



Neutral Citation Number: [2020] EWHC 1697 (Comm)

Case No: AD-2015-000149

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
QUEEN'S BENCH DIVISION
ADMIRALTY COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 08/07/2020

Before :

Mr Justice Butcher

Between :

THE OWNERS OF THE MOTOR VESSEL 'GRAVITY HIGHWAY'

Claimants

-and-

THE OWNERS OF THE MOTOR VESSEL 'MARITIME MAISIE'

Defendants

John Russell QC, Benjamin Coffey and Robert Ward (instructed by **Clyde & Co LLP**) for
the **Claimants**
Nigel Jacobs QC and Saira Paruk (instructed by **Ince Gordon Dadds LLP**) for the
Defendants

Hearing date: 23 June 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE BUTCHER

Mr Justice Butcher:

Introduction

1. There are for determination three related matters in this case. They are:
 - (1) The Defendants' Strike Out application dated 14 February 2020;
 - (2) The Claimants' appeal from the Unless Order of 16 December 2019; and
 - (3) The Claimants' application for relief from sanction, dated 17 April 2020.
2. The background to these three matters can be briefly stated.
 - (1) The case relates to a collision between the MV 'Gravity Highway' ('GH'), a newbuild car carrier which was carrying out sea trials before the completion of her fitting out, and the MV 'Maritime Maisie' ('MM'), a chemical/product tanker, on 29 December 2013 in the Korea Strait. The MM caught fire; the GH's bow was badly damaged.
 - (2) This action was commenced by the GH interests in December 2015.
 - (3) By a Consent Order dated 31 May 2017, it was agreed that the GH bore 1/3 liability for the collision, and MM 2/3.
 - (4) In April 2019 there was a reference of quantum issues to the Registrar.
3. By the Registrar's order of 17 April 2019, the Claimants were to serve a Defence and Counterclaim (which perhaps unusually for a Reference was to set out the Claimants' own claim), to include supporting documents and vouchers pursuant to paragraph 13.1(4) of Practice Direction 61.
4. On 10 May 2019 the Claimants served amended Particulars of their claim, which claimed a total of US\$31,149,065.71. Of this, the largest item was Item 1, being 'Cost of Repairs and General service carried out by Claimants', in the sum of some US\$27,212,000.
5. The Claimants had not fully complied with PD61.13.1(4), however, and by the CMC Order of 16 July 2019 ('the July Order') the Claimants were ordered to do so 'properly' by 13 September 2019. In the July Order, directions were given for the parties to provide standard disclosure by 4 October 2019. A timetable was laid down leading to a hearing of the Reference not before July 2020. In the event, that has been fixed for 19-28 October 2020.
6. On 13 September 2019 the Claimants served a Quantum Schedule running to 26 pages, together with additional supporting documentation.
7. The CMC was restored for a hearing on 28 October 2019. The resulting order ('the October Order') extended time for various steps. The October Order further provided, in paragraphs 4 and 5, as follows:
 - '4. By 1630 on Friday 22nd November 2019 the Defendants are to raise such questions or requests for further information or clarification by reference to the Claimant's Quantum Schedule ... as they consider necessary to understand the Claimants' case, completing an additional column marked 'MM Queries'.
 5. The Claimants are to respond to the Defendants' questions or requests under paragraph 4 above by completing an additional column in the same document marked 'GH response to MM Queries' above by 1630 on Friday 13th December 2019.'

8. On 22 November 2019, the Defendants served a request, by way of an additional column to the Quantum Schedule, for further information and documents. There were 155 requests made.
9. A further hearing took place on 12 December 2019. By that stage, the Claimants had not replied to the requests for further documentation and information, and the deadline for them to do so under the October Order had not yet expired. The Claimants did not tell the Registrar at that hearing whether or not they would comply with the deadline, but two hours after the hearing stated in correspondence that they would not be able to comply.
10. There were then what were in effect written submissions to the Registrar as to what should be the appropriate order in the circumstances. The Defendants sought that there should be an unless order, so that, if by 10 January 2020 there had not been provision of a response to the Defendants' requests for further information, then Item 1 of the Particulars of Claim should be struck out. The Claimants opposed that form of order.
11. On 16 December 2019 the Registrar finalised the Order ('the December Order'). Insofar as relevant, it provided:
 - '4. The time within which the Claimants must comply with paragraph[s] 5 ... of the Order dated 28th October is extended to 1630 on 17th January 2020. In the event that the Claimants fail to comply with paragraph 5 ... of the Order dated 28th October 2019 as extended by this paragraph, then:
 - (i) In the event of a failure to comply with paragraph 5 of the Order, the Claimants' claim under Item 1 of the Particulars of Claim be struck out...
 7. As the directions contained in paragraph 4 of this Order have been made without a hearing either party may apply to have them varied or set aside providing that such application is made on notice before 1200 on 18th December 2019 ... The first available date will be at 1430 on the 9th January 2020.'
12. The Registrar had given short reasons for the terms of paragraph 4 of the December Order in an email of 16 December, which included the following:

'Reasons – I have extended time in the new paragraph 4 to the 17th because Mr Kemp's email of 13th December indicates that there will be meetings in Korea on the 8th and given the difference in time zones I consider that a date of the 10th is putting too great a pressure on the GH interests. However mindful that it is important that the order [is] complied with I have included the unless order proposed by the MM interests. ... If either (or both) party disagrees I have sought to give a date before the end of term. Unfortunately, my next available date is on the 9th January 2020 [as] indicated...'
13. Neither party sought a hearing before the Registrar pursuant to paragraph 7 of the December Order. On 3 January 2020, however, the Claimants issued an application for permission to appeal, inter alia from the imposition of the unless order in paragraph 4(i) of the December Order.
14. On 17 January 2020, the Claimants served an updated Quantum Schedule intended to comply with paragraph 5 of the October Order, as amended by the December Order.

15. On 14 February 2020, the Defendants applied to strike out Item 1 of the Claimants' Particulars of Claim, on the basis that the further information supplied on 17 January did not amount to compliance with paragraph 5 of the October Order as amended by paragraph 4 of the December Order. That application also sought various forms of relief if Item 1 was not struck out.
16. On 19 February 2020, Teare J gave permission to appeal from the December Order pursuant to the application which the Claimants had made on 3 January 2020.
17. On 17 April 2020, the Claimants served evidence in response to the Defendants' Strike Out application of 14 February 2020, and made their own application for relief from sanctions.

The Issues

18. The issues which are before me are accordingly as follows.
19. In the first place, there is the issue of whether there has been non-compliance with paragraph 5 of the October Order as amended by paragraph 4 of the December Order. If the further information served on 17 January 2020 was compliant, then there was no breach, and the unless order will not have been applicable. This issue is raised directly by the Defendants' Strike Out application.
20. Secondly, should the Registrar have made the unless order which is contained in paragraph 4(i) of the December Order? This issue is raised by the appeal. This only has any significance if the Court has concluded that there was non-compliance.
21. Thirdly, assuming that the appeal fails, should the Claimants nevertheless be relieved from the sanction of striking out? This is raised by the relief from sanction application.
22. Fourthly, should any further orders be made on the alternative relief sought in the Strike Out application?
23. I will accordingly address these matters in turn.

Was there non-compliance with paragraph 5 of the October Order / paragraph 4(i) of the December Order?

24. The Defendants draw attention to the fact that no objection was made to the questions which they asked about the Quantum Schedule on 22 November 2019; and that the Claimants had not taken the opportunity of going back before the Registrar in relation to his determination that paragraph 4(i) of the December Order should be on unless terms. In the circumstances, they said, it was incumbent on the Claimants to ensure that the further information which they provided on 17 January complied with the orders made. In their contention, it did not, in a number of respects.
25. The essential complaint, which is raised in relation to about 19 of the answers on the Schedule, is that there has not been a proper clarification of the Claimants' claim in respect of man hours spent on repairs. The particular difficulty arises because GH was a new build, and most of the Claimants' claim is for repair costs incurred by the shipyard at which she was being built (Hyundai Mipo Dockyard or 'HMD'). The

decision had been taken for the yard to conduct the repairs in order that she could be sold as a newbuild rather than a repaired ship. But this meant that it was necessary to apportion the work done by the yard on the GH after the collision between work on the repairs and the remaining work which would in any event have been necessary to complete her construction. The yard had made a claim on its insurance, and the H&M insurers, Hyundai Marine and Fire Insurance Co Ltd, had appointed adjusters, Modern Marine Surveyors & Adjusters Ltd ('Modern'), which had carried out such an apportionment. The Claimants' claim in these proceedings is based on that exercise, ie it does not claim the full number of hours spent by the yard after the casualty, but is reduced to claim that proportion which Modern assessed to arise from the casualty. What the Defendants say is that no proper explanation has been given of the methodology employed by Modern in making that adjustment. They had asked, for example 'The adjusters do not explain how the claimed manhours were calculated ... Please clarify and provide a detailed breakdown of the relevant calculations and methodology.' The answer - 'The man hours were calculated from the daily reports as shown in Exhibit 1' - was not, they say, a detailed, or adequate, breakdown of calculations or methodology.

26. The Claimants say that there was no failure to answer the questions, and that their case is clear. They have produced all HMD's daily work sheets and photographs taken on almost every day of the repair work. Furthermore, they undertook a further, new, exercise of adding up all the hours shown in the daily work reports, grouped according to the work department headings used in the daily work reports. This report was served on 17 January 2020 as part of the Claimants' further information in response to the Defendants' requests. It showed a total of 251,264 hours. This could be compared with the yard's claimed hours of 276,084, which had been adjusted by Modern to 243,084 hours. Accordingly, the adjustments only affected a small proportion of the total manhours. Further, at the time the further information was provided on 17 January 2020, Modern's surveyor, Mr JY Kim, was providing limited cooperation, and the Claimants were unable to provide further information as to what he had done to adjust the hours down. They say that, since that time, he has provided rather more cooperation, but he has made it clear that he does not have any contemporaneous records of his observations and calculations which have not been provided, having disposed of them in 2015 after the issue of Modern's formal survey report. They further say that their case is sufficiently clear and that there is no real difficulty for the experts on each side in making an assessment of what hours were attributable to the repairs.
27. I was referred to authority as to what constituted compliance with an order for further particulars or information, and in particular to the case of QPS Consultants Ltd v Kruger Tissue (Manufacturing) Ltd [1999] BLR 366, and to Griffith v Gourgey [2014] EWHC 4440 (Ch) and a subsequent decision in the same case, [2015] EWHC 1080 (Ch).
28. The first of those cases was a pre-CPR case, involving an unless order for the provision of further and better particulars. Simon Brown LJ referred to the fact that under the then applicable rules and case law, if a breach of an unless order was established, then the court still had 'a wide discretion to do whatever is required in the interests of justice' (at 371). Because of the existence of that discretion, it was not appropriate to construe unless orders as narrowly as had been the case under the (even) earlier regime of Reiss v Woolf [1952] 2 QB 557. Simon Brown LJ then said (at 371-72):

‘First, an order for further and better particulars (whether or not in Unless form) is not to be regarded as breached merely because one or more of the replies is insufficient. If the answers could reasonably have been thought complete and sufficient, then the correct view is that they require only expansion or elucidation for which a further order for particulars should be sought and made.

Second, although I would regard an Unless Order as breached whenever a reply is plainly incomplete or insufficient, I would not expect the court’s strike out discretion to be invoked, let alone exercised, unless the further and better particulars considered as a whole can be regarded as falling significantly short of what was required. Whether this would be so would depend in part on the number and proportion of the inadequate replies, in part upon the quality of those replies (including whether their inadequacies were due to deliberate obstructiveness, incompetence or whatever), and in part upon their importance to the overall litigation. Satellite strike out litigation is not to be encouraged and it must be recognised that even to strike out part of a pleading (unless of course ... that would in any event be appropriate because, unparticularised, it is “vague and embarrassing”), is essentially penal.’

29. In his judgment in QPS Consultants, Waller LJ said this (at 375-76):

‘It is clear that where an order for particulars is made it is in breach of that order to respond “not entitled” or to give an answer which suggests that the matter is already sufficiently pleaded or which does not deal in any way with the request ... It is also worth mentioning that if a pleading is defective for want of particularity, although it will not normally be struck out where that lack can be remedied, it may well be struck out if the failure to particularise is in blatant disregard of court orders ... The extent and quality of the breach must obviously be taken into account in considering as a matter of discretion whether and to what extent the sanction should be enforced...’

30. A significant change was introduced by the CPR as to the effect of non-compliance with an unless order, in the sense that it was decided that the sanction embodied in such an order took effect without the need for further order; that the court’s function on an application to enter judgment was limited to deciding what order should properly be made to reflect the sanction which had already taken effect; but that there might be an application for relief from sanctions: Marcan Shipping (London) Ltd v Kefalas [2007] 1 WLR 1864.

31. The two decisions in Griffith v Gorgey are under the CPR, and are decided in the light of Marcan. In the first, which is a decision of Mr Simon Monty QC sitting as a Deputy High Court Judge, having referred to QPS Consultants including the passages I have quoted above, the judge said (at [27]):

‘Under the CPR the discretion of the court is exercised on the defaulting party’s application for relief from sanction rather than on the other party’s application for judgment.’

At paragraph [34] he said:

‘I therefore conclude that the response [to a Request for Further Information] was, to adopt the words used by the Court of Appeal in the QPS case, plainly incomplete and insufficient and thus the respondents were in breach of the unless order.’

In that case the judge granted relief from sanction, on terms which included the imposition of another, stringently expressed, unless order.

32. In the second of the decisions in Griffith v Gourgey, which was a decision of Simon J, the judge referred to QPS Consultants and other authorities. He quoted paragraph [34] of Mr Monty QC's decision, apparently agreeing with the submission that the principles in QPS Consultants remained germane under the CPR. He also said this:

'55. ... It is unnecessary to form a concluded view as to whether a "genuine attempt" to give additional information is sufficient, but I am doubtful that a party's view (reasonable or otherwise) that a response was sufficient would constitute grounds (by itself) for relief against sanctions. ...

56. ... if cogent reasons were given, it might be open to a respondent to contend that it was unable to give a response or that its ability to give a full response was confined by the state of its knowledge. In this context I note that in [22] of his judgment Mr Monty QC noted that the Respondents have never sought to argue that they could not answer the requests. Secondly, if the Court were persuaded that there had been genuine attempts to answer a request this might bear on its view of the fullness and completeness of the answer. Conversely if the Court were to conclude that a respondent was avoiding answering difficult questions it would undoubtedly count against it.

57. ... The Court is not concerned with the truth of responses. This would normally be investigated at trial or, in an egregious case, on a strike out application. Nor is it usually concerned with the logical coherence of the responses, unless it is relevant to the fullness and completeness of the response.'

33. In light of those authorities, I consider that the position is to be as follows:

- (1) In assessing whether there has been compliance with an unless order for the provision of further information the Court will consider whether the information is plainly incomplete or insufficient given the terms of the order as to the information to be provided, including the terms of any request which it has been ordered should be answered. The further information will be plainly incomplete or insufficient if it could not reasonably be thought to be complete and sufficient.
- (2) In examining completeness and sufficiency, the Court is not concerned with the truth of the answers or with their logical coherence unless any lack of coherence goes to the completeness or sufficiency of the response.
- (3) If there is non-compliance with an unless order for further information, then the sanction will take effect unless there is relief from it. In considering relief from sanction, amongst the other matters which will be taken into account, are the matters which were, in the pre-CPR context of QPS Consultants, regarded as going to the exercise of the discretion as to whether a sanction should be imposed. These will include whether the further information taken as a whole falls significantly short of what is required, and that this will depend in part 'on the number and proportion of the inadequate replies, in part upon the quality of those replies (including whether their inadequacies were due to deliberate obstructiveness, incompetence or whatever), and in part upon their importance to the overall litigation'.

34. Applying this approach, it is necessary to ask the question as to whether the further information provided by the Claimants on 17 January 2020 was, given the terms of the order pursuant to which it was being provided, 'plainly incomplete or insufficient'. I have reached the conclusion that it was not 'plainly incomplete or insufficient'. I say that for these reasons:

- (1) The order was that the Claimants should provide 'responses' to the Defendants' queries. It did not specify any degree of detail which the responses had to have.
- (2) The further information provided did provide a response to all the queries posed.
- (3) In relation to the area about which specific complaint is now made, Exhibit 2 to the Quantum Schedule served on 17 January 2020 provided a detailed totalling of the manhours worked. Exhibit 1 summarised the nature of the Modern adjustment, identifying those aspects of the manhours claimed by the shipyard which the adjusters had not accepted as being attributable to repair work, and identifying in particular that Modern had not accepted 21,316 hours of painting work and 1829 hours of machinery outfitting as attributable to repair work, with their comments including: 'we did not accept these works as damage claim and considered them as Shipbuilders Works'.
- (4) In the circumstances I consider that the further information provided could reasonably have been regarded as being complete and sufficient, in that it identified the total number of man hours spent by the yard, identified where Modern had made adjustments, and indicated that the adjustments had been made because the adjusters regarded some of the hours as 'Shipbuilders Works'. It could reasonably be thought to be obvious that the nature of Modern's adjustment was to make an attempt, based on their professional judgment, to distinguish those works which would have been required anyway as part of the process of completion.

35. For these reasons I consider that the Unless Order was not breached.

36. In those circumstances, the other two matters do not arise or are not of significance. In case I am wrong in relation to the issue of compliance, however, I will consider them, albeit relatively briefly.

The Appeal against the Registrar's Order

37. In relation to the Claimants' appeal from the Registrar's December Order, the Claimants say that the Registrar failed to take into account or to give effect to the guidance of the Supreme Court in Summers v Fairclough Homes [2012] UKSC 26 in relation to striking out an action where there is an established liability. They referred in particular to paragraph [49] where Lord Clarke said:

'The draconian step of striking a claim out is always a last resort, a fortiori where to do so would deprive the claimant of a substantive right to which the court has held that he was entitled after a fair trial. It is very difficult indeed to think of circumstances in which such a conclusion would be proportionate. Such circumstances might, however, include a case where there had been a massive attempt to deceive the court but the award of damages would be very small.'

38. The Claimants submitted that there was no difference in principle between that case where there had been a liability trial and the present case where the parties had agreed liability in the shares 2/3 to 1/3. Further the Claimants drew attention to the statement in Alpha Rocks v Alade [2015] 1 WLR 4534 at [23], per Vos LJ, that ‘it must be remembered that the remedy must be proportionate to the abuse’. In the present case, they argued, the remedy was wholly disproportionate, because it would apply even in the case of an inadvertent failure to provide all the information required (as indeed the Claimants submit, if they are wrong in relation to the Strike Out application, is all that actually occurred), and in circumstances where non-compliance would not risk a fair trial. The Registrar’s decision was therefore wrong in principle or was outside the range of decisions he could properly and reasonably have made.
39. For their part the Defendants submitted that the Registrar’s decision was one on a case management issue, which he was entitled to make. They referred to Royal & Sun Alliance Insurance Plc v T&N Ltd (In Administration) [2002] EWCA Civ 1964, at para. 38 where Chadwick LJ said
- ‘I accept, without reservation, that this Court should not interfere with case management decisions made by a judge who has applied the correct principles, and who has taken into account the matters which should be taken into account and left out of account matters which are irrelevant, unless satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge.’
40. In the present case, the Defendants argue, the Registrar was aware of the previous failures of the Claimants to comply with other orders of the court, and of their cavalier attitude in not informing him on 12 December that they would not be in a position to serve their further information on 13 December. His order was well within his discretion, and contained a mechanism for its setting aside, which the Claimants had not availed themselves of.
41. I have considerable sympathy for the Registrar, given the way the matter was dealt with by the Claimants on 12 December, and in circumstances where they had not brought to his attention on that occasion that they were unlikely to comply with the order for provision of the information on 13 December, and had therefore not engaged before him on that occasion in the argument as to what order would be appropriate for non-compliance. I am nevertheless of the view that the imposition of a striking out sanction was clearly disproportionate and wrong in principle and outside the ambit of discretion entrusted to the Registrar; and thus that the decision of the Registrar was wrong for the purposes of CPR r. 52.21(3)(a).
42. I have reached this conclusion for the following principal reasons.
- (1) Although the Defendants had previously been complaining as to a lack of proper particularisation of the Claimants’ claim, the request which is relevant here had first been made on 22 November 2019. It was a substantial one. While it had not been complied with by 13 December this is not a case where the relevant requests had been known to the Claimants and outstanding for a very long period or despite previous deadlines for the provision of answers to the particular questions at issue.

- (2) The conditional sanction imposed would mean that, in any case in which the answers were plainly incomplete or insufficient, the whole of Item 1 of the Claimants' claim would fall to be struck out. This sanction would apply whatever the reason for the answers being incomplete or insufficient and in circumstances where (a) the Claimants had a clear and agreed entitlement to recover 2/3 of their damages; and (b) it had not been shown that any substantial failure to provide the information would prejudice a fair trial of any, and still less of the entirety of, the Item 1 claim. I consider the sanction plainly disproportionate in those circumstances.
- (3) This lack of proportionality is illustrated by the facts of the case. The non-compliance which the Defendants have contended for relates only to part of the claim under Item 1. It is common ground that claims worth US\$6.2 million falling within Item 1 are not affected by the alleged non-compliance. While the Defendants have been prepared to concede that those parts of the claim should not be struck out, that is not a result provided for by the order itself. The sanction of the striking out of the whole of Item 1 is demonstrated to be disproportionate by reference to this illustration of the fact that a breach (even an allegedly substantial one) might not have any effect on considerable parts of the Item 1 claim.
- (4) The Registrar's reason for the sanction, namely that it was important that the order be complied with, would be applicable to a great many orders and is not a sufficient reason for the imposition of the 'draconian step' of a striking out order. There were other possible options available to attempt to secure compliance, including making provision for a further hearing to take place after the extended date for service to consider the sanction once the nature and extent of any non-compliance was apparent; or debarring the Claimants from relying on the Modern adjustment.

43. Accordingly had it been necessary, I would have allowed the appeal.

The Application for Relief from Sanction

44. Once again, in light of my conclusion on the Strike Out application, this does not arise for determination. I would, however, have given relief from the sanction of strike out.
45. The principles are well-known. The Court should first consider whether the breach is significant and serious; if so, the Court should consider why the default occurred; and then whether the sanction is appropriate in all the circumstances of the case.
46. In relation to the first, as I have said, I do not consider that there was a breach. But if I were wrong as to that, I would not regard the breach as a significant or serious one. The Modern adjustment is not an essential element of the Claimants' claim which could have been based on the total claim made by HMD to its insurers, leaving to evidence (in particular, expert evidence) the extent of the deductions needed to account for work which would have been required in any event to complete the GH. The Claimants have given disclosure of a considerable amount of documentation which shows the work which was actually carried out by the yard.
47. As to the second step, which involves a consideration of the reasons why any breach occurred, it appears to be the case that to the extent that the further information was not as full as it might have been this was due to (a) the fact that Mr JY Kim, who is not an

employee of the Claimants, was not cooperating fully, and (b) that he and Modern have not kept documentation relating to the adjustment. It does not appear to me that this is a case in which the Claimants have been deliberately obstructive or incompetent in the provision of the Further Information, but instead have made a serious effort to comply with the request.

48. Finally, when considering all the circumstances of the case, it is necessary again to bear in mind that this is a case in which the Defendants' liability for 2/3 of the damage to the GH is established. It is also the case that, as Mr Jacobs QC for the Defendants very fairly said, it is not the Defendants' position that the October 2020 hearing of the Reference has been jeopardised by reason of any inadequacy in the Further Information, albeit they do contend that the experts' task has been made more difficult. A consideration of those matters, taken with the other circumstances of the case, appears to me to tell firmly in favour of the grant of relief from the sanction of striking out, were such relief necessary.

The Application for a further Unless Order

49. The Defendants applied, if Item 1 of the claim was not struck out, for a further unless order requiring a clarification and detailed breakdown of the relevant calculations and methodology used by Modern within 7 days. I decline to make such an order. I am satisfied that the Claimants have provided, by the Further Information served on 17 January and in further information provided since that date, the best explanation which they are able to provide. I do not consider that there is anything to be gained by requiring the Claimants to respond again to a general request of the sort contemplated.

The Defendants' application for payroll data

50. The Defendants have applied for disclosure of 'payroll records showing hourly rates for each worker and their respective grades alleged to have been utilised for repair works related to the incident'. Before me, Mr Jacobs QC clarified that what was being sought was anonymised information: the names of the individuals can be redacted. The Claimants have objected that the disclosure of payroll documentation would place them in breach of Korean data protection regulations, and in any event is not relevant.
51. As to the first objection, I had in mind the summary of the relevant principles given in Bank Mellat v HMT [2019] EWCA Civ 449 at paragraph [63] per Gross LJ. As is there emphasised the English Court can order production and inspection of documents regardless of the fact that compliance with the order would or might entail a breach of foreign criminal law in the 'home' country of the party which is subject to the order. However, whether to make such an order is a matter for the discretion of the Court, and will not lightly be made if compliance would entail a party breaching its own criminal law. In exercising the discretion the Court will take into account the real, ie actual, risk of prosecution in the foreign state. And should inspection be ordered the Court can fashion the order to reduce or minimise the concerns under the foreign law.
52. In my judgment there is a negligible risk of prosecution by reason of the production of anonymised payroll documentation dating from 2013. I agree with Mr Jacobs QC that it is very difficult to believe that anyone will try or be able to work out from that information the identity of individuals working on the GH, especially as there were other ships being worked on at the yard at the time.

53. Further, as to the second objection, I am satisfied that the documentation is disclosable on the basis that it may potentially (although it may not) shed light on the appropriateness or otherwise of what the Claimants contend is the different way in which they have actually calculated manhour costs.
54. In the circumstances I intend to order the Claimants to provide disclosure of this documentation. I will receive further submissions as to the time in which it should be provided, and as to whether any confidentiality undertakings should be given by the Defendants, something which Mr Jacobs QC indicated might be considered.