as asking for a meeting to be set up for that group. Her questions were:
- When was the account opened
 - Have we reviewed the KYC
 - Was negative media the "focus of significant attention" as there is negative news back to early 2000's
 - What were the compliance reasons noted from BSI Lugano?
 - Had we seen any other activity (probably not as escrow) prior to that ?
 - Did we search for other compliance or personal accounts held for Etete and if so, what were the results
 - Why was the payment returned from Banque Misr
 - Have we reviewed our relationships with the tow Nigeria banks are they direct customers?
 - Who is on point from Legal and Compliance on this
77. These questions, which show her taking an active interest in the account issues, are relevant to Disclosure Issues 12 and 13. I do not agree with JPMC that she was only a passive recipient of documents. Far from it. The documents show that Mr Zames wanted a briefing asap in June 2013 and Ms Johnson then had a meeting with him. Then on 11 June 2013 Ian Lyall, head of JPMC EMEA GFCC team, emailed Ms Johnson, updating her for her meeting with Mr Zames and attaching a compliance review report and a global escrow audit (which form the subject matter of paragraph 2(b) of the draft Order attached to the Amended Application Notice). He refers to the fact that a time line was being completed. On 14 June 2013 Mr Lyall emailed Ms Johnson again, stating that in the audit report which he sent her there was a reference to payment controls but he did not think it went far enough. Correspondence between them continued in July, with Ms Johnson taking a close and active role in the steps being taken by JPMC, having discussions with senior colleagues (such as Mr Zames and Cindy Armine, the Chief Compliance Officer), approving drafts of the SARs, considering the Pataki lessons learned email and so forth. Ms Johnson sits above both

the UK and the US compliance teams. She reported to the top management of JPMC. The fact that Mr Cutler's documents (apparently redacted for privilege in many cases) may have been searched and disclosed does not in any way fill the void in respect of Ms Johnson's documents.

78. In my judgment, it is likely that she holds documents relevant to Disclosure Issues 12 and 13 and she should be a custodian for the date range sought.
79. Last, so far as Mr Gibbons is concerned (whom JPMC now accepts should be a custodian), an issue arises as to the date range of his disclosure. JPMC submits that the date range should be more restricted for him, namely 7 May 2013 to 25 September 2013. The FRN submits that the date range for him should also be 1 May 2013 to 31 January 2014. I consider that the standard date range for 2013 custodians for Disclosure Issues 12 and 13 should apply also for Mr Gibbons. It is reasonable for JPMC to search his documents into early 2014 because they may very well shed light on what was known at the date when the 2013 payment was made, in view of his role in the organisation (senior to Mr Pataki who carried out his deep dive review) and the fact that he was involved in relevant communications with other individuals within his own tier of management as well as the tier above who are not custodians. I do not consider there is any rational basis to begin the search on 7 May rather than 1 May.
80. In short I consider that the documents of each of these custodians ought to have been searched and Disclosure made in accordance with Disclosure Issues 12 and 13.

Draft order paragraph 2(b): attachments to JPMC_00024823

81. The last aspect of the FRN's application regarding "compliance concerns" seeks disclosure of the attachments to the e-mail sent by Mr Lyall to Ms Johnson and Mr James Brown on 11 June 2013 (referred to above). Ms Parkes, the partner at Freshfields with the conduct of the matter on behalf of JPMC, reviewed the documents in question and stated in Parkes 3 that they are not responsive to the Issues for Disclosure.
82. Ms Phelps QC argues that that should be the end of this point: "the general rule with regard to discovery is that the person who seeks it is bound by the oath of the person from whom it is sought". In order to go behind Ms Parkes' assessment that the documents are not responsive, the court would need to be satisfied "with reasonable certainty" that the deposing solicitor has either erroneously represented or misconceived the nature of the documents. This is, she submits, a long way from such a case.
83. As described above, in the cover e-mail JPMC_00024823, Mr Lyall provided a summary of the agreements underpinning the OPL 245 transaction in 2011. The cover e-mail seems to have been sent so as to enable Ms Johnson to brief members of JPMC's senior management about the history of the transaction and JPMC's involvement in it. Mr Lyall then also went on to explain that he had attached a "compliance review report" that was prepared "after the matter" and a "global escrow audit" that had been prepared by Internal Audit but which Mr Lyall stated that he had not looked at.
84. Mr Masfield submitted that prima facie these documents do indeed appear to be relevant to Disclosure Issues 12 and 13 as explained above.

85. In these circumstances, since these two reports are readily to hand, I invited Ms Phelps QC to take instructions as to whether JPMC would be willing, in the spirit of cooperation and compromise, which is the culture change intended to be introduced by the Disclosure Pilot Scheme, to disclose these two reports, which are not said to be privileged, *de bene esse* to the FRN so as to allow the FRN to satisfy itself that they are not relevant. After taking instructions she confirmed that JPMC very sensibly would agree to do so. It follows that no order is required on this aspect of the FRN's application.

Cost of the disclosure exercise

86. Finally, I emphasise that in my judgment disclosure by these additional custodians is a proportionate response to the application. I was told that JPMC had spent a staggering £2.9m to date on disclosure and that disclosure in respect of all additional custodians sought would add another £270,000. However, this is in respect of a claim for some \$875m. Indeed, JPMC has spent £290,000 in resisting the application for disclosure, which is more than it would have cost it to provide the disclosure. In these unusual circumstances the additional cost of JPMC complying with its disclosure obligations as a result of this judgment is comparatively modest and is not a reason for refusing the FRN the relief which I have granted it.
87. I should like to thank counsel and solicitors for the skilful way in which the arguments of the parties were presented and for their professionalism and cooperation before and during the hearing.