Neutral Citation Number: [2019] EWHC 3556 (Comm)

Case No: CL-2019-000746

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES**
**COMMERCIAL COURT (QBD)**
**IN PRIVATE**
**(reporting restrictions lifted,**
**and released for publication, 17 January 2020)**

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

Date: Friday, 13th December 2019

**Before**:

**THE HONOURABLE MR. JUSTICE BRYAN**

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**Between:**

| | |
|---|---|
| **AA** | **Claimant** |
| **- and -** | |
| **(1) PERSONS UNKNOWN WHO DEMANDED BITCOIN ON 10TH AND 11TH OCTOBER 2019**<br>**(2) PERSONS UNKNOWN WHO OWN/CONTROL SPECIFIED BITCOIN**<br>**(3) iFINEX trading as BITFINEX**<br>**(4) BFXWW INC trading as BITFINEX** | **Defendant** |

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**MR. DARRAGH CONNELL** (instructed by **Brandsmiths SL Ltd**) for the **Claimant**

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# APPROVED JUDGMENT

**MR. JUSTICE BRYAN:**

## INTRODUCTION

1. There is before me today an application made by an applicant, an English insurer who requests to be anonymised, against four defendants. Those four defendants are: the first defendant, persons unknown who demanded Bitcoin on 10th and 11th October 2019; the second defendant, persons unknown who hold/controls 96 Bitcoins held in a specified Bitfinex Bitcoin address; the third defendant, iFINEX Inc trading as Bitfinex; and the fourth defendant, BFXWW INC also trading as Bitfinex.

## BACKGROUND

2. The application relates to the hacking of a Canadian insurance company that I will refer to simply as the Insured Customer. What happened in relation to that company is that a hacker managed to infiltrate and bypass the firewall of that insured customer, who happens to be an insurance company, and installed malware called BitPaymer. The effect of that malware was that all of the insured customer's computer systems were encrypted, the malware having first bypassed the system's firewalls and anti-virus software. The Insured Customer then received notes which were left on the encrypted system by the first defendant. In particular, there was a communication from the first defendant as follows:

> "Hello [insured customer] your network was hacked and encrypted. No free decryption software is available on the web. Email us at […] to get the ransom amount. Keep our contact

> safe. Disclosure can lead to impossibility of decryption. Please use your company name as the email subject."

3. The Insured Customer is insured with the applicant, (an English insurer), whom I shall refer to as "the Insurer"/"the Applicant". The Insurer is applying to be anonymised for reasons that I will come on to. The Insurer instructed, as is common in such cases, what is known as an Incident Response Company (IRC) that specialises in the provision of negotiation services in relation to crypto currency ransom payments. The Insured Customer is insured with the Insurer against cyber crime attacks.

4. That entity, IRC, then was instructed by the Insurer to correspond with the first defendant on behalf of it and the Insured Customer so as to negotiate the provision of the relevant decryption software (the tool) which would allow the Insured Customer to re-access its data and systems. Following initial emails from IRC asking the first defendant: "*To relay your terms of decryption*" the first defendant stated *"Hello, to get your data back you have to pay for the decryption tool, the price is $1,200,000 (one million two hundred thousand). You have to make the payment in Bitcoins."*

5. After several exchanges the first defendant agreed the value of the payment to recover the tool as follows:

> "as an exception we can agree on US $950K for the tool. You can send us a few encrypted files for the test decryption ((do not forget to include the corresponding _readme files as well)."

6. Given the importance to the Insured Customer to obtain access to its systems, the Insurer agreed to pay the ransom in return for the tool.

7. In further correspondence which is exhibited before me, and following the testing of several encrypted files, the first defendant stated as follows:

> "The Bitcoin address for the payment […] When sending the payment check the USD/BTC exchange rate on bitrex.com we have to receive no less than USD 950K in Bitcoins. It takes around 40-60 minutes to get enough confirmations form [sic] the blockchain in order to validate the payment. Upon receipt we send you the tool."

8. The payment of the ransom in Bitcoin was via an agent of the Insurer, who was referred to as JJ, and who assists with the purchase and transfer of crypto currencies, including Bitcoins. Acting on the Insurer's instructions and with its authority JJ purchased and transferred 109.25 Bitcoins to the address that was provided.

9. The ransom was subsequently paid at 12.24 on 10th October 2019 and by way of email IRC requested confirmation from the first respondent:

> "Please reply. You have received $950,000 and I am hoping we can get what we need ASAP. Thank you."

10. The tool was indeed received on 11th October 2019 at 04.07 pacific daylight time by way of the following message:

"Hello,

Here is the tool

Download

[address]

Delete:

[address]

Password:

[address]

Execute the tool on every impacted host"

11. The tool was a click through application that had to be executed on each of the Insured Customer's encrypted systems. The time it took to decrypt the data varied from system to system due to the quantity of the files on each system and the system's own resources, like processor and memory. The information before me is that it took decryption of 20 servers of the Insured Customer five days and 10 business days for 1,000 desktop computers.

12. Following the payment of the ransom and the provision of the decryption tool, further investigations were undertaken on behalf of the Insurer by an employee who is also the deponent of an affidavit, dated 3rd December, in support of the various applications that are made before me.

13. Those investigations involved contacting a specialist company who is a provider of software to track payment of crypto currency. That company is Chainalysis Inc, which is a blockchain investigations firm operating in New York, Washington DC, Copenhagen, and London. They are known in the public domain not least because their work was referred to in a recent High Court case of *Liam David Robertson v Persons Unknown,* CL-2019-000444, unreported, 15th July 2019, a decision of Moulder J, where she relied upon an analysis provided by that entity to track 80 Bitcoin to a wallet/account/address held by a crypto currency exchange called "Coinbase".

14. In the present case, it was possible to track the Bitcoins that had been transferred as a ransom. Whilst some of the Bitcoins was transferred into "fiat currency" as it is known, a substantial proportion of the Bitcoin, namely, 96

Bitcoins, were transferred to a specified address. In the present instance, the address where the 96 Bitcoins were sent is linked to the exchange known as Bitfinex operated by the third and fourth defendants.

15. The Insurer is unable to identify the second defendant from the Bitcoin address referred to but that is information which is either held or likely to be held by the third and fourth defendants, to comply with their Know Your Customer ("KYC"), an anti-money laundering requirement.

## APPLICATION FOR HEARING TO BE IN PRIVATE

16. Set against that background the first application that was made before me was for this hearing to be in private. The important principle of open justice is one which is well established. The origins and the rationale, for the principle, was stated by Lady Hale in *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38, at [42] and [43], referring to *Scott v Scott* [1931] AC 417.

17. The relevant provision of the CPR is CPR 39.2, which provides:

> "39.2(1) The general rule is that a hearing is to be in public. A hearing may not be held in private irrespective of the parties' consent unless and to the extent that the court decides it must be held in private applying, the provisions in paragraph (3).
>
> "39.2(2) In deciding whether to hold a hearing in private the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected."

18. CPR.39.2 was recently amended by the addition of a new subparagraph (2A) which provides:

> "The court shall take reasonable steps to ensure that all hearings are of an open and public character save when a hearing is held in private."

19. Subparagraph 39.2(3) provides:

> A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice—
>
> (a) publicity would defeat the object of the hearing;
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> (b) it involves matters relating to national security;
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> (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
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> (d) a private hearing is necessary to protect the interests of any child or protected party;
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> (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
>
> (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
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> (g) the court for any other reason considers this to be necessary to secure the proper administration of justice.

20. The test is one of necessity and not of discretion: see *AMM v HXW* [2010] EWHC 2457 (QB), per Tugendhat J. This is reflected in the wording of rule 39.2(3), such that a hearing or part of a hearing must be held in private if the court is satisfied that one or more of the factors specified in the subparagraphs (a) to (g) are satisfied and it is necessary to sit in private to secure the proper administration of justice. The court also needs to consider proportionality, namely whether the proper administration of justice can be achieved by a lesser measure or combination of measures such as imposing reporting restrictions, anonymising the parties, or restricting access to court records. This is because a private hearing will restrict the exercise of the Article 10 Convention right of freedom of expression, through prohibiting the disclosure of information.

21. It is well established, as is acknowledged in this case by the Insurer, that the general principle that hearings be held in public is not to be lightly departed from in respect of civil proceedings. It is submitted, however, that there are compelling grounds, supported by credible and cogent evidence, as to why in this particular, and unusual, case the hearing should be held in private, relying upon the grounds specified in 39.2(3)(a) (c) (e) and/or (g).

22. First of all, in terms of publicity, it is said that publicity would defeat the object of the hearing. The overarching purpose of the application is to assist the applicant in its efforts to recover crypto currency in the form of the 109.25 Bitcoins that were unlawfully extorted pursuant to what is characterised as an extortion/blackmail, perpetrated on the 10th and 11th October against the Insured Customer and resulting in financial loss to the Insurer.

23. If the hearing were to be held in public there is a strong likelihood that the object of the application would be defeated. First of all, there would be the risk, if not the likelihood, of the tipping off of persons unknown to enable them to dissipate the Bitcoins held at the second defendant's account with Bitfinex, the real possibility of reprisal or revenge cyber attacks on either the Insurer or indeed the Insured Customer by persons unknown, the possibility of copycat attacks on the Insurer, and/or the Insured Customer and the revealing of confidential information considering the Insurer's processes and the Insured Customer's systems which will be necessary on this application, in circumstances where the vulnerability of those very systems form the basis for the blackmail itself. Ultimately, the applicant contends it is necessary for the court to sit in private to secure the proper administration of justice.

24. There are previous authorities touching upon such matters. For example, in cases concerning blackmail - and this is certainly analogous to that, a ransom is being demanded and money is being extorted in return for the decrypting of computer systems - it is more common for the court to permit hearings to be held in private. This is because the interests of freedom of expression are naturally tempered by the criminal conduct in question and the presence of blackmail will be an important factor and matter in determining privacy applications where injunctive relief is sought to thwart blackmailers as was noted by Warby J in *LJY v Persons Uknown* [2018] EMLR 19 at [29]:

> "Generally, the court has taken the view that blackmail represents the misuse of freedom of speech rights. Such conduct will considerably reduce the weight attached to free speech and correspondingly increase the weight of the arguments in favour of restraint. The court recognises the need to ensure that it does not encourage or help blackmailers or deter victims of blackmail from seeking justice before the court. All these points are well recognised ."

25. It has also been recognised that these considerations apply in the event of ransom funds having <u>already</u> been paid. That was emphasised in *NPV v QEL* [2018] EMLR 20 where the court permitted an interim application to be heard in private in the context of the ongoing blackmail of a businessman who demonstrated at least a prima facie case that he had already been blackmailed and an attempt was being made to continue that blackmail effort to obtain more money. It was held in that case that the court had to *"adapt its procedures"* to ensure that it neither encouraged nor assisted blackmailers nor deterred victims of blackmail from seeking justice from the courts. If the application had been heard in public the information which the claimant was trying to protect would have been destroyed by the court's own process.

Further, at least until the return date when the issue could be reconsidered, the defendants would also be anonymised. The claimant was making serious allegations against the defendants and they had not yet had an opportunity to respond.

26. It is said of particular relevance in present case is the case of *PML v Persons Unknown* [2018] EWHC 838 QB. In that matter, PML was the victim, as here, of a cyber attack by unknown hackers demanding £300,000 worth of Bitcoin and in default of payment certain information would be publicly disseminated. PML made an interim application for, amongst other things, an interim anonymity order and orders to restrain the threatened breach of confidence and for delivery up and/or destruction of the stolen data.

27. At the interim hearing which came before me, I sat in private and granted the injunction. In doing so I made a series of further orders, including anonymising the claimant and restricting access to the court files. I was satisfied that the requirements of section 12(3) of the Human Rights Act 1998 were met. I was also satisfied that the requirements under section 12(2) of the same Act were met, where the claimant appeared to be a victim of blackmail and there was a risk that, were the defendant to be given notice of the application, he would publish the relevant information and there were compelling reasons why the defendant had not been notified of the application. At the return hearing the court ordered the application continue to be heard in private as the judge on the return date, Nicklin J, was satisfied that it was strictly necessary to hear the application in private pursuant to CPR 39.3 (a) (c) and (g). Of particular relevance was that the purpose of the proceedings

would have been frustrated, or at least harmed, had the hearing been conducted in public. It was necessary for the court to hear evidence and submissions relating to the blackmail activities of the persons unknown along with the nature of the attack in question.

28. In the present case it is said that confidential material is involved, including details of the confidential cyber insurance policy held by the customer, the precise mechanism by which the cyber attack occurred, details of the confidential internal procedures of the Insurer and details of the way in which the Insurer had discovered the location of the Bitcoins, although I recognise that a number of those pieces of information are probably in the public domain in any event (at the level of detail which I have identified them), although further confidential information is also before me which I have had to consider.

29. A recent example of a commercial case in which the court permitted the hearing of the application for interim relief in private is *Taher v Cumberland* [2019] EWHC 2589 QB. In that case the court granted an order for the hearing of a committal application be heard in private for reasons which were set out at [76] of the judgment:

> "I heard the Privacy Application at the beginning of the hearing, giving reasons in public for granting it, which I summarise as follows:
>
> i) The Orders are principally concerned with preventing the defendants and, in particular, Mr Cumberland, directly or indirectly, from making or encouraging the making of disparaging statements about the claimants or in other ways acting to damage the business or reputation of the claimants. It will be necessary during the course of the hearing to consider various allegations and allegedly damaging statements made by Mr Cumberland, his motivations for making them and other relevant circumstances, the ventilation of which could have the damaging effect of which it is the purpose of this claim to prevent or avoid.

> ii) I was satisfied that the grounds set out in CPR 39.2(a) , (c) and (g) apply to this case and justify the hearing of the matter in private.
>
> iii) I considered whether it was necessary and proportionate to conduct the hearing in private or whether some lesser measure or combination of measures would suffice, such as imposing reporting restrictions, anonymising the parties or restricting access to court records. I was satisfied, however, that no lesser measure or combination of measures would provide the necessary protection, given the nature of the conduct alleged against Mr Cumberland (much of which, I note, he admitted during the course of the hearing) which would make it difficult, if not impossible, for the court effectively to police and enforce lesser measures.
>
> iv) I found it relevant to these considerations that the business of the claimants is one in which the reputation of the companies and of the leading individuals managing and operating them are of critical importance. Damage to reputation can lead to rapid and potentially massive losses for a business operating in the international financial services sector."

30. I am satisfied that this is an appropriate case for the hearing to be heard in private, as I indicated at the start of the hearing saying I would give reasons in due course. My reasons are given now. First of all, I am satisfied for the purpose of CPR 39(3) that publicity would defeat the object of the hearing. It would potentially tip off the persons unknown to enable them to dissipate the Bitcoins; secondly, there would be the risk of further cyber or revenge attacks on both the Insurer and the Insured Customer by persons unknown; there would be a risk of copycat attacks on the Insurer and/or the Insured Customer and I am satisfied that in all the circumstances it is necessary to sit in private so as to secure the proper administration of justice.

31. In terms of the application itself and the hearing before me, I am also satisfied that limb (c) is also applicable because during the course of this hearing I was provided with confidential information which I have not repeated during the course of this judgment and it was necessary for me to hear that confidential information properly to rule upon this application.

32. Equally, (e) applies, it is as hearing of an application made without notice and it would be unjust for any respondent to be referred to in a public hearing. That applies, in particular, to the third and fourth defendants who have not yet had an opportunity to address this court, and as will become apparent, at the very least they have, by the nature of the Exchange that they run, become mixed up in the wrongdoing, perpetrated by the first and second defendants.

33. I am satisfied that the sentiments expressed by Warby J in *LJY* apply here. It is important in the context of blackmail and extortion that those who have suffered such wrongs should not be put off approaching the court and should be offered assistance in such circumstances, and blackmail itself represents a misuse of free speech, which will mean that the interests of justice and the interests of freedom of expression are naturally tempered by the civil and potentially criminal conduct in question. I consider for the same reasons as I gave in the *PML* case that the requirements under section 12 of the Human Rights Act are also met in the present case.

34. For very much the same reasons I am also satisfied that this application was properly made without notice to the first and second defendants. Again, by the very nature of the relief sought, if the first and second defendants had been notified of this application, then steps could have been taken to thwart any order by moving the Bitcoins. These concerns are particularly important in the context of virtual currencies such as Bitcoin because they can be moved literally at the click of a mouse.

35. So far as the position of the third and fourth defendants are concerned, this application is actually made ex parte on notice, by that I mean that the third

and fourth defendants, who are effectively the Exchange, who are holding the Bitcoin, were notified of this application. I consider that it was appropriate to do so although they are mixed up, it is said, in the wrongdoing and indeed it is said on behalf of the claimant, as I shall come on to, that in fact there is a cause of action against them in the form of a restitutionary claim or a constructive trust. Essentially, they have become mixed up in this wrongdoing. At the present time there is no evidence that they are themselves perpetrators of the wrongdoing, rather, it is said, they have found themselves the holder of someone else's property, or at least that is how it is characterised for the purpose of this application by the claimant, with the result that there may be claims against them for restitution or as constructive trustees vis a vis, the Insurer.

36. I also consider it is appropriate to anonymise the Insurer in the terms that I have identified, again because of the risk of retaliatory cyber attacks upon the Insurer just as much as upon the Insured Customer.

37. It is likely that once the first and second defendants are served and/or the property is protected, I will lift the privacy in respect of this judgment so that it can be publically reported. It has been drafted in terms that will allow that to be done. The public reporting of judgments is an important aspect of the principle of open justice.

## NORWICH PHARMACAL/BANKERS TRUST APPLICATION

38. Turning then to the nature of the claims and the relief that is sought, as the application came before me the following relief was sought. First of all, a Bankers Trust order and/or a Norwich Pharmacal order requiring the third and

fourth defendants to provide specified information in relation to a crypto currency account owned or controlled by the second defendant; and/or, a proprietary injunction in respect of the Bitcoin held at the account of the fourth defendant; and/or, a freezing injunction in respect of Bitcoin held at the specified account of the third or fourth defendant; and consequential orders to serve the same, including alternative service and service outside the jurisdiction.

39. As is rightly noted in the supporting skeleton argument, this application raises certain novel legal issues relating to crypto currencies. In this regard, the court has recently grappled with analogous issues in the cases of *Vorotyntseva v Money-4 Limited, trading as Nebeus.com* [2018] EWHC 2598 (Ch), a decision of Birss J, and *Liam David Robertson v Persons Unknown* (unreported 15th July 2019) a decision of Moulder J. In addition, my attention has been referred to the recent legal statement of the UK jurisdiction Task Force "Crypto Assets and Smart Contracts" dated 11th November 2019, about which more in due course.

40. During the course of oral argument before me, I explored in some considerable detail with Mr. Darragh Connell, counsel, who appears on behalf of the claimant Insurer, in relation to precisely what causes of actions were claimed, and what jurisdictional gateways there were for service out of the jurisdiction in relation to each of the claims.

41. Another point that arose and which I explored with Mr. Connell was in relation to the application for Bankers Trust or Norwich Pharmacal type relief against an entity (the two entities which are D3 and D4) who are out of the

jurisdiction. It appears they are in fact BVI companies, although a number of their officers, including the chief financial officer and the chief technical officer, have close association with this jurisdiction, indeed it appears that the chief financial officer may be resident in this jurisdiction and that the chief technical officer has at least some association with this jurisdiction.

42. When corresponding with the third and fourth defendants putting them on notice of this application, an address in China was also identified. It is fair to say that D3 and D4, at the moment at least, have cooperated with the claimant in the following sense, which is that in email correspondence they have indicated that they are not able to comply with any order to identify anyone associated with the account, absent a court order, but that it is their practice to comply with the court order for any national jurisdiction. They had initially said that they were prepared to accept service by email which is their normal method of service but I have now been shown an email on 4th December 2019 whereby they have said they are required to be served in the British Virgin Islands.

43. In light of that there is also an application for alternative service against them using the email addresses with which there has been communication. I should also say that those communications copy in counsel from a set of chambers in London. It is assumed, therefore, that they have London counsel, although enquiries were made this morning to ensure that counsel was not attending and the message that was passed back to me was that they did not have any instructions to attend on the application. It is fair to say, therefore, that on the

application, so far as the third and fourth defendants were aware of it, adopted an essentially neutral stance in relation to the applications.

44. As I say, I have explored with Mr. Connell both the causes of action that his client has and also the jurisdictional gateways which he relies upon for his various claims for relief. One potential complication that arises in relation to the Bankers Trust order and/or the Norwich Pharmacal order is that it would be requiring an institution out of the jurisdiction to provide information pursuant to a court order of the English court. A question arises as to whether there is jurisdiction in this court to do that and to serve such an order out of the jurisdiction.

45. The position in relation to that had not been definitively determined. There is a decision of Waksman J in the case of *CMOC v Persons Unknown* [2017] EWHC 3599 Comm, in which an application was sought for worldwide freezing relief against persons unknown and one of the orders that the judge made at [10] related to Bankers Trust type relief and the judge said:

> "It seems to me that, first of all, there is a good case for seeking the information in documents contained in the order which I am making in respect of the banks, because that is the critical source to discover what has happened to the money which has been paid out from the claimant's bank account in London pursuant to the alleged fraud. I am satisfied there is jurisdiction to do that under Bankers Trust v. Shapira principles , and/or CPR 25.1(1)(g) . Secondly, there still has to be a case for service out even if no positive remedy is sought against those defendants other than the information. For present purposes I am satisfied that in relation to those banks which are situate outside the EU and outside this jurisdiction, that is covered by the fact that they are a necessary and proper party to the claims which have been brought against the perpetrator defendants; and in respect of service within the EU that Article 7.2 of the recast Brussels Regulation will apply, subject to the claimants

> filling out and attaching to the claim form, Form 510 where they certify to that effect."

46. The learned judge on that occasion assumed that it would be possible to make a Bankers Trust order and serve it out of the jurisdiction on a foreign entity relying upon the necessary and proper party gateway. However, I drew the claimant's attention to another decision, which is the decision of Teare J, in *AB Bank Ltd v Abu Dhabi Commercial Bank PJSC* [2016] EWHC 2082 (Comm), which it appears Waksman J was not referred to. In that case Teare J had to consider an application to serve a claim form out of the jurisdiction where there was a foreign bank innocently mixed up in a fraud that had been perpetrated and the question was whether Norwich Pharmacal/Bankers Trust type relief was a claim for an interim remedy for the purpose of the jurisdictional gateway in paragraph 3.1.5 of Practice Direction 6B.

47. The learned judge concluded in relation to various gateways, first of all, that it was not an interim remedy under section 25.1 of the Civil Jurisdiction Judgments Act 1982 but was indeed a final remedy. Secondly, that it was not an injunction ordering an act within the jurisdiction on the facts of that case, and, thirdly, that the necessary and proper party gateway was not met either. He said:

> "29. On 8 March 2016 ADCB Dubai, through its solicitors, stated that it was willing to write to the Central Bank to seek guidance as to whether the documents might be disclosed and was willing for the Claimant to join it in submitting a joint application to the Central Bank on the issue. On 9 March the Claimant, through its solicitors, requested more details about the proposed approach, doubted that the Central Bank would entertain a request from the Claimant and said that the will to disclose must come from ADCB Dubai. On 14 March 2016 the Claimant referred to the letter of 9 March 2016 and requested a detailed response. On 18 March 2016 ADCB Dubai said that it had made a reasonable offer to seek guidance

> from the Central Bank and to submit a joint application on the issue. ADCB Dubai was willing to agree the wording of an application and hoped that the Claimant's questions had been answered. However, there was no further response and so on 4 April 2016 ADCB Dubai wrote to the Central Bank informing it of this court's order and stating that it understood that "local regulations do not permit us to take action based on an order from a foreign court" and that it could only release customer information "where we receive an order from either a local court (ie UAE based) or Central Bank of UAE." ADCB Dubai went on to say that it had been argued that its terms and conditions gave a discretion for release information to third parties but that it did not understand that "general contractual rights override regulations issued by our regulator." ADCB Dubai urgently requested the Central Bank to approve its interpretation or approve the release of documents pursuant to the UK court order.
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> 30. Counsel for the Claimant criticised the terms of the letter to the Central Bank dated 4 April 2016. I agree that it might have been better if clause 2 of ADCB Dubai's terms and conditions had been quoted and if a copy of Al Tamimi's advice had been appended. However, given the offer made by ADCB Dubai to agree the terms of any approach to the Central Bank I do not consider that ADCB Dubai can be criticised for the terms of their letter to the Central Bank.
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> 31. On 7 April 2016 the Bank replied as follows:
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> "While agreeing with your interpretation, you may proceed further in accordance with 2007 Treaty between UAE and UK on Mutual legal Assistance. While writing to the court, you may highlight the legal restriction on the bank to pass on any customer related information to third parties without prior approval of the Central Bank. It will therefore be necessary to follow the protocol given in the Treaty in order for the Central Bank of the UAE to pass on the required information to the court in the UK thought the proper channels."

48. He concluded in that case that there was no gateway through which the claim for Norwich Pharmacal relief could pass. He therefore set aside the order for service out of the jurisdiction.

49. Because of the potential difficulties that could possibly arise in relation to that, Mr. Connell partway through his application invited me to adjourn the Bankers Trust/Norwich Pharmacal aspect of the order. He also invited me to adjourn the aspect of the application which related to seeking a freezing

injunction. Of course, the requirements under a freezing injunction would include a risk of dissipation that might well be satisfied, he would say, in relation to the first and second defendant but he would need to address the court in relation to the position of the third and fourth defendants. Realistically, if I might say so, Mr. Connell narrowed his application before me to one for a proprietary injunction against all four defendants pending any return date at which he reserved the right to pursue the other applications.

## PROPRIETARY INJUNCTION APPLICATION

50. In relation to the causes of action set out in the claim form, Mr Connell candidly recognised that it would be necessary to amend the claim form. One of the difficulties with the claim form as it was originally drafted (and I suspect that part of the reason for this was because of the application to anonymise) was that it was not as clear as it might have been precisely what causes of action were being claimed by the Insurer.

51. The potential complication is, of course, that in addition to being the Insurer, and having paid out the ransom from its own money, the Insurer was both subrogated to the rights of the Insured Customer and, secondly, there was an express assignment of such rights as the Insured Customer had. The claim form therefore raised proprietary claims in restitution and/or constructive trustees or for the tort of intimidation and/or fraud and/or conversion. It is possible that at least some of those causes of actions are those of the Insured customer, although a subrogated claim could be brought, or a claim under the assignment could be brought, by the insurer in relation to the insured customer's rights.

52. However, again Mr. Connell accepted for the purposes of today's application that the claims, in which he would seek permission to serve out of the jurisdiction and in respect of which he was seeking relief at the hearing before me, would be limited to the claims of the Insurer in restitution and/or constructive trustee against all four defendants. The rationale for that is as follows. The Insurer has paid out the sum of $950,000, that $950,000 is property belonging to the Insurer, that was used to purchase Bitcoin and the proceeds of that money can be traced into the accounts with Bitfinex, so says Mr. Connell. Those Bitcoins are being held by Bitfinex as constructive trustee on behalf of the Insurer and/or the Insurer has restitutionary claims against the third and fourth defendants who are actually holding and have possession of property which belongs to the Insurer and to which they have no right to themselves and, equally, against the first and second defendants, who are the account holders of those accounts, who have wrongfully extorted that money and have no right to the money that belongs to the Insurer.

53. I therefore turn to those causes of action. I should say that it will be necessary for the claim form to be amended, first of all, to clarify exactly what causes of action are being sought under the details of the claim and against whom. The amendments will be to make claims against the first to fourth defendants for restitution and/or as constructive trustee to recover and take a proprietary claim over those monies, including delivery up of the Bitcoins and such matters. I will discuss the precise terms of that claim form in due course with Mr. Connell, but he has indicated to me that he can give an undertaking to issue a claim form advancing those claims.

54. I therefore turn to the relief that is sought and also the relevant jurisdictional gateways.

55. Turning then to the relevant principles in relation to the granting of a proprietary injunction, the first and perhaps fundamental question that arises in relation to this claim for a proprietary injunction is whether or not in fact the Bitcoins, which are being held in this account of the second defendant with the third or fourth defendants are property at all. Prima facie there is a difficulty in treating Bitcoins and other crypto currencies as a form of property: they are neither chose in possession nor are they chose in action. They are not choses in possession because they are virtual, they are not tangible, they cannot be possessed. They are not choses in action because they do not embody any right capable of being enforced by action. That produces a difficulty because English law traditionally views property as being of only two kinds, choses in possession and choses in action. In *Colonial Bank v Whinney* [1885] 30 Ch.D 261 Fry LJ said:

> "All personal things are either in possession or action. The law knows no *tertium quid* between the two."

56. On that analysis Bitcoins and other crypto currencies could not be classified as a form of property, which would prevent them being the subject of a proprietary injunction or a freezing injunction. This exact issue has recently in November 2019 been the subject of detailed consideration by the UK Jurisdictional Task Force ("UKJT") which has published a legal statement on Crypto assets and Smart contracts, ("the Legal Statement"). The UKJT is chaired by Sir Geoffrey Vos, and Sir Antony Zacaroli is also a member. However, neither in their judicial capacity was responsible for the drafting of

the legal statement, nor have either in their judicial capacities endorsed that legal statement. Indeed Sir Geoffrey Voss explained in the foreword to the Legal Statement: "*It is not my role as a judge nor that of the UKJT or its parent, the UK Lawtech Delivery Panel, to endorse the contents of the Legal Statement*". Those responsible for drafting the Legal Statement were Laurence Akka QC, David Quest QC, Matthew Lavy and Sam Goodman.

57. It follows that the legal statement is not in fact a statement of the law. Nevertheless, in my judgment, it is relevant to consider the analysis in that Legal Statement as to the proprietary status of crypto currencies because it is a detailed and careful consideration and, as I shall come on to, I consider that that analysis as to the proprietary status of crypto currencies is compelling and for the reasons identified therein should be adopted by this court.

58. The difficulty identified in treating crypto currencies in property, as I say, starts from the premise that the English law of property recognises no forms of property other than choses in possession and choses in action. As I have already identified, crypto currencies do not sit neatly within either category. However, on a more detailed analysis I consider that it is fallacious to proceed on the basis that the English law of property recognises no forms of property other than choses in possession and choses in action. The reasons for this are set out between paragraphs 71 to 84 in the Legal Statement.

> "71. The Colonial Bank case concerned a dispute about shares deposited as security for a loan. The borrower was declared bankrupt and there was a contest for the shares between the plaintiff bank and the trustee in bankruptcy. The case was not about the scope of property generally: there was no dispute that the shares were property. The relevant question was rather whether they were things in action within the meaning of the

Bankruptcy Act 1883, an issue of statutory interpretation. If so, then they were excluded from the bankrupt estate by section 44 of that Act.

72. Lindley LJ and Cotton LJ held that the shares were not things in action. They relied principally on previous case law where the court had come to a similar conclusion in relation to the predecessor statute, the Bankruptcy Act 1869. They also drew some support from sections 50(3) and 50(5) of the 1883 Act, which appeared to make a distinction between shares and things in action.

73. Fry LJ reached the opposite conclusion, reasoning principally from what he considered to be the essential nature of a share. A share constituted "the right to receive certain benefits from a corporation, and to do certain acts as a member of that corporation" and was therefore, in his view, closely akin to a debt. He supported his conclusion by a comparison of shares to other, established, things in action, such as partnership interests and interests in funds.

74. Fry LJ's statement that "personal things" are either in possession or in action, and that there is no third category, may carry the logical implication that an intangible thing is not property if it is not a thing in action. It is not clear, however, whether Fry LJ intended that corollary and it should not in any case be regarded as part of the reasoning leading to his decision (and so binding in other cases). The question before him was whether the shares were things in action for the purpose of the Bankruptcy Act, not whether they were property, still less the scope of property generally.

75. Moreover, in making the statement Fry LJ attributed a very broad meaning to things in action. He approved a passage from Personal Property by Joshua Williams, which described things in action as a kind of residual category of property: "In modern times [sc. by the 19th century] … several species of property have sprung up which were unknown to the common law … For want of a better classification, these subjects of personal property are now usually spoken of as ... [things] in action. They are, in fact, personal property of an incorporeal nature…".

76. On appeal, the House of Lords also framed the question as one about statutory interpretation. They reversed the Court of Appeal's decision, approving the judgment and reasoning of Fry LJ. They did not explicitly address the issue of exhaustive classification between things in action and things in possession and said nothing about the definition of property. Lord Blackburn did say, however, that "in modern times lawyers have accurately or inaccurately used the phrase '[things] in action' as including all personal chattels that are not in possession". Thus, to the extent that the House of Lords agreed with Fry LJ on the classification issue, that seems to have been on the basis that the class of things in action could be extended to all intangible property (i.e. it was a residual class of all things not in possession) rather than on the basis that the class of intangible property should be restricted to rights that could be claimed or enforced by action.

77. Our view is that Colonial Bank is not therefore to be treated as limiting the scope of what kinds of things can be property in law. If anything, it shows the ability of the common law to stretch traditional definitions and concepts to adapt to new business practices (in that case the development of shares in companies).

78. Colonial Bank was referred to in Allgemeine Versicherungs-Gesellschaft Helvetia v Administrator of German Property by Slesser LJ as showing "how the two conditions of [thing] in action and [thing] in possession are antithetical and how there is nomiddle term". Again, however, the case was not about the scope of property generally but about whether something that was undoubtedly property should be classified as a thing in possession or a thing in action.

79. Most recently, Colonial Bank was cited in 2014 in Your Response v Datateam. In that case, the claimant sought to assert a lien over a database in digital form but faced the obstacle of the previous decision of the House of Lords in OBG Ltd v Allan that there could be no claim in conversion for wrongful interference with a thing in action because it could not be possessed. In an attempt to distinguish the case from OBG, the claimant argued that, even if the database could not be regarded as a physical object, it was a form of intangible property different from a thing in action and so was capable of being possessed.

80. The Court of Appeal rejected the argument. Moore-Bick LJ said that Colonial Bank made it "very difficult to accept that the common law recognises the existence of intangible property other than [things] in action (apart from patents, which are subject to statutory classification), but even if it does, the decision in OBG Ltd v Allan [2008] AC 1 prevents us from holding that property of that kind is susceptible of possession so that wrongful interference can constitute the tort of conversion." He said that there was "a powerful case for reconsidering the dichotomy between [things] in possession and [things] in action and recognising a third category of intangible property, which may also be susceptible of possession and therefore amenable to the tort of conversion" but the Court of Appeal could not do that because it was bound to follow the decision in OBG. The other members of the court agreed.

81. The Court of Appeal did not, and did not need to, go so far as to hold that intangible things other than things in action could never be property at all, only that they could not be the subject of certain remedies. The intangible thing with which they were concerned was a database, which (as Floyd LJ said) would not be regarded as property anyway because it was pure information. They did not have to consider intangible assets with the special characteristics possessed by cryptoassets.

82. In other cases, the courts have found no difficulty in treating novel kinds of intangible assets as property. Although some of those cases are concerned with the meaning of property in particular statutory contexts, there are at least two concerning property in general. In Dairy Swift v Dairywise Farms Ltd, the court held that a milk quota could be the

> subject of a trust; and in Armstrong v Winnington, the court held that an EU carbon emissions allowance could be the subject of a tracing claim as a form of "other intangible property", even though it was neither a thing in possession nor a thing in action.
>
> 83. A number of important 20th century statutes define property in terms that assume that intangible property is not limited to things in action. The Theft Act 1968, the Proceeds of Crime Act 2002, and the Fraud Act 2006 all define property as including things in action "and other intangible property". It might be said that those statutes are extending the definition of property for their own, special purposes, but they at least demonstrate that there is no conceptual difficulty in treating intangible things as property even if they may not be things in action. Moreover, the Patents Act 1977 goes further in providing, at s30, that a patent or application for a patent "is personal property (without being a thing in action)". That necessarily recognises that personal property can include things other than things in possession (which a patent clearly is not) and things in action.
>
> 84. We conclude that the fact that a cryptoasset might not be a thing in action on the narrower definition of that term does not in itself mean that it cannot be treated as property."

59. The conclusion that was expressed was that a crypto asset might not be a thing in action on a narrow definition of that term, but that does not mean that it cannot be treated as property. Essentially, and for the reasons identified in that legal statement, I consider that a crypto asset such as Bitcoin are property. They meet the four criteria set out in Lord Wilberforce's classic definition of property in *National Provincial Bank v Ainsworth* [1965] 1 AC 1175 as being definable, identifiable by third parties, capable in their nature of assumption by third parties, and having some degree of permanence. That too, was the conclusion of the Singapore International Commercial Court in *B2C2 Limited v Quoine PTC Limited* [2019] SGHC (I) 03 [142].

60. There are also two English authorities to which my attention has been drawn where crypto currencies have been treated as property, albeit that those authorities do not consider the issue in depth. They are, and I have already mentioned them, in *Vorotyntseva v Money -4 Limited t/a as Nebeus .com*, the

decision of Birss J, where he granted a worldwide freezing order in respect of a substantial quantity of Bitcoin and Ethereum, another virtual currency, and the case of *Liam David Robertson*, where Moulder J granted an asset preservation order over crypto currencies in that case.

61. In those circumstances and for the reasons I have given, as elaborated upon in the Legal Statement which I gratefully as what I consider to be an accurate statement as to the position under English law, I am satisfied for the purpose of granting an interim injunction in the form of an interim proprietary injunction that crypto currencies are a form of property capable of being the subject of a proprietary injunction.

62. I therefore turn to the applicable principles in relation to a proprietary injunction. The basis upon which proprietary injunction is sought in respect of stolen funds is summarised in McGrath Commercial Fraud in Practice, 2nd edition, at paragraph 6.247 to 6.261. As Lord Browne-Wilkinson noted in *Westdeutsche Landesbank v Islington LBC* [1996] AC 669, when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient, the property is recoverable and traceable in equity. As confirmed by Scott J in *Poly Peck International PLC v Nadir (No.2)* [1992] 4 All ER 769, the *American Cyanamid* principles apply to a proprietary injunction. First there must be a serious issue to be tried, secondly, if there is a serious issue to be tried, the court must consider whether the balance of convenience lies in granting relief sought. The balance of convenience involves consideration of the efficacy of damages as an adequate remedy, the adequacy of the cross-

undertaking as to damages, and the overall balance of convenience, including the merits of the proposed claim.

63. As I say and for the reasons I have given, I am satisfied at least to the level required for the purposes of this application for interim relief that Bitcoins constitute property. I am satisfied that the test for a proprietary injunction against each of the four defendants, is also satisfied, that there is a serious issue to be tried as between the insurer and each of the four defendants in relation to the proprietary claims which I have identified, in relation to that Bitcoin which represents the proceeds of the monies paid out by the Insurer. Clearly, the ultimate strength of the claim against each of the four defendants is not a matter for determination before me today. I am satisfied that there is at least a serious issue to be tried against all four defendants. I should say that so far as the first and second defendants are concerned, I consider that the claims are very strong because those would appear to be those defendants who in fact committed the extortion and blackmail and obtained by way of ransom the sums concerned.

64. The position is less clear in relation to the third and fourth defendants who may simply have got mixed up in another's wrongdoing but certainly they are, as I understand it, holding Bitcoin which belongs to the claimant which has (arguably) come into their possession in the furtherance of a fraud and in circumstances where they have no entitlement to retain that Bitcoin if the claimant demonstrates it is entitled to the relief which it seeks.

65. Therefore, I am satisfied that there is at least a serious issue to be tried which is all that is requited at this stage for an interim injunction. I am satisfied that

the balance of convenience lies firmly in favour of granting relief in furtherance the Insurer's claimed proprietary rights. Equally I am satisfied that damages would not be an adequate remedy in circumstances where the 96 Bitcoins could be dissipated and I am satisfied that the insurer has a strong claim to the Bitcoins in question. The relief that is being proposed is either the same or very similar to the relief I note which was granted in terms of the asset preservation order granted by Moulder J (a copy of which I have been provided with).

66. However, in addition to a proprietary injunction, there is also ancillary relief as is usual in terms of providing information so that location of assets etc and where monies have moved to, for example, can be obtained. That is particularly apposite in the case of the first and second defendants, of course, because some of the money has in fact been converted into fiat currency but, equally, it may well be the case that because of the very rapid speed at which Bitcoins could be moved, that by the time this injunction is obtained that in fact some or all of the Bitcoins may have moved from the particular exchange or the particular account within that exchange and ancillary information in relation to that is needed. I will revert to that.

67. First of all, however, I need to consider whether or not it is appropriate to grant service out of the jurisdiction in relation to the claims which are advanced. A number of gateways are relied upon under Practice Direction 6B. It is fair to say that an additional number of gateways were being considered in the context of the wider claims which I am going to adjourn, i.e. the claim for Norwich Pharmacal or Bankers Trust relief, as such, and also for a worldwide

freezing injunction. The ones which are being claimed and relied upon for the purpose of the proprietary injunction, which is the matter in relation to which relief is being sought now is, first of all (2) a claim is made for an injunction order and the defendants be prevented from doing an act within the jurisdiction; (3) a claim is made against a person upon the whom the claim form has been served or will be served otherwise in reliance on this paragraph, and (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try and (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim; (5) a claim is made for an interim remedy under section 25.1 of the Civil Jurisdiction and Judgments Act 1982; (9), a claim is made in tort where damage was sustained or will be sustained within the jurisdiction, or damage which has been or will be sustained that results from an act committed or likely to have been committed within the jurisdiction.

68. In the present case, I am satisfied that the claims which are sought in terms of constructive trust and restitutionary claims, and the proprietary injunction that is sought in relation to those falls within (5), claim for interim remedy under section 25.1 of the Civil Jurisdiction and Judgments Act, as well as (9), claims in tort, where damage was sustained within the jurisdiction, the Insurer being an English insurance company who paid the money from, I am told, an English bank account and is registered here and therefore it is said has suffered loss in the money which was used to buy the Bitcoins which has ended up and has been traced through to wherever it is kept by Bitfinex.

69. I do not find it necessary to determine for present purposes whether or not the debate in relation to Bankers Trust and Norwich Pharmacal relief means that such an application - were it made - was one for interim relief or final relief because that application has been adjourned, so I express no view at the moment in relation to that.

70. So far as other gateways are concerned I consider that gateway (3) is potentially applicable because of the application of the other gateways that I have identified such that provided that any of the defendants can come within those other gateways, there are other defendants that would fall within the provisions of gateway (3). I say that also in relation to the third and fourth defendants because the relief that is being sought in terms of proprietary injunction and delivery up from them is actually substantive relief against them, i.e. the claimant is saying, "You are holding in your account Bitcoins which belonged to me, I suppose conceptually you have converted them and/or in any event that you are holding them on constructive trust for me and therefore return them." This is not simply Bankers Trust or Norwich Pharmacal type relief which is once and for all relief. There is, therefore a prospect of a trial involving all four defendants.

71. Therefore, and for the reasons I have given, I am satisfied it is appropriate to serve the claim form out of the jurisdiction in relation to the causes of action that I have identified, i.e. the restitutionary and constructive trust causes of action which will be set out in the amended claim form which I will also grant permission both for amendment and to be served out of the jurisdiction.

72. That then raises a question in relation to alternative service. The applicable principles in relation to alternative service in relation to the claim form are set out at CPR 6.15 and at 6.27 in relation to other documents. 6.15 provides: *"(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place."*.

73. One difficulty, of course, arises in relation to the first and second defendants, which is that because they are persons unknown it is not as yet known what jurisdiction they are in. They could be in this jurisdiction, in which case permission to serve out would not even be needed. They could be in any jurisdiction. This is not an unknown problem and the courts have grappled with this before. Two cases in particular that spring to mind are *LJY v Persons Unknown* [2017] EWHC 3230 QB, [2018] EMLR 19, where Warby J in the context of an individual C applying for an interim non-disclosure order restraining persons unknown D from publishing allegations of serious criminal misconduct and E being alerted to the possibility of publication in an anonymous letter received from D in which D invited C to make contact with them by "an unregistered and untraceable mobile phone, in that case the court granted, an application for an order requiring C to identify themselves and to provide an address for service and B authorising C in the event of D's non-compliance with that requirement to serve the claim form by the alternative method of filing it at court.

74. Another relevant decision of Warby J's is *Clarkson plc v Persons Unknown* [2018] EWHC 417 QB, (7th March 2018). In that case company C brought proceedings for an injunction to prevent unknown person D from disclosing or using confidential information illegally obtained from C's IT systems in circumstances where D threatened to publicise the information unless a very substantial sum was paid. The court granted C an interim injunction prohibiting D from communicating or disclosing certain information to any third party or using it in any other way and made an order permitting C to serve the claim form on the email address used by D to make the blackmail threats.

75. Turning first to the first and second defendants, I consider that this is an appropriate case for alternative service. There is good reason to do so. It is not currently known where D1 and D2 are. I should say D1 and D2 are potentially one and the same person. The alternative service that is sought is as follows: that the claimant had permission to serve the order and all other documents required to be served in relation to the enforcement of the order or the proposed proceedings on the first and second defendants by email, by any address provided by the second and third defendants relating to the Bitcoin account identified at annex A, and by delivering or leaving it any physical address provided by the second and third defendants that relate to the Bitcoin account identified at annex A, and it seems to me that it would be also appropriate to authorise service of the claim form by the alternative method of filing it at court, for essentially the same reasons as were granted by Warby J in the *LJY* case.

76. So far as the third and fourth defendants are concerned, communication to date has been by email and what is sought is service by email to three email addresses, two previously used and one more recently used. I need to give more careful consideration in the case of the third and fourth defendants because they have recently communicated saying that they require to be served in the BVI and therefore the cooperative approach which they had been indicating they were going to adopt, that they could be served by email which also appears to be their normal method of service, i.e. they accept service by email (which may reflect the fact that they are indeed a technology company), they have now indicated they want to be served in person in the BVI. That does cause me some concern because they have also said in the same breath that they will cooperate with the court and any court order the court may make.

77. I consider that there are three reasons why I should make an order for alternative against the third and fourth defendants as well. The first is that this is really an urgent application. It is very important that it comes to their attention quickly because it is concerned with the 96 Bitcoins which could be dissipated at any moment. That really leads on to the second point, which is that because of the very nature of Bitcoin they can be moved at the click of the mouse and therefore steps should be taken for the proprietary injunction to come to the attention of the account at the exchange at which the Bitcoin are held at the earliest possible opportunity. Thirdly, ultimately, these Bitcoin belong to the claimant, it is a proprietary claim, and it is important that the injunction is placed as soon as possible so that their rights are preserved and the risk of that property departing to an unknown location are minimised.

78. For those reasons, and although it is exceptional to grant alternative service, I consider this is just the sort of case where there is good reason to grant alternative service and indeed even if the test is one of exceptional circumstances I am satisfied it is met for the reasons that I have identified. Therefore, I grant alternative service by email on the third and fourth defendants to the three email addresses that will be identified in the order.

79. I should say that, as is apparent, the applications before me are on a without notice basis and therefore the claimants are under a duty of full and frank disclosure. A number of matters have been raised before me orally today by Mr. Connell, as well as the matters which are set out in the supporting affidavit which I have borne well in mind, and I am not aware of any of those matters which militate against the granting of this order. I have also asked whether there are any other matters which are required to be drawn to my attention. Mr. Connell, on instructions, has told me that there are not.

80. In the usual way there is a cross-undertaking in damages which clearly is appropriate. I also have information before me which satisfied me that there is no requirement that that undertaking be fortified at least pending a return date. By the nature of the relief which I am granting in terms of the order I consider that there should be a return date within a short period of time. I will come on to the aspects of the order which deal with information but I consider a return date should be on Friday 20th December, first of all, because it seems to me that a period of about seven days is the right period for any first return date and secondly, I am conscious of the fact that after Friday it will be vacation and it will be better that if there are substantive issues arising that they are at

least either considered, or directions are given pending a further hearing, at a hearing before the end of the legal term rather than this matter appearing before a vacation judge during the course of the vacation who may not have familiarity with the case or the issues that arise. The return date will be Friday 20 December with a half day estimate.

81. The other aspect of the injunction, the proprietary injunction, is an application that information be provided both in terms of the identity and address of D3 and D4 and that applies to all four defendants, i.e. that D3 and D4 identify D1 and D2, equally D1 and D2 have to identify themselves, including their address, and any associated information that D3 and D4 may have in relation to D1 and D2. I am satisfied that that information is necessary to police the proprietary injunction that I have granted for the reasons that I have said and also I consider that the associated information would also be appropriate to be provided by way of pre-action disclosure in the action which the claimant is undertaking to commence forthwith against all four defendants. I will hear counsel in terms of the finalisation of the precise form of information to be provided.

82. In terms of timescale I can see no reason why that information should not be provided within short order. The claimant has been in correspondence with Bitfinex for some time. I have no doubt that Bitfinex has the ability to access its records and its KYC material to identify the information that is sought in relation to D1 and D2 and equally D1 and D2 clearly will know themselves that information.

83. What I am going to do is stagger the time by which the information has to be provided such that Bitfinex i.e. D3 and D4, should provide it by 4 p.m. next Wednesday, which I think is the 18th and that D1 and D2 provide the information by 4 p.m. on the 19th. I say that because until the information is supplied by D3 and D4 these proceedings may not come to the attention of D1 and D2 and so they would be unable to comply and it would be wrong in principle, it seems to me, to make the order for them to provide information at a time when it is possible the order may not have come to their attention.

84. That would mean, therefore, though, that everyone would have had to comply with the order by the return date.

85. Therefore, for the reasons I have given I am satisfied that it is an appropriate case for the granting of a proprietary injunction in the terms that I have identified against all four defendants, and for the reasons I have given, and it is appropriate to serve the amended claim form out of the jurisdiction and I give permission to do so under the gateways I have identified, together with alternative service for the reasons I have given.

86. I will adjourn the other applications for Bankers Trust/Norwich Pharmacal relief and for a worldwide freezing injunction to the return date in the first instance, no doubt in the meantime and in the light of the product of the order that has been obtained, it will be possible to give directions at that hearing as to what is to happen to those further applications. At that time, consideration can also be given, for example, in relation to orders for the provision of particulars of claim and in due course a defence so that any injunctions that are

granted will either go to trial or can be brought to fruition within a relatively short period of time. Costs reserved.

87. I will now hear counsel in relation to the finalisation of the order.

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