Neutral Citation Number: [2024] EWHC 765 (Ch)

Case No: BL-2020-001050

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

7 Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 5 April 2024

BETWEEN:-

Loudmila Bourlakova & Ors

Claimants

- and -

Oleg Bourlakov & Ors

Defendants

Before:

THE HONOURABLE MR JUSTICE RICHARD SMITH

Neil Kitchener KC, Jeff Chapman KC, David Caplan and Tom Foxton of Counsel (instructed by **Mishcon de Reya**) for the **Claimants**

Andrew Scott KC and Ajay Ratan of Counsel (instructed by **Asserson**) for the **6th Defendant**

Andrew Hunter KC, Jack Watson and Samuel Cathro of Counsel (instructed by **PCB Byrne**) for the **7th and 8th Defendants**

Graham Dunning KC, Alexander Milner KC, Rowan Pennington-Benton and Nicholas Leah of Counsel (instructed by **Madison Legal**) for the **12th Defendant**

Hearing dates: 26 and 27 March 2024

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APPROVED JUDGMENT

Mr Justice Richard Smith:

Introduction

1. This ruling relates to two sets of applications which came before me on 26 and 27 March 2024, the first set comprising applications by the First and Fourth Claimants (together, **Claimants**) for asset freezing and/ or proprietary injunctive relief (**Injunction Application**) against:-

   (a) the Sixth Defendant (**Mr Anufriev**);
   (b) the Seventh and Eighth Defendants (**Kazakovs**);
   (c) the Twelfth Defendant (**Edelweiss**); and
   (d) Hemaren Stiftung (**Hemaren**).

2. The second set concerns a number of different orders sought by Mr Anufriev, the Kazakovs and Edelweiss (together, **Defendants**) against the Claimants relating to the alleged misuse of their confidential, including privileged, information (**Confidentiality Applications**).

3. I do not set out here in any detail the background to these proceedings which is noted at some length in my judgment dated 8 September 2023 concerning the amendment of the Claimants' claims and the joinder of the Fourth Claimant ([2023] EWHC 2233 (Ch)). For present purposes, it suffices to note that these proceedings concern an alleged fraudulent scheme said to involve misrepresentation, forgery and asset misappropriation with a view to putting assets beyond the reach of the Claimants. That scheme is said originally to have been instigated by the (now deceased) First Defendant (**Mr Bourlakov**), the husband and father of, respectively, the First and Fourth Claimants, allegedly acting in concert with the Kazakovs and Mr Anufriev. Following Mr Bourlakov's death, Mr Kazakov is said to have continued that scheme, again in concert with others.

4. Most relevantly for present purposes, one aspect of the alleged fraudulent scheme concerns the ownership of Edelweiss, a Panamanian company. Following the amendments and joinder permitted last year, the Claimants' primary case is that Edelweiss is owned by the Fourth Claimant, albeit with Mr Kazakov said presently to exercise wrongful control of that entity and its valuable assets through his alleged sole beneficial ownership of Hemaren, a Panamanian foundation (of which Mr Anufriev is Protector). The Claimants have recently applied to have Hemaren joined to these proceedings.

5. The Injunction Application first came before me on 21 and 22 February 2024, limited then to asset freezing relief against Mr Anufriev, the Kazakovs and Edelweiss. Having been issued on 18 January but not served until 12 February 2024, the Defendants were highly critical that the Claimants had avoided the duty of full and frank disclosure arising on without notice applications by giving the bare minimum of notice which they said was wholly insufficient to allow them fairly to deal with the Injunction Application. The Claimants sought to justify such limited notice on the basis of the risk of asset dissipation. Mr Anufriev, the Kazakovs and Edelweiss applied to adjourn the February hearing, a position not resisted by the Claimants once Mr Kazakov and Edelweiss offered certain undertakings not to dispose of Edelweiss' assets. These were accepted by the Court and the Injunction Application re-listed to come back before me on 26 and 27 March 2024.

The CT report

6. At the February hearing, there was an extraordinary turn of events arising from the evidence then relied on by the Claimants in support of the Injunction Application. That evidence included the first affidavit of Ms Naomi Simpson, a partner in Mishcon de Reya LLP, solicitors for the Claimants (**MdR**), dated 17 January 2024. That affidavit exhibited a report of the same date from a private investigation firm called CT Group (**CT**). The information in that report was apparently gathered by CT from confidential human sources, including (i) the 'Field Team', a group of private investigators comprising former intelligence officers (ii) the 'Underlying Sources', individual sources 'on the ground' who carry out investigations and obtain information on behalf of the Field Team and (iii) a source with access to a specialised database that aggregates banking data for analytical purposes. The identity of these sources had not been disclosed to MdR.

7. The report exhibits various documents said to evidence a risk of dissipation. Those documents include e-mails purportedly between Mr Kazakov and Mr Anufriev and substantial banking transfers, including from Edelweiss. Although CT was unable to guarantee the accuracy of the matters identified, it expressed a high degree of confidence in their reliability. Ms Simpson's affidavit also referred to certain material obtained by CT which might have been subject to legal privilege having been removed from the batch of documents provided to MdR and subject to 'privilege review' by counsel with no prior involvement in the proceedings.

8. Evidence from Mr Kazakov and Mr Anufriev served shortly before the February hearing suggested that the vast majority of bank transfers identified in the CT report never, in fact, occurred and that the e-mails it had obtained were forgeries. Further preliminary analysis of some of the CT report materials, as summarised in the tenth witness statement of Ms Seborg, partner in PCB Byrne LLP, solicitors for the Kazakovs, dated 20 February 2024, was to the same end. Given that evidence, the Claimants confirmed very shortly before the February hearing that they would not rely on the CT report at that hearing but maintained that there was still sufficient evidence of risk of dissipation to warrant the asset freezing relief sought. In the event, as I have said, the February hearing was adjourned, with the Claimants also required to indicate by 27 February 2024 the extent to which they continued to rely on the CT report on the Injunction Application.

9. On 28 February 2024, the Claimants issued a further application, seeking the joinder of certain additional Defendants, including Hemaren, to these proceedings, further injunctive relief (said to be on a proprietary basis) against Hemaren and Edelweiss (restraining the disposal of Edelweiss' shares, the exercise of rights as Edelweiss' shareholder and the disposal of Edelweiss' assets), and related orders for service out of the jurisdiction. I granted the orders for service out on 5 March 2024.

The Confidentiality Applications

10. Following the February hearing, focus turned to the manner in which CT had gone about the collation of the materials referred to in its report, with Mr Anufriev making an urgent application on 1 March 2024 for further information in that regard and the delivery up by the Claimants of those materials privileged to him. In the event, that application was adjourned by consent on 6 March on the basis of certain information provided by MdR and the provision by privilege review counsel of potentially privileged materials.

11. That focus was intensified prior to the restored hearing of the Injunction Application, with the Kazakovs, Mr Anufriev and Edelweiss issuing the Confidentiality Applications. Those applications are very similar and, in broad terms, they seek orders for the Claimants to (i) deliver up and destroy the Defendants' confidential information (ii) procure that CT does the same (iii) cease using the information (iv) cease CT's instruction (v) swear affidavits confirming compliance with their obligations and providing full information as to the use and dissemination of the information and (vi) provide related disclosure.

12. The Confidentiality Applications also sought the adjournment of the Injunction Application until full compliance with the mandatory injunctions sought. In addition, declarations were sought as to (i) the use of unlawful means by CT in obtaining the Defendants' confidential information (ii) the provision of some of the Defendants' confidential information to MdR and review counsel (iii) the use of the Defendants' confidential information to prepare further materials, including the CT report and (iv) the absence of any privilege in documents instructing CT or created in furtherance of its investigations or of the use of the Defendants' confidential information. The Confidentiality Applications were listed to be heard with the Injunction Application on 26-27 March 2024, time permitting.

13. The Defendants' position in respect of the Confidentiality Applications is perhaps most conveniently summarised in Ms Seborg's twelfth witness statement dated 9 March 2024 served on behalf of the Kazakovs. This explains how analysis of the material provided in the CT Report had confirmed that a considerable volume was fake or forged. Further correspondence with MdR revealed that it had been aware since August 2023 that CT held potentially privileged documents belonging to the Defendants but no efforts were made

then to notify the Kazakovs about this. These documents had been passed to review counsel, albeit some had been passed to and, in one case (as Ms Seborg understood at the time), reviewed by, MdR. Review counsel passed the privileged documents to PCB Byrne LLP on 7 March 2024. Those privileged documents are genuine.

14. It also remains unclear what other confidential material CT may have obtained that was not provided to review counsel, albeit the CT report states that its investigations began in 2020. Moreover, some purported documents attached to the report have now been confirmed as having been obtained in 2021 and 2022. That access to genuine confidential information has been obtained is demonstrated not only by the privileged documents but also by some of the supporting documents for the CT report. Although most documents are fake, some are genuine and others, although not themselves genuine, reflect the contents of others that are. As a result of their analysis, the Kazakovs say that it appears CT has accessed their genuine confidential information, including their email accounts, the overwhelming inference being that this was done using unlawful means, likely by hacking or 'phishing' over a prolonged period, with access obtained to potentially thousands of confidential documents.

The Claimants' position

15. On 19 March 2024, Ms Pigott, a partner in MdR, swore an affidavit in which she confirmed that the Claimants no longer relied upon the CT report and would no longer be seeking asset freezing relief against the Kazakovs and Mr Anufriev rather than proprietary injunctive relief against Hemaren and Edelweiss. Only if proprietary relief was not available against Edelweiss did it maintain its application for asset freezing relief against that entity.

16. In relation to the Confidentiality Applications, the affidavit explains how MdR became aware on 4 August 2023 that a potentially privileged tranche of documents had been obtained. MdR decided not to take possession of that material and made arrangements for its review by independent counsel. She also explains how four potentially privileged documents were inadvertently sent by CT to MdR. One of those was read and reviewed by Ms Simpson who formed the view that the iniquity exception applied to it. The four documents were then sent to review counsel. On 15 March 2024, a further one page

document, some of which might also be privileged, was also found within the materials provided by CT. The lawyer then ceased her review and the document was quarantined before being sent to PCB Byrne LLP. After the issue of privileged documents was raised by the Kazakovs and Mr Anufriev, review counsel sent the potentially privileged documents to the relevant Defendants.

17. As to the relief sought by the Kazakovs, Mr Anufriev and Edelweiss, Ms Pigott explained that the Claimants were willing to take steps to protect the confidential information, as to which:-

(a) the Claimants did not accept that documents relating to CT's investigations were not subject to privilege or that they were disclosable;

(b) steps had already been taken to ensure that the Claimants had not come into possession of the Defendants' privileged material;

(c) the CT report had already been extensively referred to in open court (and was therefore not confidential) and was said by the Defendants to be largely fictitious in any event;

(d) she did not believe there were any further materials prepared using the Defendants' confidential information (other than those already disclosed);

(e) the Claimants would deliver up all the Defendants' confidential information (excluding the CT report) in their possession or the possession of MdR, counsel (including review counsel) and any foreign lawyers;

(f) the Claimants would destroy all copies of the Defendants' confidential information (excluding the CT report) in their possession or the possession of the Fourth Claimant's husband (**Mr Gliner**) and use best endeavours to procure the destruction of documents held by their lawyers, except as required for legal or similar purposes;

(g) the Claimants would issue instructions to CT to seek that it and its agents deliver up and destroy the Defendants' confidential information (excluding the CT report);

(h) the Claimants would not make any further use of the Defendants' confidential information, except as required by law;

(i) the Claimants would not instruct CT or its agents or contractors except as required to respond to allegations made against them concerning instructions already given; and

(j) the Claimants or an MdR partner would swear a further affidavit (i) confirming the delivery up and destruction of the Defendants' confidential information and the related instruction to CT (ii) identifying those individuals to which such information had been provided (except individual MdR partners and staff and counsel) (iii) the steps taken to prevent its use and to procure its destruction and (iv) particulars of any other investigation(s) which led to the acquisition of such information.

Marengo

18. Finally, at the hearing on 26 March, the Defendants showed me a letter sent by MdR the day before, explaining the surveillance in January 2024 of a London meeting between Mr Kazakov, his daughter, his lawyer and two investigators. That surveillance was undertaken by another firm of investigators, Marengo, instructed by the Claimants. Marengo apparently recorded the meeting without MdR's knowledge, with a transcript of that recording then passed to review counsel who confirmed it was likely privileged. MdR have not taken possession of the transcript, albeit Marengo inadvertently sent them a copy, the recipient deleting it (without reading it) when he realised what is was. Marengo did, however, give brief 'fragments' or 'headings' of the conversation to MdR during the course of the surveillance as would be explained in the proposed further affidavit.

Further adjournment of the Injunction Application

19. At the outset of the hearing on 26 March, the Defendants applied for the adjournment of the Injunction Application. They did so on the basis that (i) having gone about the evidence gathering in the way they had, the Claimants and their contractors were responsible for the unfortunate situation necessitating the Confidentiality Applications (ii) the Claimants would not be prejudiced because Edelweiss agreed to renew its undertaking given on the last adjournment (iii) the Defendants should have transparency as to what has occurred and the extent of the fruits of the Claimants' wrongful conduct before being allowed to proceed and (iv) such transparency is also required since it may enable the Defendants to bolster their opposition to the Injunction Application on the basis of delay and/ or 'clean hands', both fact sensitive enquiries.

20. The Claimants opposed the adjournment on the basis that (i) it had already been agreed at the February hearing that the Injunction Application would be heard before the end of term (ii) nothing new had occurred since save for the Marengo disclosure (iii) there had been transparency in relation to that disclosure (iv) if the materials underlying the CT report were fictitious, the Claimants had been the subject of an elaborate hoax (v) the material that has a bearing on the Injunction Application is in the CT report that has not been relied on by the Claimants such that the necessary connection between the alleged iniquity and the injunctive relief sought is not made out for the 'clean hands' doctrine to be engaged and (vi) the relief sought being proprietary in nature, the Court is more willing to accede to it even where questions of 'clean hands' do arise.

21. Having heard the parties' submissions, I granted the adjournment for the brief reasons given orally then. In short, despite the Claimants' suggestions that nothing new had occurred since February, including the continued non-reliance on the CT report, the focus in February was on the authenticity of the exhibited materials, not on the confidentiality of, or privilege in, the documents that had been obtained as part of CT's investigations. Although the Claimants suggested that there was insufficient connection for the 'clean hands' doctrine to be engaged, particularly where proprietary relief was sought, it seemed that the position with respect to the Claimants' access to and use of the Defendants' confidential material that had been obtained was not yet sufficiently clear to exclude the possibility that it might be relevant to the issues that fall to be decided on the Injunction

Application. Since Edelweiss and Hemaren had both offered undertakings, there would be no prejudice to the Claimants by permitting the adjournment to allow more light, as the Claimants themselves recognised was required, to be shed on the situation.

22. That said, I also made clear that I considered insufficient regard had been paid to the interests of others, particularly CT, against which it was apparent that very serious allegations of unlawful conduct were being made, confirmed in submission to amount to criminal conduct, without them having been given sufficient notice of, and a proper opportunity to consider, and if so advised, meet them. The fact that those allegations were made in the context of an interim application and findings sought on the balance of probabilities based on more limited evidence did not seem to answer the concern. Even on that basis, such findings, if made, could still be potentially very damaging. Nor did the attendance of CT representatives as observers at the hearing meet the Court's concerns either.

Argument on the Confidentiality Applications

23. The Court having granted the adjournment of the Injunction Application on the basis indicated, the parties then sought further time to agree a way forward on the Confidentiality Applications and to identify those areas that might still require further argument. The parties returned at noon the next day (27 March). As I made clear then, it was disappointing that more progress had not been made to reach common ground. Although the Defendants fairly recognised in light of my observations that the disclosure aspects of the Confidentiality Applications (or some of them at least) should not be pursued at this stage, it seemed that the parties had not meaningfully engaged beyond exchanging rival draft orders.

24. In the course of further argument, the Kazakovs expressed concerns on behalf of all Defendants that there appeared to have been access to their confidential and privileged information over a period of two to four years by CT and their agents. In terms of the Kazakovs, 56 apparently genuine privileged documents had been returned to them and another 10 or 12 genuine non-privileged confidential documents were identified from the CT report material. Given the period of access and likely sources, including Mr Kazakov's inbox and Gmail account containing thousands of e-mails, this appeared to be the 'tip of

the iceberg'. Moreover, such material as had been disclosed included documents which, although fake, had seemingly been derived from genuine confidential materials. Despite these revelations, the Defendants say that no information had been forthcoming as to how many further documents had been provided to the Claimants themselves, their associates such as Mr Gliner or their advisers, in all likelihood directly by CT without reference to MdR. The Defendants also have further pressing questions, including as to the further privileged information found on MdR's systems, the non-privileged confidential information that MdR has received and the extent of the materials sent to review counsel.

25. In light of the principles indicated in authorities such as *Imerman* v *Tchenguiz and others* [2010] EWCA Civ 608 (at [72]-[74] and [146]), a person should not be entitled to benefit from wrongful access to and copying of the confidential information of another. In those circumstances, an injunction should lie to prevent the defendant from accessing and using the confidential information, the information should be returned and copies also returned or destroyed. As *Ford* v *Financial Services Authority and others* [2012] EWHC 997 (Admin) shows (in the context of privileged information), even if this may entail an extensive, time consuming and, even then, potentially incomplete, task by the (in that case, inadvertent) recipient, it should still be undertaken.

26. The Claimants, by contrast, reminded me that authorities such as *Imerman* indicate (at [74]) that, given the application of ordinary equitable principles, the fashioning of the appropriate relief is a discretionary matter, including importantly by reference to what is proportionate and sensible. In this case, the Court has already indicated that the approach is a 'stepping stone' one, the Confidentiality Applications not being fully effective for the reasons indicated on the adjournment application. Moreover, the facts of this case are far removed from *Imerman*. In this case, the CT report has been referred to extensively in open court. The vast majority of the information within it is fictitious. Reliance is placed on the report by the Defendants, not the Claimants. There is no suggestion that those aspects of the CT report that might be authentic are particularly sensitive. Nor is it possible for anyone (apart from the Defendants) to infer the content of genuine materials from which certain parts of the CT report materials are said to be derived. The Claimants have given back the privileged material, the most sensitive aspect. They have also offered to return any

confidential materials. Finally, much of the relief is more appropriately sought from CT, not the Claimants. Given these matters, the suggested 'fruits' of the CT report are illusory.

Relief

27. Before considering the terms of the Court's order, let me make clear at the outset that I am under no illusion as to the potential seriousness of the acquisition of confidential information belonging to another, not least the privileged information belonging to one party to highly contested litigation acquired by the other. What is not clear at present, and what appeared to be the real gravamen of the Defendants' concerns, was the full extent of the dissemination of their confidential information obtained by CT, in particular, to the Claimants themselves, Mr Gliner and (non-MdR) advisers.

28. Those matters notwithstanding, it is also important to remember how the issue arises here since that too is relevant to how the Court should approach the question of the appropriate relief at this stage. Unlike some of the authorities to which I was referred, the Confidentiality Applications are not (yet) made in the context of an action for breach of confidence. They arise on a claim alleging a fraudulent scheme and they have been advanced in light of the Claimants' evidence on an application for injunctive relief. It is perhaps unsurprising that matters have developed in this way but, in a sense, this brings me back to the Court's concerns canvassed in the context of the application to adjourn the Injunction Application.

29. Indeed, there is a need for some caution in considering potentially wide ranging relief when there is no properly constituted substantive claim for the wrongs said to have been perpetrated on the Defendants and some of those potentially implicated by the allegations and/ or to which the request for some of the relief sought might perhaps more appropriately be directed are not on proper notice of them, let alone before the Court. Albeit perhaps more challenging in the present unusual circumstances, the Court's central focus remains on maintaining the integrity of those proceedings that *are* properly before it, ensuring that the parties are on an equal footing and that they can participate fully and effectively.

30. With these considerations in mind, I now turn to the question of the appropriate relief. I need not recite the specific points raised by the parties concerning the form of draft order. Instead, I approach the matter by reference to the broad headings used at the hearing.

31. **Scope of confidential information**: although the Defendants say that they are concerned about confidential information acquired by the investigators, their proposed definition (and, therefore, the Claimants' obligations under their draft) was not so limited and was, therefore, potentially overbroad. That said, I agree with the Defendants that the Claimants' formulation, by reference to the materials provided by the investigators to the Bourlakovas or their agents, may be too limited and/ or unclear. I consider that matters are better expressed by reference to the information obtained by the investigators, coupled with a more clearly defined category of the Claimants' associates for the purpose of the delivery up and destruction obligations as they feature later in the order.

32. **Whether the CT Report should be 'in scope'**: the Defendants also explained that the CT report materials contained, or were in some part derived from, confidential information (including from one apparently privileged document). Those confidential source materials needed to be protected in the same way as all the rest. The Claimants' concern was that the report formed a central aspect of the Confidentiality Applications and would therefore likely continue to be relied on, and extensively referred to, by the Defendants. Seeking to meet this concern, the Defendants proposed a redaction regime for the CT report which, if agreed, would replace the unredacted version which could then be destroyed with the other materials. The Claimants suggested that this was impractical and unnecessary given that such confidential material as the CT report may contain is subsumed within a much larger mass of fake material, with no sensible way for the Claimants or outsiders to discern what is what.

33. Given the likely continuing importance of the CT report to the Confidentiality Applications and the requirement for the Claimants fairly to be able to address those (and any related claims or proceedings), I was not persuaded that the proposed redaction exercise was appropriate or, indeed, realistically capable of agreement, not least when it seemed that the Claimants themselves could not meaningfully identify what information in the CT report might be genuinely confidential and what might be fabricated. Rather, I consider the

appropriate course is to limit the purposes for which the CT report can be used as the Claimants had already proposed for other parts of the confidential information.

34. Finally, given the ongoing discussions concerning one of the Defendants' documents potentially engaging the iniquity exception, and the possible need for the Court to decide any related dispute in due course, I considered it appropriate that this too should fall outside the defined scope of the confidential information implicated by the order.

35. **Delivery up**: it was common ground that the Claimants should deliver up the confidential information in their possession or control or that of their lawyers. I agree with the Defendants that this should not be limited to legal advisers although I found unclear the Defendants' reference to "associates" which I have not adopted. The delivery up of documents held by Mr Gliner is provided for through reference in the order to the Claimants' family members. To the extent confidential information might have come into the hands of others, this will be revealed by the Claimants' affidavit. If appropriate, further relief can then be sought.

36. **Destruction**: the parties were also agreed that the Claimants should destroy or procure the destruction of documents containing the confidential information. However, the Defendants had originally proposed that this should extend to documents *referring to* the confidential information. In my view, this was overbroad and unclearly expressed. Likewise, I found unclear in scope and effect, and also unnecessary, the Defendants' reference to "Springboard Materials" which I have not adopted either.

37. **Copies/ restrictions on use**: the Defendants accepted that there may need to be one copy of the destroyed material retained for evidential purposes. However, their draft provided for this to be at the Defendants' direction. In my view, this did not afford sufficient protection to the Claimants to defend the Confidentiality Applications (or any related claims or proceedings). In those circumstances, I consider it appropriate to permit the Claimants to retain (by their solicitors) copies necessary for those or similar but limited purposes. However, I was not persuaded that this permission should extend to the privileged materials, even under the auspices of review counsel. Rather, I consider it

appropriate for the Defendants to be required, in the event of later dispute, to maintain a full set of the privileged materials returned to them by the Claimants.

38. **Investigators**: both parties agreed that there should be no further engagement of the investigators. They also agreed that an instruction should be issued to them to deliver up confidential information and destroy documents in which such information was contained. However, the Claimants did not agree to a requirement to use all best endeavours to procure that the investigators take those steps. I agree that this would impose too uncertain and onerous an obligation, albeit I consider it appropriate that the Claimants should expressly confirm in such instructions their agreement to pay the investigators' reasonable related costs. I will so provide.

39. **Affidavit**: it was common ground that an affidavit should be sworn confirming the individuals to whom confidential information had been provided, the steps taken to prevent its misuse and compliance with the requirements of any order. As a preliminary matter, I agree with the Defendants that an affidavit should be sworn by each of the Claimants in addition to a partner in MdR so that the deponent to a particular matter is that person with the most direct knowledge. Although this may cause practical issues, I consider it warranted given, in particular, the Defendants' concerns as to what information may have reached the Bourlakovas, their family members and other advisers.

40. However, I was unable to agree with many specific aspects of the Defendants' draft order which seemed to overreach my indications as to what was appropriate, at least at this stage. So, for example, full particulars (or disclosure) were requested of certain reviews, reports, instructions, communications and investigations, the provision of which might well, in my view, implicate privileges asserted by the Claimants even though, as I had already made clear, any related enquiry would be premature. Likewise, the identification of the specific individuals who had come into contact with the Defendants' confidential information from within CT's sources or MdR is not, in my view, appropriate even if the former is limited to a best endeavours obligation and the latter to the Defendants' privileged materials only.

41. The required transparency will largely be achieved based on the Claimants' proposed draft, albeit I consider it appropriate that they should identify additionally in their affidavits the recipients of the CT report and provide an explanation of the manner and circumstances in which the various persons so identified came to be provided with the Defendants' confidential information. Although detail on some aspects has already been provided, the explanation is not complete. However, as I will make clear in the order, this does not require the disclosure of information or documents in which the Claimants might assert privilege.

Conclusion/ disposal

42. The order I have prepared reflects the view I have reached as to the appropriate relief at this stage in light of both the general considerations indicated above and the specific circumstances obtaining here. This has been circulated with the draft of this judgment. Given the polarised position of the parties on the draft order, and the need to provide them with a pathway to move forward quickly, it may be that some refinement is required. A liberty to apply provision has been added, albeit its exercise is not encouraged if any relevant matter(s) can be agreed. Finally, as to the date for compliance, the order adopts the Claimants' proposal for the simple reason that the exercise it envisages is not straightforward and it is important that the final work product provides the Defendants and the Court with confidence that it has been undertaken correctly.

43. In the meantime, I make the following concluding observations. Although I will not grant the Defendants all the relief they seek, the order does address their central transparency concern. Moreover, the Court does not preclude the grant of further relief, if appropriate. In that regard, the Defendants are well advised to consider the basis on which any further relief, if pursued, might be sought and whether the Confidentiality Applications in the current proceedings are the appropriate vehicle for that. A number of the requests for relief in their draft order suggest that they might not be. This is, as I hope I have already made clear, more than a matter of form or procedure. To that end, I also make clear that the Court expects the Defendants to engage meaningfully on this aspect with the Claimants and any other persons potentially affected.

44. I should also add that, with the relief I have granted having the focus described, and even if further relief might be sought, I presently see no reason in principle why the Injunction Application, if pursued, could not be re-visited following compliance with the order I will make. As I canvassed at the hearing, it also seems to me that, following such compliance, a directions hearing would be of benefit to enable the parties and Court to take stock of both sets of applications. That has already been provided for in the order adjourning the Injunction Application. It will also be reflected in my further order on the Confidentiality Applications.