[2017] UKUT 147 (TCC)
Reference number: FS/2014/005
FS/2014/006

PROCEDURE – application for issue of witness summonses – Rule 16 of the Tribunal Procedure (Upper Tribunal) Rules 2008 - and requests under the Taking of Evidence Regulation (Council Regulation (EC) No 1206/2001 of 28 May 2001) – CPR, 34.23 – s 25 of the Tribunals, Courts and Enforcement Act 2007

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

(1) STEWART OWEN FORD
(2) MARK JOHN OWEN **Applicants**

- and -

THE FINANCIAL CONDUCT AUTHORITY **Respondent**

TRIBUNAL: JUDGE ROGER BERNER

Sitting in chambers at The Royal Courts of Justice, Strand, London WC2 on 31 March 2017

On the application of Mr Ford dated 31 January 2017 for witness summonses and letters of request, and having considered the written submissions of the Authority dated 15 February 2017 and of Mr Ford dated 16 March 2017

DECISION

1. I have before me an application by Mr Ford for witness summonses or letters of request in respect of a number of named individuals. Mr Ford's original application concerned some 19 individuals; his application has now been modified and relates to eight.

Background

2. I need not say anything much about the background to the present application. It is in the context of a very substantial case before this Tribunal on the references of, as things now stand, Mr Ford and Mr Owen, of decision notices issued by the Authority to them in which it was found that, in relation to their conduct as directors of Keydata Investment Services Limited ("Keydata"), they were each in breach of Statements of Principle 1 (integrity) and 4 (relations with regulators) and that each was not a fit and proper person to perform functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. Each was made the subject of a prohibition order and a financial penalty was imposed, on Mr Ford of £75 million and on Mr Owen of £4 million.

3. Keydata's business was concerned with certain investment products underpinned by bonds issued by two special purpose vehicles incorporated in Luxembourg, SLS Capital SA ("SLS") and Lifemark SA ("Lifemark"). The Luxembourg regulator (the Commission de Surveillance du Secteur Financier ("CSSF")) closed Lifemark to new business in mid-2009 and it was put into liquidation on 11 May 2012. Keydata ceased trading in June 2009 and went into administration. Keydata has subsequently been dissolved on 2 July 2014.

4. During the relevant period of 26 July 2005 to 8 June 2009, more than 37,000 investors purchased the relevant investment products, investing over £475 million. The Financial Services Compensation Scheme ("FSCS") has subsequently made payments to investors of over £330 million.

5. In each of the statements of case served by the Authority in relation to Mr Ford and Mr Owen, the Authority has referred, in the summary of its case, to the amounts invested in the investment products and to the level of consumer detriment which the Authority says has arisen from the sales of the investment products and to the impact which this level of consumer detriment has had on the financial services sector. The failings of Mr Ford and Mr Owen are considered by the Authority to be of the most serious nature. The amount of the investor loss, and the view of the Authority as to the seriousness of the breaches are referred to as factors in determining, according to its policy, the imposition of financial penalties in each case.

6. Mr Ford and Mr Owen dispute the Authority's findings and have served detailed replies. In each case it is argued, amongst many other things, that it was not their actions that have given rise to consumer detriment; rather that such detriment was the direct result of the interventions, said to have been unwarranted, of the

Authority itself and, in relation to Lifemark, the CSSF with the encouragement of the Authority.

Powers of the Tribunal

7. The power of the Tribunal to issue a witness summons stems from rule 16 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Upper Tribunal Rules"), by which the Tribunal may, either on the application of a party or on its own initiative by summons require any person to attend as a witness at a hearing.

8. That power is not, however, without its limitations. One such limitation is territoriality. By rule 16(3), no person may be compelled to give any evidence that the person could not be compelled to give on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined. Although it concerned not the Upper Tribunal Rules, but the analogous rule in the Tax Chamber of the First-tier Tribunal, the finding by Warren J in this Tribunal in *Clavis Liberty Fund v Revenue and Customs Commissioners* [2015] 1 WLR 2949 that there was no jurisdiction to issue a witness summons in respect of a prospective witness with no presence in the jurisdiction is equally apt to this Tribunal.

9. Of the eight individuals for whom by his application Mr Ford now seeks evidence in these proceedings, two are resident outside the jurisdiction, but within the EU. No witness summons may be issued in respect of those individuals. Mr Ford has therefore sought in those two respects the issue of a letter of request (strictly, a request for the taking of evidence) under Council Regulation (EC) No 1206/2001 of 28 May 2001 – the Taking of Evidence Regulation – on cooperation in the taking of evidence in civil or commercial matters.

10. There is no provision in the Upper Tribunal Rules with respect to the making of requests for the taking of evidence equivalent to CPR 34.23, under which the High Court may order the issue of a request to a designated court in the Regulation State (an EU Member State other than Denmark) in which the proposed deponent is. But s 25 of the Tribunals, Courts and Enforcement Act 2007 does provide that, as respects the attendance and examination of witnesses in particular, and more generally other matters incidental to the Upper Tribunal's functions, the Tribunal has "the same powers, rights and privileges as the High Court". It seems to me, although in the event it is not something that I have to decide, that this would suffice to give this Tribunal the same power to make a request under the Taking of Evidence Regulation as exists in the High Court.

11. The Authority has pointed out that the Taking of Evidence Regulation allows a request to be made only in respect of "civil and commercial matters". It has referred me to *Dicey and Morris*, at paragraph 8-098, where the question of what is a civil or commercial matter is addressed. There is no indication that a reference of this nature would be other than civil or commercial; indeed it seems to me to have attributes of both, and I note that in practice bankruptcy, insurance and employment are treated as being within "civil and commercial matters". I see no reason why that should not be

the case on a reference from a decision notice of the Authority, but again this is something that does not fall to be decided in this case.

12. In all cases, whether of witness summonses or letters of request, evidence should be compelled only if it is relevant and will materially assist in the determination of an issue or issues in the proceedings. As this Tribunal said in *Jeffery v Financial Conduct Authority* (FS/2010/0039; 15 January 2013, reported as Appendix A to the decision released on 7 February 2013), at [15]:

> "… the Tribunal may direct additional witness evidence, or issue a witness summons in a particular case, in each case at the discretion of the Tribunal, where the Tribunal considers that there is a real likelihood that such evidence will materially assist the Tribunal in its determination of an issue or issues in the proceedings. The test is not whether the party making the application hopes that the evidence sought will assist its case. That would be in the nature of speculation or, as it is put, a "fishing expedition". The test is whether the Tribunal considers that there is a real likelihood that its determination will be assisted. That may be the case where the Tribunal considers that additional evidence would be reasonably likely, one way or another, to resolve an area of uncertainty."

Mr Ford's application

13. With those broad principles in mind, I turn to Mr Ford's application. Mr Ford makes a number of what he describes as overarching submissions. They concern the damage to his reputation and financial ruin which he attributes to the actions of the Authority which, he asserts, have themselves led to enormous harm to UK consumers, but for which he is being made the scapegoat. He regards the objection made by the Authority to all (bar one) of the witness summonses and letters of request sought as further evidence of an attempt by the Authority to deny Mr Ford a fair hearing before this Tribunal. He argues that the balancing of public interests by the Tribunal requires the attendance of certain witnesses and not their exclusion.

14. There is no doubt that Mr Ford, and Mr Owen with him, are entitled to a fair hearing. In terms of evidence, that fairness may be provided by evidence being admitted where it is relevant, and in the context of an application for witness summonses or letters of request, appropriate orders being made where the evidence that can reasonably be expected to be obtained is both relevant and likely materially to assist the Tribunal in its determination. The fact that a party may raise objections to the summonses or requests sought does not in any way indicate a desire on the part of that party to deny the other a fair hearing. Both parties are entitled to put their respective arguments to the Tribunal, provided they do so reasonably and within the spirit of the Tribunal's overriding objective of fairness and justice. There is no merit in Mr Ford's suggestion that the objections raised by the Authority in this case trespass outside those parameters.

15. In respect of a number of the proposed witnesses, Mr Ford's application discloses a common theme. He refers to the question of consumer detriment, and

seeks to argue that the nature of the alleged misconduct in his case and that of Mr Owen and the causes of the consumer detriment are "inextricably linked". He refers to this as the "dominant feature" of the case, and regards the question at the heart of the case for determination by the Tribunal as being who or what caused the consumer detriment.

16. The Authority takes a different position from that of Mr Ford on the relevance and relative importance of the issue of consumer detriment. It says that the issue of consumer detriment is irrelevant to all questions of liability. It points to its pleaded case in respect of consumer detriment as being simply that the actions of Mr Ford and Mr Owen contributed to that detriment and that this is one of a number of aggravating factors relevant to penalty and/or sanction. It says that the primary determinant of penalty is the £73.3 million of fees which the Authority says Mr Ford personally extracted from the Lifemark structure without any proper basis and without informing the other Keydata directors, Keydata's compliance officer, any of Keydata's clients or the regulator. The Authority's case is that Mr Ford should not be permitted personally to benefit in this way from his own misconduct. It submits that the evidence permitted in respect of the issue of consumer detriment should be commensurate with the limited extent to which it is relevant, and that it does not justify the issue of witness summonses and requests.

17. In my decision released on 1 February 2016, reported at [2016] UKUT 0041 (TCC), in considering certain disclosure applications made by Mr Ford and Mr Owen, I noted, at [38], that the question of relevance was to be considered in the context of the matters which are within the jurisdiction of the Tribunal to determine. That jurisdiction, I pointed out, is a statutory one, contained in s 133 of the Financial Services and Markets Act 2000 ("FSMA"). By s 133(4), the evidence which the Tribunal may consider is any evidence relating to the subject matter of the reference. At [40], I said that the subject matter of the references in this case is the conduct of Mr Ford and Mr Owen.

18. That there is a link between the alleged misconduct and the consumer detriment is clear, but it is not the consumer detriment, or the causes of it, that will determine the question whether the conduct was, as alleged by the Authority, misconduct. That, according to the Tribunal's statutory jurisdiction, is the principal question for determination. If, and only if, the Tribunal finds that there has been misconduct will the question of its seriousness be relevant to any sanction to be imposed. But the extent of that relevance must be viewed in the context of the case that is actually put by the Authority. In this case, as the Authority has said, the principal element of the financial penalty in his case is the element of disgorgement of the financial benefit which the Authority alleges Mr Ford has obtained by reason of his misconduct.

19. It will not assist Mr Ford to seek to characterise the Authority's case as something different from what it actually is in order to assert that it was the Authority, and not anything done by Mr Ford and Mr Owen, that caused the consumer detriment. In particular, Mr Ford should not be under the impression, as his application suggests that he is, that if the Tribunal were to find that there were no causal connection, or no sufficient causal connection, between the conduct of Mr Ford and Mr Owen and the

consumer detriment which occurred, the Authority's case would collapse, as it is "so squarely based on consumer detriment". That is plainly not the case, and it will not assist Mr Ford in properly preparing for the hearing if he continues to believe that it is. That is not to say that Mr Ford may not make the causation argument, but that will not deflect the Tribunal from its statutory task of making its determination as to the subject matter of the reference, which is the conduct of Mr Ford and Mr Owen. That is the focus of the enquiry, and from that follows that it must be the focus of the evidence and the submissions of the parties.

20. With those introductory comments in mind, I turn to the individual applications.

Rebecca Irving and Lilian Small

21. Ms Irving and Ms Small were each, at the material times, employees of the Authority, and it is convenient to consider the applications in respect of them together. Both Ms Irving and Ms Small were senior investigating officers. Ms Irving, Mr Ford asserts, "was pivotal in the interventions in relation to Keydata and Lifemark SA and also a key member of [the Authority] in its interactions, *inter alia*, with PwC, CSSF and with the Provisional Liquidator of Lifemark in the relevant period." Similar assertions are made with respect to Ms Small.

22. Mr Ford submits that the evidence of Ms Irving and Ms Small goes to the heart of many of the facts and matters relied upon by the Authority. Mr Ford says, in relation to Ms Irving, that the following questions would be included amongst those to be put:

> (1) Why did Ms Irving encourage, persuade or instruct the CSSF to close Lifemark to new business as and when she did?
>
> (2) How much research did the Authority do into Lifemark before Ms Irving procured the closure of the company to new business?
>
> (3) Were the Authority aware of the likely consequences for UK investors of closing Lifemark to new business?
>
> (4) Before taking the decision to close Lifemark to new business, what (if any) alternative courses of action did the Authority consider and why were none of these alternatives taken up?
>
> (5) Why did nobody at the Authority speak to Mr Ford about Lifemark before taking action to close the company to new business?
>
> (6) Similar questions would be put in relation to Ms Irving's involvement in relation to the provisional liquidator of Lifemark in the period from June 2009 to December 2010, the ISA issue[1], including interaction with HMRC in relation to simplified voiding and PwC in respect of the closure of Keydata.

[1] The ISA issue refers to the case of Mr Ford that the intervention of the Authority prevented Keydata from finalising agreement with HMRC under a "simplified voiding process" to resolve issues concerning the ISA status of products distributed by Keydata.

23. In relation to Ms Small, Mr Ford refers in particular to the question (which he says is one of the many important questions to be put to Ms Small) of the "statutory objective" achieved "by depriving SLS and Lifemark bondholders of the benefit of simplified voiding".

24. I am not satisfied that either Ms Irving or Ms Small could provide evidence that is either relevant to this case or would materially assist the Tribunal in its determination. As the Authority has noted, in my decision of 1 February 2016, I determined, in the context of the disclosure applications made at that time, that the internal decision-making processes of the Authority at the time of the material events were not relevant to these proceedings. At [42], I said:

> "The internal decision-making processes of the Authority, and its motives in taking the actions it took, may be relevant to the misfeasance proceedings, but they are not, in my judgment, relevant to the subject matter of these references. That includes the decision-making processes and motivation behind the decisions taken by the Authority in relation to the 2007 Thematic Review and the TLPI Review, the actions of the Authority in relation to HMRC in connection with the ISA status of the investment products, and the actions taken in respect of Keydata, SLS and Lifemark."

25. The reference in that passage to the misfeasance proceedings was to a claim in the High Court that officers of the Authority had acted improperly in respect of actions at the time of the administration of Keydata. Those proceedings were summarily dismissed by the court on 7 November 2016 as having no reasonable prospect of success.

26. It is apparent from the line of questioning suggested by Mr Ford that he is seeking to create a further avenue by which he can attempt to impugn the underlying processes by which decisions were taken by the Authority as to appropriate action to be taken with respect to the matters in question. In my judgment nothing has changed which would make such a line of enquiry relevant to the issues to be determined on these references. The subject matter of those references is the conduct of Mr Ford and Mr Owen, and consideration of that issue will not be illuminated by any analysis of the rationale for any subsequent action of the Authority. If Mr Ford wishes to submit that it was the actions of the Authority, and not the conduct of himself and Mr Owen, that caused the consumer detriment, then it is not evidence of the reasons why the Authority took, or refrained from taking, any particular action, that will assist. I agree with the Authority that any submissions that either Mr Ford or Mr Owen wish to make in that respect can be made on the basis of the simple fact of those actions themselves. That accords with what I said at [41] of my decision of 1 February 2016:

> "Mr Ford's case that it was the actions of the Authority, and not the conduct of the applicants, that caused the consumer detriment, can be made on the basis of the factual account of the actions of the Authority, when considered in the context of the Tribunal's consideration of the facts as a whole."

27. For these reasons, I refuse Mr Ford's applications in relation to Ms Irving and Ms Small.

Tim Harrop

28. Mr Harrop is a partner in Allen & Overy LLP, the firm of solicitors which advised Keydata on tax matters. Mr Ford has requested Mr Harrop to provide a witness statement in relation to the HMRC "simplified voiding process", which concerns the ISA issue. Mr Ford's application says that Mr Harrop has declined to assist on the ground that he has a continuing duty of confidentiality to Keydata, notwithstanding the liquidation of that company.

29. Mr Ford's application does not suggest that the Tribunal would receive assistance from Mr Harrop with regard to the simplified voiding process or any other aspect of ISA compliance. Instead, Mr Ford's focus is again on an attempt to ascertain the underlying reason why Ms Small had, as Mr Ford describes it, "urged HMRC not to allow Keydata to use the simplified voiding process" and, it is said, intervened subsequently to prevent an agreement being reached with HMRC. For the same reasons I have given with respect to the proposed summons in relation to Ms Small herself, I find that no evidence that Mr Harrop could be expected to give in that respect would be relevant to the issues for determination.

30. It is clear that the facts concerning the discussions between Keydata and its advisers with HMRC concerning the ISA compliance issues and in particular the use of the simplified voiding process will be both relevant and material. But evidence will be given by Mr Turner of HMRC in that respect, and Mr Ford and Mr Owen will have the opportunity to ask questions of Mr Turner as to the facts material to the ISA issue. There has, I am told by the Authority, been disclosure by the Authority of all the communications with HMRC in its possession.

31. In those circumstances, rejecting Mr Ford's submission as to the relevance of the reasons for the Authority's actions with respect to HMRC and the ISA issue, and in view of the factual evidence otherwise available to the Tribunal, in the form of Mr Turner's evidence and the disclosed documents, I conclude that the evidence of Mr Harrop would, to the extent it is directed at the reasons for the Authority's actions, be irrelevant, and would not otherwise be of material assistance to the Tribunal.

32. In consequence, I refuse Mr Ford's application in respect of Mr Harrop.

Peter Johnson

33. Mr Johnson was the senior compliance officer of Keydata at all material times, and later became Chief Operating Officer. He was himself the subject of a decision notice issued by the Authority in connection with the matters at issue in these references, under which, along with Mr Ford and Mr Owen, he was subjected to a prohibition order and a financial penalty. He made a reference to this Tribunal, and was joined in the proceedings with Mr Ford and Mr Owen. However, his reference was subsequently withdrawn.

34. The Authority takes a neutral position with regard to the issue of a witness summons to Mr Johnson. It acknowledges that Mr Johnson will be able to provide relevant evidence in respect of due diligence undertaken by Keydata and certain operational and compliance matters.

35. As one of the senior executives, and in particular in his compliance role, I do consider that Mr Johnson's evidence of those matters, so far as material to the allegations of misconduct against Mr Ford and Mr Owen, would be both relevant and likely to be of material assistance to the Tribunal. I shall accordingly provisionally accede to Mr Ford's application in respect of Mr Johnson, subject to giving Mr Johnson the opportunity to object.

36. Subject to any objection of Mr Johnson, any summons will in any event be required to be strictly limited as to the matters with respect to which Mr Johnson will be required to give evidence. In particular, agreeing with the Authority in this respect, Mr Johnson will not be required to give any evidence with respect to either his participation in these proceedings or his withdrawal of his own reference, or anything related to those matters. His evidence is to be strictly confined to facts (and not opinions) within Mr Johnson's own knowledge in relation to the period from 26 July 2005 to 8 June 2009, which is the Relevant Period during which the Authority alleges misconduct by Mr Ford and Mr Owen.

37. I will make directions concerning the next steps in this process, including provision for Mr Johnson to object.

James Darbyshire

38. Mr Ford's application describes Mr Darbyshire as the principal officer of the FSCS during the relevant period. The application submits that Mr Darbyshire would be able to give evidence "in relation to actions and decisions of the FSA Investigation Team, with particular reference to interventions in relation to FSCS collaboration with the FSA and the CSSF in respect of Keydata and Lifemark; the reasons for the decision to reject the Seaport rescue plan, despite the strong recommendation from the IMA that it be accepted; and the FSCS determination that SLS and Lifemark investors had claims against Keydata." Mr Ford also asserts that Mr Darbyshire's evidence informs the issue of consumer detriment.

39. There is in my judgment no basis on which evidence concerning the activities of the FSCS, and the reasons behind certain of its actions, could be of relevance to the subject matter of the references of Mr Ford and Mr Owen. To the extent that the evidence of Mr Darbyshire is sought to inquire into the internal decision-making processes of the Authority, it cannot be regarded as relevant for the reasons I have given earlier. The decision-making processes and the reasons behind decisions of the FSCS itself cannot on any analysis be relevant for consideration. As with the actions of the Authority, Mr Ford and Mr Owen may make submissions with respect to the cause of consumer detriment by reference to the fact of those actions as well as the material facts of the actions of Keydata and themselves. The evidence of Mr Darbyshire will not assist the Tribunal in that respect.

40. I refuse Mr Ford's application for a witness summons in relation to Mr Darbyshire.

Daniel Schwarzmann

41. According to Mr Ford's application, Mr Schwarzmann was the co-administrator in the administration of Keydata and its co-liquidator in the liquidation. He is also described as a partner and principal decision maker within PwC in the relevant period. He was the author of the Keydata "Solvency Report", which was the report used in his appointment as administrator of Keydata. Mr Ford says that, in addition to those matters, Mr Schwarzmann could give evidence with regard to a number of other issues relating to Lifemark, CSSF and PwC, the sell-off of asset portfolios and rejection of rescue plans.

42. Mr Ford's reply to the Authority's statement of case asserts that the Solvency Report was deliberately misleading and was concocted on the instruction of the Authority in order to support a pre-determined decision by the Authority to seek to place Keydata into administration.

43. That allegation of bad faith has essentially been disposed of by the High Court's dismissal of the misfeasance proceedings, and these references are not an appropriate forum in which to seek to resurrect them. They have no relevance to the core issue of the conduct of Mr Ford and Mr Owen. To the extent Mr Ford and Mr Owen wish to make submissions as to the causation of consumer detriment they can do so by reference to the fact of the administration and their own submissions, supported by their own evidence or the expert evidence (which has been permitted in respect of traded life policy investment, including the Lifemark and SLS products, and forensic accountancy) as to the financial viability of Keydata. The Tribunal will not be materially assisted by any evidence of Mr Schwarzmann with respect to either the administration or liquidation of Keydata, or the other matters referred to by Mr Ford.

44. I refuse Mr Ford's application for a witness summons in respect of Mr Schwarzmann.

Eric Collard

45. Mr Collard was employed as a manager within KPMG Luxembourg. Amongst other things, as Mr Ford's application states, Mr Collard was the author of a report relied upon by the Authority in forming its views regarding the risks associated with the Lifemark bonds. Mr Collard was also appointed provisional administrator of Lifemark.

46. There are two strands of evidence that Mr Ford submits Mr Collard could give and which would be material. The first is evidence based on his knowledge and experience of the US life settlements industry as at November 2009 and his knowledge and experience of investment products underpinned by US life settlement policies and related business models. The second is more generally in relation to the provisional administrator's activity report for Lifemark dated 9 February 2010 and

interaction with the Authority and CSSF, as well as with PwC in relation to Keydata and Lifemark.

47. As to the first of these strands, I do not accept that Mr Collard's evidence could be of material assistance to the Tribunal. The risks associated with the Lifemark bonds are properly to be the subject of expert evidence for which provision has been made by directions of the Tribunal. Mr Collard would not be put forward as an expert; indeed, the Authority has pointed to witness evidence of Mr Ford to the effect that Mr Collard has no knowledge or experience of US senior life settlements or life settlement-backed bonds. Mr Ford's own application refers to his reply to the statement of case which makes the same assertion. Mr Collard's evidence of fact in this respect could add nothing to the contents of his report. If Mr Ford wishes to challenge that report or aspects of it, that can be done by the expert evidence which Mr Ford has been permitted to adduce.

48. The second strand once again seeks to obtain evidence with respect to the underlying processes of the Authority, CSSF and PwC. For the reasons already given, I do not consider any of that to be relevant to the subject matter of these references, and I do not consider that the Tribunal will be afforded any material assistance by receiving evidence in that regard.

49. I refuse Mr Ford's application in relation to Mr Collard. In view of that I need not consider further in relation to Mr Collard the jurisdictional issues around the making of a request under the Taking of Evidence Regulation.

Christiane Campill

50. Ms Campill is a senior executive at the CSSF, the Luxembourg regulator. Mr Ford says that the evidence which Ms Campill would be able to provide "goes to the very heart of the question of the viability or otherwise of the Lifemark business model". In the application he also submitted that Ms Campill would be able to give evidence as to the basis for the decisions of the CSSF in respect of the Lifemark bonds and the history of Lifemark up to June 2009 and the interaction with the Authority from June 2009.

51. The viability of the Lifemark business model is properly the subject of the expert evidence. No assistance will be derived by the Tribunal from evidence of fact from Ms Campill. The basis of the decisions of the CSSF is, for the same reason as applies to the basis of the decisions of the Authority, not relevant to the subject matter of these references. Equally irrelevant is the interaction between the CSSF and the Authority. Any question of causation and consumer detriment may be the subject of submission having regard to the fact of the CSSF intervention itself.

52. Finally, evidence of Ms Campill, as a regulator, is not in my judgment required in order for Mr Ford (who was a director of Lifemark) to provide evidence as to the history of Lifemark.

53. I refuse Mr Ford's application in relation to Ms Campill. As with Mr Collard, that means that I need not consider in relation to Ms Campill the jurisdictional issues around the making of a request under the Taking of Evidence Regulation.

Summary of decisions

54. I provisionally allow Mr Ford's application in respect of Mr Johnson, subject to the caveat I have expressed about the scope of the evidence Mr Johnson may be required to give. I will make further directions in that regard, which will include provision to enable Mr Johnson to object to the issue of the summons.

55. In all other respects I refuse Mr Ford's application.

ROGER BERNER
UPPER TRIBUNAL JUDGE

RELEASE DATE: 7 APRIL 2017