Neutral Citation Number: [2025] EWHC 145 (KB)

Case No: KB-2024-001032

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date:31 January 2025

Before :

SENIOR MASTER COOK

- -

Between :

JACAPO MORRETTI

Claimant

- and -

(1) DAVIDE LEONE
(2) DAVIDE LEONE & PARTNERS INVESTMENT COMPANY LIMITED

Defendants

- -
- -

John Platts-Mills (instructed by **Grosvenor Law**) for the **Claimant**
David Reade KC (instructed by **Lewis Silkin LLP** for the **Defendants**

Hearing date: 13 January 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 31 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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SENIOR MASTER COOK

Senior Master Cook:

1. These are two applications made by the Defendants in application notices dated 4 October 2024 and 3 January 2025. Before setting out the detail of the applications it is useful to set out the background to the litigation and the procedural steps which have been taken since it was issued.

The parties, proceedings and applications

2. The Claimant is a research analyst, investment professional and Chartered Financial Analyst. He worked with the First Defendant since 2007 and was instrumental in the formation of the Second Defendant together with the First Defendant. The Second Defendant is an investment firm offering investment advisory and portfolio management services, commonly known as a hedge fund. Following a corporate restructure the Claimant became an employee of the Second Defendant with effect from 3 January 2019 until his dismissal in June 2013.

3. These proceedings arise from the Claimant's dismissal from the Second Defendant. The Claimant seeks damages in respect of personal injury he alleges was caused by bullying behaviour and harassment on the part of the First Defendant. The claim form was issued on 28 March 2024 and particulars of claim were served on 24 July 2024. The particulars of claim run to some 29 pages. Detailed particulars of the incidents of bullying, harassment, stress, intentional or reckless conduct are recited at paragraph 10 of the particulars of claim as follows, "The Claimant sets out and relies upon a non-exhaustive chronological list of specific incidents that he can now recall in Schedule 1 to these particulars of claim.". Paragraph 11 of the particulars of claim sets out particulars of complaints concerning the Claimant's working environment and state of health as follows, "The Claimant will refer to and incorporates in these Particulars of Claim Schedule 2 which is a detailed non exhaustive chronological list of key incidents that the Claimant can recall …".

4. The Defendants filed an acknowledgement of service on 8 August 2024. It is important to note that no other application was made by the Defendants at this point. Defences were due to be served by 22 August 2024. The parties agreed to extend the time for filing Defences firstly, until 19 September 2024 and then to 3 October 2024.

5. On the 1 October 2024 the Defendants made an urgent application for a further extension of time to file their Defences. This application was heard by me in the absence of the Claimant in the urgent applications list on 2 October 2024. The application was supported by the witness statement of Mr Colin Leckey dated 1 October 2024. Mr Leckey's statement revealed that in parallel with these proceedings in November 2023 the Claimant had commenced proceedings in the Employment Tribunal in respect of unfair dismissal, harassment and victimisation. He stated that these claims were being contested and that grounds of resistance had been filed on 4 March 2024.

6. At paragraph 10 of his witness statement Mr Leckey stated that in the course of the Employment Tribunal proceedings the Claimant's solicitors had revealed the existence of approximately 66 covert recordings that had been made by the Claimant of various conversations that he had had with the Frist Defendant in the period July 2021 to April 2022. He stated that on 17 May 2024 the Employment Tribunal had ordered the Claimant to provide copies of the recordings to the Defendants by 31 May 2024 and

that over 70 hours of recordings had been disclosed in accordance with the Employment Tribunal's order.

7. Paragraph 14 of Mr Leckey's statement should be set out in full:

> "14. The Particulars of Claim and the Schedules relied upon by the Claimant are now produced as [CDL1/5-59] . As will be apparent, the Claimant relies extensively on matters which he alleges were said to him during various phone calls and in other discussions, many of which are the subject of the covert recordings. Both the content of these recordings, and the context in which matters were discussed, are important features of both the ET proceedings and the High Court proceedings. There is a very substantial factual overlap between the claims in the High Court and those in the Employment Tribunal, in which the Claimant has repeated many of the several hundred specific allegations he relies on in the Tribunal proceedings. The extent of this overlap has been acknowledged by the Claimant to the extent that he has proposed a stay of the High Court proceedings pending determination of the ET proceedings. The ET proceedings are presently listed for a final hearing in May 2025."

8. Mr Leckey then referred to CPR 31.22 which he said was engaged as the recordings were disclosed pursuant to an order of the employment Tribunal and stated that the Defendants could not sensibly respond to the myriad of different allegations and incidents relied upon by the Claimant in support of his High Court claim without making direct reference to the covert recordings and accordingly he had made an urgent application to the Employment Tribunal requesting permission to rely upon the recordings and had made a direct request to the Claimant seeking such permission. In the circumstances he sought a further extension of time to serve the Defences until 14 days after permission had been given to rely upon the recordings by the Employment Tribunal, the Claimant, or the High Court.

9. At paragraph 19 of his witness statement Mr Lecky acknowledged that it was the position of the Claimant that the High Court proceedings should be stayed pending the determination of the Employment Tribunal proceedings.

10. At the hearing on 2 October 2024, it seemed to me that, the obvious and sensible thing to do would be to stay the High Court proceedings with immediate effect. Ms Bell who appeared on behalf of the Defendants urged me to permit the Defence to filed before implementing the stay so that the Defendants could put their version of events on the record. This course seemed to me to be undesirable for two primary reasons. First, if the Employment Tribunal disposed of large elements of the claim the particulars of claim in this action would require radical amendment and the costs of the proposed Defence would be wasted. Second, it seemed to me the Defendants were attempting to conduct the litigation on the basis of and through the court file which was an unnecessary distraction from the Employment Tribunal Proceedings and a questionable use of the parties', and the court's resources.

11. It was at this point that Ms Bell informed the court, for the first time, that the Defendants were contemplating an application to restrict access to the court file. This drew a pretty

curt response from me to the effect that this was a classic bullying claim and one which, whilst potentially embarrassing for the Defendants, did not appear to raise any issues of confidentiality. I referred to the principle of open justice and pointed out that the Defendants had been content for the particulars of claim and attachments to be on the court file since issue, a period of approximately 70 days, without raising the slightest complaint. In the circumstances I ordered a stay of the proceedings with immediate effect.

12. On 4 October 2024 the Defendants issued two applications; the Application to Restrict Access and an application to the lift the stay. Pursuant to the latter, the Defendants invited the court to temporarily lift the stay previously directed pursuant to my order of 2 October 2024 – "*only for the purpose of the Defendants filing their Defences in the claim by 4pm on the Day following the Order*". I refused this application and adjourned the Application to Restrict Access.

13. By application notice dated 10 December 2024 the Defendants applied for an adjournment of this hearing. It transpired that the Employment Tribunal had held a preliminary hearing on 13 November 2024. The day before that hearing the Defendants had made an application for a Rule 50 order to restrict reporting of the matters which are now the subject the current applications before me. Hardly surprisingly the Employment Tribunal was not in a position to determine the application and I am told it was not prepared the accede to the Defendants request that it be determined before this hearing. I refused the application for an adjournment on the basis that the alleged "confidential" nature of the material complained of would not change depending upon the decision taken by the Tribunal and had been in the public domain since the Acknowledgement of Service had been served.

14. By a further application dated 3 January 2025 the Defendants expanded the nature of the orders they sought under 4 December 2024 Application to Restrict Access. The effect of this application is that:

    i) It applies the principles in the original restricted access application to the material in the Schedules to the Particulars of Claim;

    ii) It seeks to protect the following additional categories of information:

        a) The identities of current and former employees and members of the Second Defendant in relation to whom disparaging comments or references to disparaging comments and/or allegations of sexual conduct are made; and

        b) Commercially sensitive information.

    iii) It seeks a declaration that in relation to any application that may be made pursuant to CPR 5.4C(2) the medical report of Professor Tony Elliott, dated 24 February 2023, which was served with the Particulars of Claim, does not form part of a statement of case for the purposes of CPR 5.4C(1)(a) but is a document "filed with or attached to" a statement of case and can only be accessed with the permission of the court under CPR 5.4C(2).

15. The Defendants applications were supported by the witness statements of Mr Stephen O'Flaherty dated 4 October 2024, 29 October 2024 and 3 January 2025. Mr O' Flaherty is a director of the Second Defendant. In response the Claimant relied upon the witness statements of Rachel Gregory dated 22 October 2024 and Jacopo Moretti dated 9 January 2024.

The Legal Principles

16. There was little dispute between the parties as to the relevant legal principles to be applied. CPR 5.4C sets out the general rule and process in relation to a non-party who wishes to obtain a document from court records:

> "5.4C
>
> (1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of –
>
> (a) a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it;
>
> (b) a judgment or order given or made in public (whether made at a hearing or without a hearing).
>
> (2) A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.
>
> (3) A non-party may obtain a copy of a statement of case or judgment or order under paragraph (1) only if –
>
> (a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
>
> (b) where there is more than one defendant, either –
>
> (i) all the defendants have filed an acknowledgment of service or a defence;
>
> (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
>
> (c) the claim has been listed for a hearing; or
>
> (d) judgment has been entered in the claim.
>
> (4) The court may, on the application of a party or of any person identified in a statement of case –
>
> (a) order that a non-party may not obtain a copy of a statement

> of case under paragraph (1);
>
> (b) restrict the persons or classes of persons who may obtain a copy of a statement of case;
>
> (c) order that persons or classes of persons may only obtain a copy of a statement of case if it is edited in accordance with the directions of the court; or
>
> (d) make such other order as it thinks fit.
>
> (5) A person wishing to apply for an order under paragraph (4) must file an application notice in accordance with Part 23.
>
> (6) Where the court makes an order under paragraph (4), a non-party who wishes to obtain a copy of the statement of case, or to obtain an unedited copy of the statement of case, may apply on notice to the party or person identified in the statement of case who requested the order, for permission."

17. It has been rightly said on many occasions that open justice is a fundamental principle at the very heart of our justice system. As set out in the Supreme Court case ***Dring v Cape Intermediate Holdings Ltd*** [2019] UKSC 38 at [42]–[43], there are two main purposes to the open justice principle:

> "The first is to enable public scrutiny of the way in which courts decide cases—to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly.… the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases."

18. The general rule, that a non-party may without permission obtain from the court record original copies of a statement of case, reflects the principle that the identities of parties to civil proceedings as well as the allegations they make against one another are public. As was made clear in ***R v Bedfordshire Coroner, ex p Local Sunday Newspapers Ltd*** [1999] 164 JP 283 at [19]), it is important that justice in the courts be done in public and thus not only that the public have access to the courts but they '*have access to the information given in court unless an exception to that rule is established*' and departure from the open justice principle is the exception and any such exceptions must be '*regarded strictly*' at [20].

19. The courts must guard against the natural tendency for the general principle of open justice to be eroded and for exceptions to grow by accretion as exceptions are applied by analogy to existing cases see, ***Khuja v Times Newspapers Ltd*** [2017] 3 WLR 351, at [14]).

20. The rule and Practice Direction do not specify the factors bearing on the court's exercise of its power to order the provision of edited copies of the statements of case, and in this

respect, I am of the view that it is important to have regard to analogous cases dealing with relevant protectable interests, such as Article 8 rights and confidentiality.

21. In Cape Intermediate Holdings v Dring [2020] AC 629 at paras 45 and 46 Baroness Hale said:

> "45 However, although the court has the power to allow access, the applicant has no right to be granted it (save to the extent that the rules grant such a right). It is for the person seeking access to explain why he seeks it and how granting him access will advance the open justice principle. In this respect it may well be that the media are better placed than others to demonstrate a good reason for seeking access. But there are others who may be able to show a legitimate interest in doing so. As was said in both Kennedy [2015] AC 455, at para 113, and A v British Broadcasting Corpn [2015] AC 588, at para 41, the court has to carry out a fact-specific balancing exercise. On the one hand will be "the purpose of the open justice principle" and "the potential value of the information in question in advancing that purpose".
>
> 46 On the other hand will be "any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others". There may be very good reasons for denying access. The most obvious ones are national security, the protection of the interests of children or mentally disabled adults, the protection of privacy interests more generally, and the protection of trade secrets and commercial confidentiality. In civil cases, a party may be compelled to disclose documents to the other side which remain confidential unless and until they are deployed for the purpose of the proceedings. But even then there may be good reasons for preserving their confidentiality, for example, in a patent case."

22. In a situation where a party seeks a restriction on access to the court file the court must carry out a fact-specific balancing exercise. On the one hand will be the purposes of the open justice principle and the potential value of the information in question in advancing that purpose and on the other hand will be any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others.

23. In carrying out this fact specific balancing exercise the observations of Warby LJ in ***Millicom Services UK Ltd and others v Clifford*** [2023] ICR 663 at [44] are of assistance:

> "As a general proposition, it may be said that the more remote an item of information is from the issues requiring resolution in the case the less likely it is that a restriction on its disclosure will offend the open justice principle or compromise its purposes."

24. Lastly, in relation to manner of reporting and the public reception of it. First, broadcasting authorities and newspaper editors should be trusted to fulfil their responsibilities accurately to inform the public of court proceedings, and to exercise sensible judgment about the publication of comment which may interfere with the administration of justice, see ***Re C (A Child) (Private Judgment: Publicity)*** [2016] 1 WLR 5204, at [29]). Second, the risk of public misunderstanding of sensitive allegations made in court proceedings does not justify infringements of open justice as Simler J, as she then was, observed in ***BBC v Roden*** [2015] ICR 985, at [40], the public's understanding of legal constructs, such as the difference between suspicion and guilt in criminal proceedings, or the making of allegations of sexual impropriety in Employment Tribunal proceedings should not be underestimated.

The submissions of the parties

The Defendants

25. On behalf of the Defendant, Mr Reade KC made the broad submission that the Claimant has taken an expansive approach to his pleaded case and included numerous peripheral matters and allegations in the particulars of the incidents he relies on. In the circumstances the Defendants seek to impose limited restrictions such that pending trial, statements of case provided to the public would not contain specified confidential client names, private and/or potentially damaging statements concerning its employees or members, or information of commercial sensitivity to the Defendants.

26. Unpacking that broad submission.

Client information

27. Mr Reade KC pointed to the following features of Mr O Flarty's evidence which dealt with the confidentiality of the client information the Defendants sought to protect:

    i) Expectations of client confidentiality are fundamental within hedge funds and within the wider asset management industry (para 5) as they enable clients to maintain the privacy they value and require in their financial dealings (para 6). Mr O'Flaherty stated that he is aware of no hedge fund which publicly discloses the names of its investors (para 5).

    ii) Investor confidentiality provisions are accordingly a standard feature of hedge fund investment documentation (para 5) and feature in the Second Defendant's investment documents (para 8).

    iii) The Second Defendant also takes significant additional steps to preserve confidentiality. Investor names are assigned an alphanumeric code to be used within the business and externally, with only certain senior individuals at the Second Defendant having access to the actual investor names (para 8). Investor communications take place via a confidential, password protected platform to avoid sharing information over email and subjecting it to increased risk of cyber attack or human error of being sent to an incorrect email address (para 8). The Second Defendant does not publish any substantive information on its website (para 10).

iv) Staff employment contracts include obligations to keep investor information confidential, and the Claimant's contract contained such an obligation which expressly remains binding on him following the termination of his employment (para 9).

28. Mr Reade KC submitted, whether or not the intention of the Claimant in (unnecessarily) naming clients was to cause damage to the Defendants, the effect of such names being made publicly available would be to cause significant prejudice to the Defendants and their clients. He put forward the following examples of possible adverse outcome for the Second Defendant and its investors established by the evidence:

i) The risk of named investors redeeming their investments, putting at risk the very existence of the Second Defendant (in circumstances in which quarterly redemptions mean they could do so swiftly, and in good time before the employment tribunal hearing) (para 11.a);

ii) The risk of other investors becoming alarmed and redeeming their own investments, a particular risk in relation to investors who are publicly well known and sensitive to publicity (para 11.b);

iii) A damaging effect on the Second Defendant's ability to attract new investors or raise capital, over concerns that confidentiality provisions in the investment documents could be overridden (para 11.c); and

iv) The risk of competitors pursuing the named investors (para 11.d).

29. The specific references the Defendants initially sought to redact are explained at paragraphs 2-4 of the Confidential Annex to the First Witness Statement of Mr O'Flaherty. In paragraphs 2-3 of the Confidential Annex to his Third Witness Statement, Mr O'Flaherty identifies the additional references made in the Schedules (to the same clients and identifying parties) which the Defendants seek to protect for the same reasons.

Commercially sensitive information

30. In the Particulars of Claim the Claimant made reference to an investment advisor which advises various investors in the Second Defendant's funds. This advisor was named in the Particulars of Claim and relief was sought in that regard in the first application, see the Confidential Annex to First Witness Statement of Mr O'Flaherty, para 5. In the 3 January 2025 application the Defendants address further references to the same entity made in the Schedules (see Confidential Annex to Third Witness Statement of Mr O'Flaherty, para 4).

31. Mr Reade KC pointed out that as explained by Mr O'Flaherty in the Confidential Annex to his First Witness Statement (para 5) [73], the role of this advisor is confidential and commercially sensitive and disclosure of the same could do commercial damage to the relationship between these parties. He submitted the identity of the advisor is entirely peripheral to the allegations made by the Claimant against the Defendants, but, given the authority and influence that this advisor has on the investment decisions of its clients, the protection of this commercially sensitive information is of real importance to the Defendants.

Relief sought

32. In the circumstances Mr Reade KC invited the court is invited to redact these client and advisor names to protect this confidential information regarding third parties.

Current and former employees and members

33. In the 4 October 2024 application the Defendants sought to redact one paragraph in which reference is made to the mental health of a former employee (Confidential Annex, para 6, Particulars of Claim paragraph 13(xx)(v)). Mr Reade pointed out that the Schedules contain considerably more references to current and former employees and members, and accordingly the 3 January 2025 application expands the relief sought in order to address these where such references are liable to interfere with the Article 8 rights of the individuals in question. The relevant references are identified by Mr O'Flaherty in paragraphs 5-13 of the Confidential Annex to his Third Witness Statement.

34. The additional restrictions sought by the Defendants relate to two categories of references:

    i) Allegations regarding sexual conduct (see Confidential Annex para 6-7); and

    ii) Allegation of disparaging statements by the First Defendant regarding employees and members (see Confidential Annex para 8-13).

35. In relation to the first category Mr Reade KC submitted the statements of a sexual nature are clearly of a highly personal and private nature and engage the Article 8 rights of the relevant individuals and in the circumstances he invited the court to protect their private lives on the basis that to do so would not have any detrimental impact on the public's ability to understand the proceedings given how peripheral such matters are to the case.

36. In relation to the second category Mr Reade KC pointed out that the allegations were pursued against the First Defendant and the court was not being invited to rule on the truth or falsehood of the statements said to have been made. Accordingly, the identities of those about whom the statements are said to have been made is not necessary for a proper understanding of this case. In the circumstances he suggested that this information would, however, be liable to have a significant impact on those who are named on the basis that their Article 8 rights are engaged.

Relief sought

37. Mr Reade KC therefore invited the Court to impose the limited and targeted redactions sought to ensure that the open and fair trial of these proceedings does not result in significant unnecessary damage to the Defendants, their clients and partners, and their current and former employees and members.

Application for a declaration regarding the status of the Claimant's medical report.

38. The Defendants also seek a declaration that the medical report of Professor Tony Elliott, dated 24 February 2023 does not form part of a statement of case for the purposes of CPR 5.4C(1)(a) but is a document "filed with or attached to" statement of case and can only be accessed with the permission of the court under CPR 5.4C(2).

39. The basis on which this declaration was sought was explained by Mr Reade KC on the basis that The Defendants understand this to be the effect of the decision by me at the 1 November 2024 hearing, at which I ruled that the Schedules do form part of a statement of case. The Defendants seek a declaration confirming the status of the medical report to ensure that my decision is recorded and upheld and to ensure that inadvertent disclosure is not given.

The Claimant

40. Mr Platts-Mills made four general points relevant to both the assertions of "client and commercially sensitive material" and "current and former employees and members". First, departure from the open justice principle is the exception and any such exceptions must be 'regarded strictly'. Second, the information has been a matter of public record since July 2024. In this respect as to the potential for harm, in respect of confidentiality or privacy, it can be fairly said that the horse has bolted. The court should not be in the habit of closing stable doors in such circumstances. The Defendants could and should have applied for a stay before filing an acknowledgment of service. Had they done so a non-party would not have been able to obtain a copy of the Particulars of Claim (r.5.4C(3)). There would have been no need to take the exceptional step of seeking redactions. The court's time would not have been drawn upon. Costs would have been saved. Third, the information the Defendants seek to redact is all highly relevant to the Claimant's claim, indeed, the focus of the redactions is the Claimant's allegations of breach. If the information were truly irrelevant then one might expect to see the Defendants pursuing a strike out application. If redacted, the public will not be able to understand a central part of the Claimant's claim – namely that the First Defendant created a hostile and damaging working environment through the way in which he referred to and the allegations he repeatedly made in detail against others, including senior employees of the Defendant. Fourth, the Defendants' actions in seeking to adjourn the Application to Restrict Access and the inexplicable delay in making the Further Application to Restrict Access cuts against the grain of any assertion that the need to limit access to the court record is overly pressing, let alone that the circumstances are exceptional.

<u>Client information and Commercially sensitive information</u>

41. Mr Platts-Mills accepted that the Claimant does not take issue with the evidence of Mr O'Flaherty to the effect that investor identity is usually kept confidential within the industry or with the Claimant's own contractual obligations of confidentiality.

42. Mr Platts-Mills referred to a Google search which revealed a press article published in 2012 naming one of the investors in the funds managed by the Second Defendant and submitted that information in relation this investor had had lost any quality of confidentiality that it may have had.

43. Mr Platts-Mills then suggested that this assertion was bolstered by the evidence of the Claimant at paragraph 7 of his witness statement to the effect that the First Defendant repeatedly discussed such matters, and informed him of having discussed matters with others including the identity of the Second Defendant's investors.

<u>Current and former employees and members</u>

44. Mr Platts-Mills submitted that the jurisdiction to make a redaction is not a general privacy charter for the protection of any material which those affected by litigation wish to keep hidden. A concern to protect the mere publication of embarrassing or disparaging material is not sufficient. He pointed out that the Defendants contend that Schedule 1 'makes reference to alleged sexual conduct by certain of the Defendant's employees' and suggested that this position should be treated with care. At entries 52 and 85, by way of example, the Claimant does not make allegations against employees, but rather refers to allegations being made by the First Defendant against them (some of which are expressly alleged to have been false by the Claimant).

45. Mr Platts-Mills submitted that there is plainly nothing exceptional about 'disparaging comments or references'. The Defendants observed that the court is unlikely to be called upon to determine the truth of the underlying allegations (the issue being the impact of the First Defendant making them irrespective of their truth). As to the risk of damage to the individuals concerned, the public's understanding of legal constructs, such as the making of serious allegations, including sexual impropriety, in proceedings should not be underestimated.

Application for a declaration regarding the status of the Claimant's medical report.

46. Mr Platts-Mills short response to this point was that PD 16 para 11.1 required a medical report to be "attached to" a particulars of claim and that given the clear wording of CPR 5.4C (1) (a) to the effect that a non-party may not obtain a document "attached" to a particulars of claim as of right the declaration sought by the Defendants was pointless.

A final point

47. At the conclusion of arguments, I informed counsel that I would make enquiries on the court's case management system CE-file in order to ascertain whether there had been any and if so how many requests to obtain documents from the court file. This information seemed to me to be relevant to Mr Platts-Mills stable door argument and possibly relevant to the balancing exercise I must perform. I informed counsel that they would have the opportunity to make further submissions in writing.

48. Having made enquiries I informed counsel that there had been two such requests to date. The first, for the claim form from a Mr Michael McLeod, mmcleod@gryphon-strategies.com and the second, for the claim form, particulars of claim and two court orders from Fabio Perugia, f.perugia@maimgroup.com. Mr Reade KC informed me that Mr Perugia is the Defendants own PR consultant.

49. Neither counsel wished to make further submissions in light of this information.

Decision

Client and Commercially sensitive information

50. I start form the position that the evidence before me establishes an arguable case that the information the Defendants seek to redact attracts the degree of commercial confidentiality contended for by Mr Reade KC. I have to confess that I was a little sceptical about this at first, but given that Mr Platts-Mills did not seriously challenge the proposition, this should be my starting point.

51. I have concluded, having analysed the statements of case, that in relation to these categories the redaction of client and advisor names would not have any detrimental impact on the reporting of this case, or prejudice the Claimant's Article 6 right to a fair trial. This conclusion is supported by the example put forward by Mr Reade KC. The Particulars of Claim refer to alleged repeated comments by the First Defendant about a former employee of the Second Defendant which the Claimant states were of a paranoid or delusional nature, and cites that these comments included claims that the employee in question collaborated in plots with certain clients and an advisor (paragraphs 8 and 13(xviii)). I accept, given the nature of the allegation, that anyone accessing the statements of case would not need to know the identity of the third parties referred to in order to understand the allegation, which is said to be one of bullying and harassment of the Claimant by the First Defendant. I therefore accept the inclusion of the third party information does not further the open justice principle, and in the circumstances it is therefore not in the public interest for confidence to be breached. Even if there were to be some minimal impact on the ability of a third party to understand the proceedings, any such ability would be limited and would be more than outweighed by the loss of the confidentiality established by the Defendants.

52. As for the submission made by Mr Platts-Mills that the cat is out of the bag and that the information has been in the public domain for a considerable period. The information revealed by the Google search is of some age, going back to 2012 and much may have changed in the intervening years. I accept that the Defendants do not appear to have done much about this and that this potentially undermines their expectations of privacy however, as I have pointed out, the evidence of Mr O'Flaherty is not challenged.

53. I am of the view that the Defendants should have made the application much sooner than they did. It is clear from the manner in which the application to extend time to file the Defence was handled that no proper consideration had been given to this issue in advance of the first hearing before me. No satisfactory explanation has been provided for failing to make the application before filing the acknowledge of service. Had the application been made at this point there would have been no possibility of confidential information entering the public domain before the application had been considered by the court. However, the delay needs to be considered together with what has actually happened in the time the file has been open to public inspection. The court file has been accessed twice and only one copy of the particulars of claim has been requested. This request was made by the Defendants own PR consultant.

54. Having considered the purposes of the open justice principle and my conclusion that the potential value of the information in question in advancing that purpose is extremely limited together with my conclusion the Defendant has a legitimate interest in protecting the confidential nature of its Client and Commercially sensitive information, the balancing exercise falls in favour of granting each of the redactions sought by Mr Reade KC on behalf of the Defendants.

Current and former employees and members

55. It seems to me that it is common ground between the parties that the Claimant alleges the First Defendant made disparaging statements against current and former employees and members of the Second Defendant. The allegations are not made directly against those individuals and the Court will not be determining the truth or falsehood of the underlying allegations. It is important to keep this well in mind when considering the

balancing exercise between the individuals Article 8 rights and the principle of open justice.

56. Mr Reade KC's submission in relation to this issue really focused on the potential risk of reporting and the public reception of it. As I pointed at paragraph 24 above, in the context of my reference to ***BBC v Roden***, the public's understanding of legal constructs, should not be underestimated and broadcasting authorities and newspaper editors should be trusted to fulfil their responsibilities accurately to inform the public of court proceedings.

57. It would be clear to anybody looking at the court file that this claim had been stayed, prior to a Defence being filed, with the purpose of enabling the Claimant's Employment Tribunal Claim to be resolved. Given the nature of allegations, being centered on what was said by the First Defendant rather than anything done by the individuals, I conclude the balance comes down on the side of open justice.

58. In the circumstances I decline to order the redactions sought by Mr Reade KC in respect of the current and former employees and members of the Second Defendant.

Application for a declaration regarding the status of the Claimant's medical report.

59. I can deal with this issue quite shortly. My decision in relation to the schedules to the Particulars of Claim was based on the fact that paragraphs 10 and 11 of the Particulars of Claim expressly incorporated the schedules into the Particulars of Claim as particulars of incidents of bullying, harassment, stress and intentional or reckless conduct.

60. The position with the medical report is different. Mr Platts-Mills is correct in his submission that PD 16 para 11.1 requires a medical report to be "attached to" a particulars of claim. In the circumstances I accept his submission that the clear wording of CPR 5.4C (1) (a) renders the application redundant.

61. I would invite counsel to submit a draft order giving effect to this judgment.